



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



In the matter of: )  
)  
) ISCR Case No. 10-08661  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel  
For Applicant: *Pro se*

September 30, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the Foreign Influence concerns that were generated by his relatives who are citizens and residents of India. He failed to mitigate the Sexual Behavior security concerns generated by his viewing child pornography. Clearance is denied.

**Statement of the Case**

On June 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing one allegation under Guideline D, Sexual Behavior, and five allegations under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on May 27, 2010, denying the Sexual Behavior allegation and admitting the Foreign Influence allegation. He requested a decision on the record. The case was assigned to Department Counsel on July 12, 2011. After Department Counsel requested a hearing, it was assigned to me on July 29, 2011. A notice of hearing was issued on August 11, 2011, scheduling the hearing for September 1, 2011. The hearing was held as scheduled, and I received six Government exhibits (Government Exhibits (GE) 1-6) and Applicant's testimony. The transcript (Tr.) was received on September 7, 2011.

### **Ruling of Evidence**

Department Counsel requested that I take administrative notice of the facts set forth in 16 documents that I marked as Hearing Exhibits (HE) I through XVI. I took administrative notice of the facts set forth in HE I through IX, but reserved judgment on the administrative notice on the facts set forth in HE X through XVI. Upon reviewing HE X through XVI, I have decided to take administrative notice of the facts set forth in these exhibits also.

### **Findings of Fact**

Applicant is a 31-year-old single man. He has a master's degree in computer engineering, earned in 2005, and a bachelor of science degree in computer science, earned in 2002. He has been working in the defense contracting industry since 2002. For the past two years, he has worked as his company's senior principal network engineer. His duties include designing and monitoring network systems. (Tr. 34-35, 54)

Applicant's maternal grandmother is a citizen of India. She lives in the U.S. and is a permanent legal resident. Applicant's paternal grandparents are citizens and residents of India. He communicates with them very infrequently because he does not speak their language. The last time he saw them was when he visited India in 2008. (Tr. 37, 40)

Applicant has four paternal aunts who are citizens and residents of India. Each aunt is married. His contact with these relatives is rare. (GE 3 at 2; Tr. 42) Applicant has four cousins. Two live in the United States and two live in India. All are Indian citizens. Applicant is frequently in contact with his cousins who live in the United States. He sees their parents on the rare occasions when the parents travel to the United States to visit the cousins. (Tr. 42). Since 2008, when Applicant last visited India, the only contact he has had with his cousins living in India were a few congratulatory e-mails sent after one cousin graduated and later had a baby. (Tr. 46)

Applicant was born and raised in the United States. He has travelled to India about seven or eight times. Two of these visits occurred during his adulthood. He has no trips currently planned. (GE 1 at 35; Tr. 47)

India is a multiparty, parliamentary, secular democracy with a population of 1.1 billion. (Item VI at 1) U.S. and Indian relations have strengthened during the past 10 years (Item I at 11). Before then, their relationship was strained because India had developed nuclear weapons in contravention of international conventions, and had never signed the Nuclear Non-Proliferation Treaty (*Id.*).

Currently, the U.S. is India's largest trading partner (Item I at 7). Also, the U.S. is India's largest investment partner, and provides \$126 million in annual development assistance (*Id.*). In 2004, the U.S. and India launched the Next Steps in Strategic Partnership, an agreement which governed multiple initiatives involving, among other things, energy, trade, democracy promotion, and disaster relief (Item I at 11).

The growth of the U.S. and India's economic ties has been accompanied by a corresponding growth in their strategic relationship. In 2005, "a U.S. - India Joint Statement asserted that 'as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states'" (Item III at 6). In 2006, Congress passed the Henry J. Hyde United States - India Peaceful Atomic Cooperation Act, which allows direct civilian nuclear commerce with India for the first time in 30 years (Item I at 11). This agreement "opens the door" for American and Indian firms to participate in each other's civil energy sector (Item I at 12). Specifically, it enables India to buy U.S. nuclear reactors and fuel for civilian use. Currently, less than one-half of one percent of all exports to India require a license. (Item II at 7)

Since early 2002, the United States and India have held a series of unprecedented and increasingly substantive combined exercises. (Item II at 58) India is undertaking a major modernization program, and will spend potentially 100 billion over the next decade. U.S. weapons manufacturers are "eager to gain a slice of this lucrative pie." (Item II at 57)

India has a positive relationship with Iran. India "firmly opposes the emergence of any new nuclear powers in the region, but also opposes the use of force or sanctions, instead favoring diplomacy" to address Iran's nuclear program. (Item II at 26). Between 2004 and 2006, the United States sanctioned Indian scientists and chemical companies for transferring equipment related to weapons of mass destruction and technology to Iran. (Item II at 26) The Indian government protested the sanctions, characterizing them as unjustified.

India is one of the most terror-afflicted countries in the world (Item III at 3). In 2009, more than 1000 people died from terrorist incidents in India (*Id.*). India considers defeating terrorism and combating violent religious extremism as a critical shared security interest with the U.S. (Item II at 55). In 2010, the U.S. and India formed a joint working group on counterterrorism. (*Id.*) Counterterrorism efforts are sometimes hindered by India's suspicions of the depth of the United States' relationship with Pakistan's military and intelligence services. (*Id.*)

Applicant was first granted a clearance in 2004. (Tr. 54) It was issued by another agency. In 2008, this agency conducted a periodic reinvestigation. As part of this investigation, Applicant underwent a polygraph. (Tr. 88) A few weeks later, Applicant was contacted by the investigator and informed that he needed to undergo another polygraph interview after some irregularities in his breathing were identified. (Tr. 86)

During the second polygraph interview, Applicant disclosed that he viewed child pornography between 2003 and 2008 on his home computer. (Answer; GE 6) Also, he identified the two websites he used to access child pornography, provided an estimation of the ages of the children pictured, and identified the number of adults who appeared in these pornographic images. (GE 6 at 2; Tr. 80-82)

Applicant admits disclosing this information to the investigator. However, he contends none of this information is true, and that he was pressured into making these disclosures by an overbearing investigator who “was trying to put words in [his] mouth.” (Tr. 31) Also, Applicant contends he initially said “no” to the investigator’s questions, but eventually said, “okay, whatever,” after repeated inquiries. (Tr. 75)

On May 19, 2009, the other agency denied Applicant’s security clearance application. (GE 6 at 1) Applicant did not appeal the decision. (*Id.*, Tr. 31)

### **Policies**

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. 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.”

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

## Analysis

### Guideline D, Sexual Behavior

Under this guideline, “sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” (AG ¶ 12) The possession of child pornography constitutes a crime. (18 U.S.C. Sec. 1466A) Consequently, AG 13(a), “sexual behavior of a criminal nature, whether or not the individual has been prosecuted,” is potentially applicable. Applicant’s behavior, if substantiated, also would trigger the application of AG ¶ 13(c), “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.”

Applicant’s explanation that he was lying to the investigator when he admitted to viewing child pornography is not credible. He described the pornography in detail, identifying the websites where he accessed it, estimating the children’s ages and identifying the number of adults who appeared in the pornography. Moreover, after the other agency denied Applicant’s security clearance based on his disclosures, Applicant had the right to raise any irregularities with the investigative process on appeal, and did not do so. AG ¶¶ 13(a) and 13(c) apply without mitigation.

### Guideline B, Foreign Influence

AG ¶ 6 explains the foreign influence security concern as follows:

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.

Although India is not a paragon of democracy, it is certainly not a hostile, totalitarian state seeking to project its power worldwide through the brute intimidation or coercion of its citizens domestically and abroad. Consequently, neither Applicant’s grandmother nor his two cousins living in the U.S. constitute security risks.

Over the years, India and the United States have become closer allies. Both countries have a shared interest in promoting the rule of law, combating extremism, and

developing new markets. As with any sovereign nation, however, India has its own foreign policy that is not always congruent with U.S. foreign policy. Most significantly, India disagrees with U.S. policy toward Iran. The U.S. has imposed sanctions on Indian companies for transferring weapons-related technology to Iran. Moreover, friendly countries can conduct espionage against the United States just as readily as hostile ones. Consequently, Applicant's family members who are citizens and residents of India trigger the application of AG ¶ 7(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."

Applicant has not seen his grandparents living in India for nearly three years. Any contact since then has been rare because he cannot communicate with them. Contacts with his other relatives in India has also been rare. AG ¶ 8(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," applies. Applicant has mitigated the foreign influence security concern.

### **Whole-Person Concept**

Under the whole-person concept, 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.

I have considered the applicability of the whole-person factors in my analysis of the security concerns, and I conclude that, with respect to his sexual behavior, they do not warrant a favorable conclusion.

### **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 D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraph 2.a-2.e:

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.

MARC E. CURRY  
Administrative Judge