



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



In the matter of: )  
)  
) ISCR Case: 10-08182  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: John Griffith, Esquire

September 6, 2011

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is granted.

**History of Case**

On March 29, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 11, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on or about March 23, 2011, and requested a hearing before an administrative judge. On April 20, 2011, DOHA assigned the case to me and issued a Notice of Hearing on May 17, 2011, setting the hearing for June 2, 2011. On that date, Department Counsel introduced Government Exhibits (GE) 1 and 2 into evidence without objection. Applicant testified and introduced Exhibits (AE) A through L into evidence without objection. DOHA received the hearing transcript (Tr.) on June 13, 2011.

## **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. The request and the attached documents pertinent to India are included in the record as Hearing Exhibit (HE) A, along with 16 attachments. The documents were admitted. (Tr. 14.) The facts administratively noticed are limited to matters of general knowledge and pertinent to India, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.f of the SOR and provided explanations. Those answers are incorporated into these findings of fact.

Applicant is 43 years old. He was born in India. After completing high school, he graduated from an Indian university in July 1988 with a bachelor's degree in commerce. He then worked as an account assistant until he immigrated to the United States on a work visa in 1998. (Tr. 28, 37.) He did not work for the Indian government or military while living in India, nor did he have friends working for the government. (Tr. 30.) He came to the United States to establish a "better life." (Tr. 31.) Since January 2010 he has worked for his company, which subcontracts with defense contractors. (AE 1.)

After arriving in the United States, Appellant worked for a consulting company that provided services to the U.S. military. He worked for that company about three months. (Tr. 38-40.) He then moved for another position. (Tr. 41.) Between 2000 and 2001, he asked his employer to sponsor him for permanent residency status. (Tr. 42.) In 2003 he, his wife, and children obtained permanent residence status. (Tr. 44.) In August 2008 he became a naturalized U.S. citizen. (Tr. 45.) He relinquished his Indian passport to the Indian consulate soon after becoming a U.S. citizen because he was "proud to be a U.S. citizen." (Tr. 46, 53.)

In July 1996 Applicant married his wife in India. She was born there and earned a bachelor's degree in commerce from an Indian university. She immigrated to the United States with him in 1998. She became a naturalized U.S. citizen in December 2008. Their two children, ages 15 and 17, were born in India. They became naturalized U.S.

citizens in June 2009. (GE 2 at 175.) His children have received high school awards. (AE I, J.) His wife and children renounced their Indian citizenship. (Tr. 74.)

Both of Applicant's parents were born and raised in India. They are Indian citizens. His father, age 85, served in the Indian Navy and retired before Applicant was born. (Tr. 21.) His father subsequently worked as a mechanical engineer. (Tr. 20, 73.) His mother, age 62, is a homemaker (Tr. 20, 79.) Applicant's father does not associate with anyone in the Indian military or government. (Tr. 21-22.) His parents own rental properties from which they derive some income. (Tr. 36.) Applicant has never sent them money. (Tr. 37.) They visited the United States three times, the last visit being in 2009, when they stayed a year and lived with him and also his brother. (Tr. 55, 62.) He sponsored them for permanent residence status and they recently received approval. They are in the process of moving to the United States and will live with Applicant. (Tr. 56.) He speaks to them once a month. (Tr. 54.)

Applicant is the eldest of four children, all born in India. Appellant's brother is a citizen of India, but resident of the United States since 2009. He works as an engineer. (Tr. 56; GE 2 at 175.) Both of his sisters are citizens and residents of India. They are homemakers. One of his brother-in-laws owns a business and the other brother-in-law is a doctor. (Tr. 58.) They have not been to the United States. He is sponsoring one of them for permanent residence status and intends to begin the process for the other sister. (Tr. 58.) He speaks to his sisters once a month. (Tr. 78.)

Applicant's father-in-law and mother-in-law were born in India. They are farmers. Applicant did not discuss his plan to move to the United States until he purchased tickets. (Tr. 33.) He has never sent them money. (Tr. 37.) They visited the United States twice, in 2009 and once before that. They were here during the time his parents were visiting in 2009. (Tr. 71.) He talks to them once or twice a year. (Tr. 77.)

Applicant traveled to India four times since leaving in 1998: in December 2003, July 2005, December 2007, and September 2009. (AE 2 at 176.) He stayed with his parents during these visits. (Tr. 52, 67.) He saw his sisters and in-laws while there. While there he was never contacted by anyone who wanted information about his government work. (Tr. 80.) He has not returned since 2009 because he has had no reason to return. (Tr. 53.) However, he testified that he was traveling there this summer to assist his parents with their interview at the U.S. Consulate's office when they receive their U.S. permanent resident cards. (Tr. 56, 69.)

Appellant's net U.S. value is about \$365,000. In 2004 Applicant purchased a house that is now paid. (Tr. 78.) In 2004 he formed an IT consulting firm with his wife. (Tr. 49-50.) The company does not work or have clients in India. (Tr. 76.) It subcontracts work for defense companies. He has a retirement fund in the United States. (Tr. 78.) He does not have financial interests in India. (Tr. 61, 82.)

Applicant submitted character letters. A consulting project director wrote a letter of appreciation in March 2011 commenting on Applicant's diligence and good work. Applicant received praise for a project that he completed in 1999 for a city college. (AE E.)

At the hearing, Applicant credibly and sincerely expressed pride in his U.S. citizenship. (Tr. 46.) He has no intention to return to India, especially in view of his parents' anticipated move here.

## **India**

I take administrative notice of the following facts: According to its constitution, 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.

The Indian government generally respects the rights of its citizens, but numerous serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, the terrorists coordinated an attack at a hotel in Mumbai frequented by westerners.

The United States recognizes India as key to its strategic interests and has sought to strengthen its relationship with it. 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, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including its increasing cooperation with the Iranian military.

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 that were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally export technology to entities in India.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The U.S. and India seek to elevate the strategic partnership further

to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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(b) and 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 the 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.

According to 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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 two conditions that could raise a security concern and be potentially disqualifying in this case:

(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;<sup>1</sup> 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’s two sisters, parents, and in-laws are citizens and residents of India. His brother is a citizen of India, but resident of the United States. India is the world’s largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and restricted, dual use technology has been illegally exported to India. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

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<sup>1</sup> The mere possession of close family ties with a person 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 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions raised in this case:

(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; and

(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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon that government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. India's close, friendly relationship to the United States, its adherence to human rights standards and rule of law, its leading role in the suppression of terrorists, and the lack of evidence that India uses coercive tactics in its espionage targeting of the United States, all tend to negate a concern that Appellant's relationship with his sisters, parents, or in-laws poses a security risk. Hence, AG ¶ 8(a) has some application.

Applicant produced sufficient evidence to establish AG ¶ 8(b). Based on his relationships and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interests. He, along with his family, has lived in the United States since 1998. He became a naturalized citizen in October 2008. His wife also became a naturalized citizen in 2008, and their two children became naturalized U.S. citizens in June 2009. He has financial ties to the United States through his business and personal investments. He does not own property in India. His wife is a co-owner in his business. He has received praise from colleagues. He

considers himself to be a citizen of the United States and no longer a citizen of India. His immediate family has also renounced their Indian citizenship. His parents have obtained permanent U.S. residence status and are moving here. Based on those strong connections and loyalties to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not have application to the security concerns raised as a result of Applicant's contacts with his sisters or in-laws residing in India because they are sufficiently frequent and cannot be considered casual. His contacts with his parents have been consistent and frequent. He has visited his family four times since 1998 and maintained communication with them over the years.

### **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 the applicant's conduct and all relevant 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.

According to 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. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Although this case pertains to Guideline B, the security concerns do not arise from any questionable conduct by Applicant, but rather from circumstances that warrant further analysis. Applicant is a 43-year old man, who was born in India, and has lived in the United States for about 13 years. He has been a naturalized U.S. citizen since 1998. His spouse and children have been living in the United States since 1998 and are also naturalized U.S. citizen. He and his wife have a successful business in the United States. His brother lives here. His ties to the United States are much stronger than his ties to family members living in India. There is no



evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and relinquished his Indian passport after he became a U.S. citizen. He expressed his allegiance to the United States and gave credible testimony in response to the security concerns alleged in this case.

I weighed the totality of Applicant's family ties to India, a strong U.S. ally, against his ties to the United States. Since 1998, he has traveled to India four times to visit his family. Both parents are in the process of immigrating here. He is currently sponsoring his sister, who has applied for permanent residency. He has contact with both sisters and in-laws living there. Applicant's work, assets, and established connections in the United States make economic coercion through any of relatives living in India extremely unlikely. In the event such a conflict arose, I am persuaded that Applicant would resolve the conflict of interest in favor of the United States.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances, in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.f: 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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SHARI DAM  
Administrative Judge