



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05812
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

September 20, 2011

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on September 1, 2006.

Applicant answered the SOR in writing on March 25, 2011, and requested a hearing before an administrative judge. I received the case assignment on April 29, 2011. DOHA issued a Notice of Hearing on May 3, 2011, for a hearing on May 24, 2011, and I convened the hearing as scheduled.

The Government offered Exhibits 1 through 9, which were admitted into evidence without objection. Applicant testified and submitted Exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the transcript of the hearing

(Tr.) on June 3, 2011. I granted Applicant's request to keep the record open until June 7, 2011, to submit additional matters. On May 31, 2011, he submitted AE C and D, which were admitted into evidence without objection. The record closed on June 7, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India.<sup>1</sup> The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit I (HE I). The facts administratively noticed are set out in the Findings of Fact.

### **Amendment to the SOR**

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved, by letter dated April 21, 2011, to amend the SOR issued to Applicant by adding:

2. Guideline E: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Available information raising this concern shows that:

a. You falsified material facts on a Questionnaire For National Security Positions, dated June 16, 2010, in response to "17.d. In the last 7 years, have you ha[d] an active passport that was issued by a foreign government." You answered "No", [*sic*] whereas in truth, you deliberately failed to list that you had an active Indian passport issued in October 25, 2000 that was destroyed on June 7, 2010.

b. You falsified material facts on a Questionnaire for Sensitive Positions electronically transmitted on May 06, 2009, in response to "20B-6. Ever Held/Hold [F]oreign Passport."; You responded that you surrendered your foreign passport to the Indian Consulate at the time of your previous security clearance. Passport [*sic*] cancelled because you received US citizenship, the Indian passport has been cancelled/surrendered after you received citizenship: whereas in truth, you deliberately failed to list that you had an active Indian passport issued in October 25, 2000.

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<sup>1</sup> The Government failed to present information or argue that there was any heightened risk associated with the United Arab Emirates.

Applicant had no objection to the amendments and I granted the motion. (Tr. 10-11.)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR under Guideline B, with explanations. He denied the allegations under Guideline E. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 43 years old, married, and has two children. Applicant was born in India and obtained his undergraduate degree from an Indian college. Applicant came to the United States in 1991 to obtain a master's degree in computer science. Applicant became a U.S. citizen in 2001. His wife also became a U.S. citizen in 2001. Both of his children were born in the United States. Applicant has lived in the United States for more than 19 years. (GE 1; GE 5; Tr. 25-26, 37, 52-57.)

Applicant has a U.S. passport and does not have a valid Indian passport. When he became a U.S. citizen, he assumed that his Indian passport was invalid. He renewed his Indian passport in October 2000, prior to becoming a U.S. citizen. He placed it in the back of a safe, along with his other old passports and those of his family, and then forgot about them. His son lost the key to the safe and it remained locked for an extended period of time. In 2004, when Applicant was in the process of completing his first security clearance application, he ordered a new key for the safe. He discovered the passport, reported it to the investigator, and sent it to the Indian Consulate to be invalidated. It was marked "canceled" and returned to Applicant. He provided a copy of the canceled passport. When he completed his May 6, 2009 Questionnaire for Sensitive Positions and his June 16, 2010 Questionnaire for National Security Positions, Applicant assumed that the stamp indicating the passport was "canceled" invalidated the passport. He indicated on each of the Questionnaires that he did not have an active foreign passport. Further, he surrendered his Indian passport to his DoD security manager on June 7, 2010. His canceled Indian passport was destroyed by his security manager. (GE 1-9; AE B; Tr. 39-46, 61-66.)

Applicant's father and mother are citizens and residents of India. They are approximately 75 and 70 years old, respectively. His father is a retired textile engineer. He formerly worked for a private Indian company. Applicant sponsored his parents for permanent residency in the U.S. but his parents returned to India to live because they were more comfortable there. They are supported by their own savings. Applicant testified India does not have any form of public retirement assistance. As a matter of economic convenience, Applicant also has an Indian bank account with a balance of approximately \$500, which he uses to help his parents if they need it. The most Applicant has given his parents totaled approximately \$8,000, which is the equivalent to one year's living at a comfortable lifestyle in India. He speaks to his parents by phone on a weekly basis. Applicant acknowledged that "My parents are the only leverage" that could be used to coerce him, but indicated he thought he had the "quality and integrity"

that should assuage the Government's concerns. (GE 1; GE 4; GE 6-9; Tr. 28-29, 33-39, 69, 76, 79, 81-82.)

Applicant's sister is a citizen of India, residing in the U.S. She is married to a U.S. citizen. Her children are U.S. citizens. She works for an international agency and gets benefits from the agency based upon her foreign citizenship, such as a housekeeper and private schools for her children. She maintains her Indian citizenship. She has been in the U.S. since 1992. Applicant talks to his sister approximately once-per-week by phone. (GE 1; GE 5; GE 9; Tr. 30-31, 69-71.)

Applicant's mother-in-law lives with her son (Applicant's brother-in-law) in India. They are both citizens and residents of India. Applicant's father-in-law is deceased. His father-in-law owned his own business, a general merchandise store, and left it to his wife and son. They run it and are financially well off. Applicant communicates quarterly with his mother-in-law and once a month with his brother-in-law. (GE 1, GE 5; GE 7; GE 9; Tr. 31, 52, 71-74.)

Applicant also has a sister-in-law who is a citizen of India, but resides in the United Arab Emirates (UAE). Her husband was hired to work in the UAE as a marketing manager for a pharmaceutical company. She works as a teacher in a private school. Applicant stated that he is "not at all close" to his in-laws. Applicant's wife has applied for a "green card" for all of her family members. (GE 1, GE 5; GE 7; GE 9; Tr. 32, 74-76.)

Applicant visits his parents in India approximately annually. When he travels there, he often encounters distant relatives. Applicant has a number of extended family members in India and he socializes with them when he is in India. Applicant also has a friend in India. They were high school classmates. His friend is a permanent resident of the U.S. Applicant estimates he has spoken to this friend three-to-four times in the past twenty years. (GE 7; Tr. 32-34, 78-79.)

Applicant owns two properties in India. The first property was purchased five years ago as an investment because of the rise in real estate prices in India. It has a current market value of \$200,000. Applicant intended to sell the property for a profit and quickly return the funds to the U.S., however, the Indian market declined and he would suffer a loss if he sold the property now. He has a broker in India to help him sell the property when the market improves. Applicant does not consider his broker a friend or associate. He has no other ties to the broker except as it relates to the potential sale of this property. The second property was purchased by Applicant's father. It was purchased in Applicant's name to avoid bureaucracy and corruption in India. It is valued at approximately \$400,000. Applicant lists his total net worth as \$3,400,800. He owns nine properties in the U.S. and has cash assets totaling \$328,800. (AE D; Tr. 34-37.)

Applicant's children were exclusively educated in the United States. Applicant indicated that he considers himself an American. He testified:

. . . When I took that pledge, it meant something. It changed something inside me. I had two kids here in the U.S. They're not going to go back to India ever. So you know this is your new home. And that's how things changed. (Tr. 50.)

Applicant also submitted three character statements from colleagues. All statements indicate Applicant is honest, reliable and trustworthy. Each statement conveys the author's trust in Applicant and his professional competency. (AE A.)

I take administrative notice of the following facts regarding India. (HE I) India has a democratic constitution and is a republic. It has a multi-party, federal, parliamentary system of government. The national legislature is a bicameral body. The population of India is 1.1 billion people. In 1947 India became an independent republic.

In late November 2008, terrorist attacks in Mumbai, targeted areas frequented by westerners. There is a continuing threat from terrorism throughout India and the U.S. State Department has issued travel warnings to U.S. citizens regarding the ongoing security concerns in India and possible threats of attack on targets where U.S. citizens or Westerners are known to visit.

India has had human rights issues that concern the U.S. and international groups. Those include persons being killed while in police custody, disappearances of persons, torture, and rape. Corruption is also pervasive.

The U.S. has had several cases since 2004 of persons and companies illegally exporting and selling equipment to India. The equipment involved includes electronics directed missile technology, nuclear testing, and defense equipment. Legal actions against companies and individuals were cited in the government administrative notice reports.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding 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 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The following four conditions are potentially applicable.

- (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;
- (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;
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's parents, mother-in-law, brother-in-law, broker, and extended family members are all citizens and residents of India. His sister and sister-in-law are citizens of India living in the U.S. and UAE, respectively. He has a friend who is Indian, but is a permanent resident of the U.S. with whom he has had contact. Applicant traveled to India annually. He also shares living quarters with his wife, who has ties to her family in India. Disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(d) requires both the presence of foreign contacts and a heightened risk. I find there is sufficient evidence regarding terrorist activities in India and the Indian government's human rights abuses to establish a heightened risk. I find AG ¶¶ 7(a), 7(b), and 7(d) apply.

Applicant owns an apartment in India that he purchased five years ago for investment purposes. He will sell it when the value increases. Applicant estimates the current value at \$200,000. His parent's house is also in his name and it is valued at \$400,000. Applicant has a bank account in India with about \$500 in it. Applicant has sufficient financial interests in India. I find AG ¶ 7 (e) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. Four are potentially applicable.

- (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 U.S.;

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's ties to his parents and sister are strong. He has allowed his parents to title their home in his name. He calls his parents and sister weekly, and he has a bank account in India for convenience to help provide support for his parents. His contribution for their support has equaled a year's worth of income in India. He intends to maintain the bank account so that he can provide for them in the future. His ties to his in-laws are not as strong as his bond to his own parents; however, he also had the burden to show that his wife, with whom he lives, does not have strong ties to her parents that could create a risk. He failed to present such mitigating evidence. Due to the unpredictable nature of terrorists, who are active in India, it is impossible to say these relationships are of a nature that it is unlikely Applicant will be placed in a position to choose between them and the interests of the U.S. AG ¶ 8(a) does not apply.

Applicant has lived in the U.S. for 19 years. The majority of his financial wealth is in the U.S. Applicant's children were born in the U.S. and grew up here. He indicated they are thoroughly Americanized. However, his contacts with India and his family living there are more than casual. He keeps in close contact with his parents. He provides them financial support. He is unwilling to sell his investment property in India at this time due to a decline in value and he cannot sell his parent's property because they live there. He has strong ties to his parents in India that are not outweighed by his emotional ties and wealth he has amassed in the U.S. AG ¶¶ 8(b) and 8(c) does not apply.

Applicant's apartment, parent's house, and bank account in India are of minimal value when compared to his U.S. property and financial interests. They will not cause a conflict for Applicant. He wants to sell the apartment when he can realize a financial gain by doing so. Applicant's financial interests in India are not significant enough to be used to influence, manipulate, or pressure Applicant because of his total financial holdings and his stated desire to terminate the foreign holdings when the market is more advantageous for him. AG ¶ 8(f) applies to Applicant's financial interests.



The mitigation established through application of AG ¶ 8(f) does not mitigate the over-arching concern with respect to Applicant's familial ties in India. His monetary investments in India are unlikely to place him in a vulnerable situation, but the same cannot be said with respect to his strong bond to his parents. Applicant acknowledged that his parents were the "only leverage" that could be used to coerce him.

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's answers in his Questionnaire for National Security Positions, dated June 16, 2010 and his Questionnaire for Sensitive Positions electronically transmitted on May 6, 2009, are potential security concerns. On both of these documents, he indicated he did not have an active Indian passport. Applicant testified that he thought the passport was invalid in 2001 when he became a U.S. citizen, but that he sent the passport to the Indian Consulate in 2004 to be officially canceled after he discovered it in his safe. Applicant produced a copy of his passport bearing stamps indicating that it had been "canceled" by the Consulate. He further provided that he surrendered the canceled passport to his security manager in 2010 for destruction. His testimony is credible and well documented. I find he did not deliberately falsify either questionnaire.

### **Whole-Person Concept**

Under the "whole-person concept," the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The 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 each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has close ties with India and a close relationship with his parents. His close ties have led him to invest in India and to support his parents who reside there despite their permanent resident status in the U.S. Applicant visits India frequently. Although he has a large amount of assets in the U.S., his close connections in India are significant and create a heightened risk.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his foreign influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a and 2.b: For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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JENNIFER I. GOLDSTEIN  
Administrative Judge