



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05673
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

May 31, 2011

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on April 9, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

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<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On December 9, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).<sup>2</sup> Applicant signed a notarized Answer to the SOR on December 29, 2010, in which he admitted the allegations. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on January 11, 2011, and the case was assigned to me on January 25, 2011. DOHA issued a Notice of Hearing on February 9, 2011, and I convened the hearing as scheduled on March 2, 2011. I admitted two Government Exhibits, (GE) 1 and 2. Applicant testified, and offered 13 exhibits, which I admitted as Applicant Exhibits (AE) A through M.

### **Procedural Ruling**

I take administrative notice of facts relating to India, set forth in fifteen U.S. government documents submitted by Department Counsel. (Hearing Exhibit I). The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

### **Findings of Fact**

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 40 years old, was born in India. He earned a bachelor's degree in engineering there in 1993. He worked for software companies in India, including a subsidiary of a U.S. corporation. He did not serve in the Indian military. He married an Indian citizen in 1998. He and his wife worked for private companies in India. He came to the United States in 1997, at the age of 27, and his wife came to the United States in 1998. Applicant and his wife became naturalized U.S. citizens in 2008.<sup>3</sup> His children, who are two and seven years of age, are native-born U.S. citizens. His life revolves around his daughter's school and sports activities, and his church activities. He is currently working toward his master's degree in project management. He is a project manager for a defense contractor, where he has been employed since 2006. Applicant has held a public trust position since 2006. This is his first application for a security clearance. (GE 1, 2; AE A; Tr. 22-23, 54, 66-74)

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<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>3</sup> When Applicant and his wife became U.S. citizens in 2008, they forwarded their foreign passports to the Indian embassy, where they were cancelled. Guideline C is not alleged. (Tr. 77, 108)

Applicant's parents are citizens and residents of India. His father, 77 years old, is retired. His mother is 67 years old. They visited Applicant twice in the United States in the past 13 years. They are in touch by telephone every week or two. Applicant provides his parents with approximately \$375 per month support. He visited his family in India six times between 2002 and 2010. When he visits, he stays about three weeks. (GE 2; AE A; Tr. 91-97, 106-111)

Applicant also has two sisters who are citizens and residents of India. One sister, who is 44, is an excise inspector for the Indian government, which Applicant describes as a "low-level" position involving ensuring taxes are paid on time. Her spouse is a chemical engineer for a private company. Applicant's other sister is 45 years old. She works for a private bank, and her husband has his own IT company. Applicant talks with his sisters once every week or two by telephone. They have not visited him in the United States, and have never requested help or support from him. Applicant's family in India is not aware that he is seeking a security clearance. (GE 2; AE A; Tr. 91-97)

Applicant's mother-in-law and sister-in-law are citizens and residents of India. His mother-in-law, 66, is retired from a position working in a pharmacy. She has no interest or understanding of Applicant's job. His sister-in-law has a clerical position in an airline company, and his brother-in-law works for an insurance company. Applicant's mother-in-law visited Applicant and his wife in the United States twice, and his sister-in-law visited them once. He talks with his in-laws once every week or two by telephone. Applicant's in-laws have no connections with the Indian government. (GE 1, 2; AE A; Tr. 98-102)

Applicant purchased a townhouse in India while he was an Indian citizen, worth approximately \$100,000. He stays there when he visits, and keeps it vacant when he is not there. He is trying to sell the property, and placed it on the market in June 2010. However, water damage developed and it had to be withdrawn. Applicant has since repaired the damage, and it has been back on the market since December 2010. Applicant also maintains a bank account in order to pay expenses related to the house, and to provide some support to his parents. It has a balance of approximately \$2,250. When the house is sold, he will close the account. He has no other Indian investments, business interests, or connections. Applicant's home in the United States was assessed in March 2011 at \$743,000. He has bank accounts and stocks worth approximately \$120,000. (GE 2; AE A, C; Tr. 55, 102-107, 112, 115-118)

Applicant received the Team Appreciation Award for outstanding technical client support in 2004. The Contracting Officers Technical Representative (COTR) on Applicant's contract with a federal agency submitted a character reference. He has known Applicant since 2006 and has worked closely with him since that time. He noted that Applicant consistently maintains a professional attitude, and has an excellent rapport with his superiors. In the four years Applicant has held a public trust position, he has never had negative work or character issues. He considers Applicant a strong asset to the agency. The Director of IT solutions at Applicant's company also submitted

a reference. Applicant leads a 39-person IT team, and is the subject matter expert, and the primary liaison with the client. Applicant has earned the respect of his subordinates, the management team, and the client, and has consistently performed with the highest integrity. (AE D, E)

### **Administrative Notice**

I take administrative notice of the following facts.<sup>4</sup> India is a sovereign, socialist, secular democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion. Since gaining independence in 1947, India has had a tumultuous history, particularly with regard to its relations with Pakistan. Within India, sporadic outbreaks of religious riots and violent attacks by a variety of separatists and terrorist groups have occurred.

The Indian government generally respects the rights of its citizens, but serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearance, torture, and rape. The lack of accountability has permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program, and its cooperation with Iran in some policy areas, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, fighting terrorism, and creating a strategically stable Asia.

India and the United States are partners in the fight against global terrorism. India has demonstrated its commitment to political freedom. It is seeking a permanent seat on the United Nations Security Council. The United States and India issued a joint statement of their intentions to foster bilateral relations by establishing working groups to address strategic cooperation, energy and climate change, education, economics, trade, agriculture, science, technology, health, and innovation.

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<sup>4</sup> The facts cited derive from the summary and documents contained in Hearing Exhibit I.

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>5</sup> Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.<sup>7</sup> A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the Government.<sup>8</sup>

## Analysis

### Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or

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<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The relevant disqualifying conditions under AG ¶ 7 are:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has close ties to his parents, sisters, and in-laws, who are citizen-residents of India. He is in touch with them about weekly. He visited India six times between 2002 and 2010. Some family members have visited him in the United States as well. Applicant's ties support a conclusion that a heightened risk of foreign influence exists. Disqualifying conditions AG ¶ 7(a) and (b) apply.

The foreign influence guideline includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>9</sup> Here, Applicant's parents, sisters, and in-laws live in India. Applicant has frequent contact with them. He also sends money to help support his parents, and travels to see them every year or two. His conduct indicates his affection and sense of obligation to them. Applicant's sister holds a job with the Indian government. However, she—and other members of his family—have never requested help from Applicant, and none of his family is aware that he is seeking a security clearance. Moreover, the United States and India have a long-standing, stable relationship, and share common strategic goals. India is a democracy and a partner in combating terrorism. Given the nature of the country involved, it is unlikely that the government would exploit him or his relatives based on their relationship. Finally, Applicant has strong ties to the United States: his wife and children are U.S. citizens; he owns a home here, has substantial savings and investments in the United States, and is deeply involved in his daughter's school and sports activities, and his local church. I conclude Applicant would choose these long-standing relationships over his ties to India. AG ¶¶ 8(a) and 8(b) apply.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

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<sup>9</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Foreign family ties raise security concerns because of the potential for exploitation. Here, Applicant has close ties with foreign family members that raise such concerns. However, they do not outweigh his ties to the United States. Applicant has lived here for 14 years. He has a home, spouse, and children here. His wife and children are U.S. citizens. He has been employed here since 1997. His COTR and the IT director at his company attest not only to his excellent work performance, but to his integrity. He has held a public trust position for years without incident.

Applicant has a house in India that he is trying to sell, and a small bank account of about \$2,000. He intends to close the account as soon as the property is sold. Taken together, these Indian assets total just over \$100,000. However, that financial interest is outweighed by his U.S. property, valued at almost \$750,000, and his U.S. savings and investments worth more than \$100,000. His U.S. assets represent a substantial tie to the United States. Given Applicant's family, economic, and social ties here, I conclude that he would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

#### **Formal Findings**

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a. – 1.h.	For Applicant

#### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge