



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



In the matter of: )  
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----- ) ISCR Case No. 10-03826  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: Bradley D. Moss, Esquire

August 31, 2011

**Decision**

HOWE, Philip S., Administrative Judge:

On September 10, 2009, Applicant submitted his electronic Security Clearance Application (e-QIP). On September 17, 2010, 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 within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 20, 2010. He answered the SOR in writing on October 9, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 30, 2010. Another administrative judge was assigned the case on December 8, 2010. DOHA issued a Notice of Hearing on January 31, 2011, for a hearing on February 16, 2011. That hearing was cancelled on February 15, 2011, at Applicant's request.

I received the case assignment on April 14, 2010, when it was reassigned. On April 28, 2011, his counsel submitted a Notice of Appearance. DOHA issued a second Notice of Hearing on April 11, 2011, and I convened the hearing as scheduled on May 3, 2011.

The Government offered Exhibits 1 through 18, which were received without objection. Applicant testified and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on May 10, 2011. I granted Applicant's request to keep the record open until May 18, 2011, to submit additional matters. On that date he submitted Exhibits C to F, without objection. The record closed on May 18, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **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. (Tr. at 10-12.) The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit I. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. (Tr.13.) The facts administratively noticed are set out in the Findings of Fact, below.

#### **Findings of Fact**

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

Applicant is 64 years old, married, has three children, and two grandchildren. Applicant was born in India and obtained his undergraduate degree at a college there. Applicant came to the United States in 1973 to obtain a master's degree and a Ph.D. degree in engineering. Applicant became a U.S. citizen in 1987. His wife became a U.S. citizen in 1986. All his children were born in the United States. Applicant has lived in the United States for 37 years. He is the owner of two companies who are involved in scientific research. The companies have never done business with the Indian government. Applicant has a U.S. passport and does not have a valid Indian passport. On February 17, 2011, Applicant sent the Indian passport to the Indian Embassy with a renunciation statement. Applicant found the passport, which was issued in 1983, under some papers in his office. (Tr. 46-59, 69, 73, 82, 103-105, 113; Exhibits 1-3, F)

Applicant has worked with U.S. government scientific agencies in the past. He developed new technology and formed his companies to develop it. Applicant has made presentations at scientific conferences. He coordinates his presentations with the U.S. government agencies to make certain he is not discussing classified or confidential

information at the conferences at which representatives of foreign governments or companies may be attending. In January 2011 Applicant attended a conference and completed the required government forms before attending or discussing any information there. (Tr. 53-56, 91-94)

Applicant' parents are deceased. While she was alive, Applicant visited his mother in India, remaining there no more than two weeks each visit. These visits occurred in 2002, 2004, 2006, 2007, 2009, and 2010. (Tr. 60, 61-67, 97; Exhibits 1-3)

Applicant has one sister and four brothers who live in India and are citizens of that country. His oldest brother is a retired executive level manager for the Council of Scientific and Industrial Research, an agency of the Indian government. Applicant's next oldest brother is a retired university professor in India. The third brother is a senior level manager of printing for the same government research agency. The fourth and youngest brother works for the World Health Organization as a researcher on malaria. Applicant's mother lived with that brother until she died. The sister is a retired teacher in a private school. (Tr. 63-67; Exhibits 1-3)

Applicant owns an apartment in India for which he paid \$35,000 in September 2005. Applicant denied the apartment was worth the \$130,000 alleged in the SOR. The current market value is \$30,000 according to Applicant's brother. He purchased it as an investment because of the rise in real estate prices in India, but the crowded conditions for daily travel have not made this property increase its value. When the Indian government builds mass transit in that area Applicant expects the value to increase, then he could sell it at an appreciated value. The apartment is rented. Applicant would like to sell the apartment now that his parents are deceased. As a matter of economic convenience, Applicant has an Indian bank account with a \$1,500 balance in it to use when he is visiting India. Credit cards are not accepted in the small shops in India so Applicant needed money there to purchase items. His net worth is shown as \$868,500 on his personal financial statement. Applicant's youngest brother received all the property for his parents in India because his mother lived with him, pursuant to a family agreement. Applicant has no other property in India other than the apartment and the bank account. (Tr. 74-81; Exhibits 1-3, C)

Applicant spoke with his mother when she was alive about every two or three weeks. He telephoned her at his brother's home. Applicant speaks by telephone with his other brothers and his sister at various times every four to eight weeks during the year. He does not provide any financial support to them. (Tr. 63, 101-107)

Applicant has a friend who was an undergraduate classmate in India many years ago. Applicant renewed his friendship with him when the friend's son visited the United States about five years ago. The last time he saw his friend was about the same time when the friend came to the United States. Applicant did not see him when he went to India because the friend lives in the southern part of India, far from Applicant's family. They do email each other about every two months to discuss various topics. (Tr. 70, 71, 108, 109)

Applicant's father-in-law and mother-in-law still live in India. They are 82 and 77 years old, respectively. His wife visits them periodically to take care of them. She sponsored them for their "green cards," but her parents returned to India to live because they were more comfortable there. Applicant speaks with his in-laws when his wife telephones them. (Tr. 72, 99, 116)

Applicant has no contact with the Indian government or any contracts with it. He did not work in India when he lived there, only attending college and then immigrating to the United States for further education. (Tr. 56, 57, 82)

Applicant's office manager, and a professor friend, testified on his behalf as being an honest, intelligent, and hard-working man whose family is thoroughly Americanized. His children speak only English. Applicant's children were educated in the United States exclusively. Applicant also submitted four character statements, three from employees or colleagues of Applicant and one from a daughter who is a dentist. All statements allude to the absence of any Indian influence in the daily work environment. All statements convey their trust in Applicant and his professional competency. (Tr. 16-43, 59; Exhibits A, B, D, E)

I take administrative notice of the following facts regarding India. The country 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. There are 28 states and seven union territories. The population of India is 1.1 billion people. India became an independent republic in 1947 when it achieved independence from Great Britain. It is a member of the British Commonwealth of Nations.

The United States (U.S.) and India have a \$50 billion annual bilateral trade relationship. The Indian economy has grown about 7% annually since 1997. The U.S. regards India as a growing world power sharing common strategic interests. Two key issues of concern to the U.S. are the Indian nuclear weapons program and the pace of economic reform within the country. In 2006 the U.S. authorized the sale of nuclear reactors to India for peaceful uses. In 2008 the two countries signed an agreement on peaceful nuclear cooperation.

The Indian Army has 1.4 million members. The Indian Navy is able to project its sea power throughout the Indian Ocean area by means of its aircraft carrier, 15 submarines, and 15 major surface warships. Two more aircraft carriers are on order. The Indian Air Force has 900 aircraft and is the world's fourth largest air force.

India is a non-permanent member of the United Nations Security Council. It wants a permanent seat on that Council. During the "Cold War" India was a trading partner of the Soviet Union. It is also a major trading partner at present with the People's Republic of China.

India and Pakistan have a long-standing rivalry dating back to the 1950's. The conflict includes disputes over Kashmir territory, most of which India now controls.

Tensions also exist with the People's Republic of China over border issues, as they do with the neighboring country of Bangladesh.

India has several human rights issues that concern the U.S. and international groups. Those include persons being killed while in police custody (1184 from April 2001 to March 2009), disappearances of persons, torture of persons in police custody although Indian law prohibits torture, prison conditions, arbitrary arrests, denial of fair trials in certain cases, the use of excessive force by police officials, and the limitation of certain freedoms, such as press, association, and assembly.

The U.S. has had several cases since 2004 of persons and companies exporting and selling equipment to India without the proper export licenses. The electronic equipment involved is directed toward missile technology, nuclear testing, and defense equipment. Seven legal actions against companies and individuals were cited by the government in administrative notice reports. (Exhibits 4-18)

### **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:

(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;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(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;

(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;

(f) failure to report, when required, association with a foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has five siblings in India. Two brothers worked for an Indian governmental agency. Applicant's wife's parents live in India. He has a college friend with whom he has had contact in the past few years. Applicant has had telephonic contact with all these people periodically each year. Applicant traveled to India six times between 2002 and 2010. These relationships and contacts are sufficient to make AG ¶ 7 (a) and (b) apply.

Applicant owns an apartment in India that he purchased in 2005 for investment purposes. He will sell it when the value increases after a new mass transit line is installed in that city. Applicant estimates the current value at \$30,000. Applicant has a bank account in India with about \$1,500 in it. He uses the account when he travels there as a convenience because credit cards are not used in the small neighborhood family owned stores, so Applicant needs access to cash for purchases. AG ¶ 7 (e) applies.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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 parents are deceased. His familial desire to travel to India to visit his parents does not now exist. Some of his siblings are retired. Two continue to work, one for an Indian governmental research agency and the other for the World Health Organization. He speaks with them several times each year. His college friend is only a personal relationship revived after many years when that friend's son came to the U.S. These relationships and their positions or status in life 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) applies.

Applicant has lived in the U.S. for 37 years, longer than he lived in India growing up. His financial wealth is in the U.S. Applicant's children were born in the U.S. and grew up here. They are thoroughly Americanized. Applicant's business interests are in the U.S. His contacts with India and his family there are so minimal when compared to his long-standing relationship and attachment to the U.S. that it is clear Applicant will resolve any conflicts in favor of the U.S. Applicant has been careful in the past to comply with all U.S. government requirements before discussing any scientific material at conferences. This record shows he knows his obligations to protect information. AG ¶ 8 (b) and (e) apply.

Applicant's apartment 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. These two Indian financial interests cannot be used effectively to influence, manipulate, or pressure Applicant because of his total financial holdings and his stated desire to terminate the foreign holdings when the market makes it advantageous for him. AG ¶ 8 (f) applies.

### **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’s relationship with India and his siblings results from his birth there. Applicant’s 37 years in the U.S. and his age of 64, coupled with his substantial financial and business interests in the U.S., make it most likely he will protect U.S. interests first and foremost in any contact with India or its representatives and corporations. There is no likelihood of any potential for pressure, coercion, exploitation, or duress upon Applicant because his family and business are in the U.S. His Indian siblings are also mature in years and have their own lives, with some of them being retired from their employment. Applicant’s past compliance with U.S. security regulations shows he knows the rules and will comply with them in any contact with any foreign entity, governmental or business.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign influence security concerns. I conclude the “whole-person” concept for Applicant.

### **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: FOR APPLICANT

Subparagraph 1.a to 1.i: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge