



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-08776
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

May 11, 2011

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

On February 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 answered the SOR on March 2, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 24, 2011. DOHA issued a Notice of Hearing on March 31, 2011. I convened the hearing as scheduled on April 20, 2011. The Government offered Exhibits (GE) 1 and 2. Applicant did not object and they were admitted into evidence. The Government requested administrative notice

be taken of HE I. I granted the request. Applicant testified on his own behalf. He offered Exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 26, 2011.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.d, 1.f, and 1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 55 years old. He married in 1983 and has three daughters, ages 26, 24, and 22. He has worked for a federal contractor since approximately 2005. He has a diploma in automotive engineering. He is attending college and has earned approximately 40 credits towards a bachelor's degree in business administration.<sup>1</sup>

Applicant was born in India. In 1978, while living in India, he was hired by a company from Country X to work in Country X. The Indian company had a contract with the U.S. government. Applicant was hired as a cashier and bartender. He moved to Country X and worked for the company until 1981. In 1981, he was hired to work at the U.S. embassy in Country X, as a supply clerk and store keeper. He was promoted in approximately 1986 to supply supervisor. He was promoted again in approximately 1991, as the supply procurement supervisor. In 1997, he became the Assistant General Services Officer. He remained in that job until 2005, when he was granted a Special Immigration visa, which permitted him and his family to immigrate to the United States immediately and provided automatic permanent residency status to them. A Special Immigration visa is given to those who have shown exceptional loyalty to the United States. Approximately a month and a half after immigrating to the United States, he secured a job with a federal contractor. He has held the job since then. Applicant worked for the United States government for 24 years.<sup>2</sup>

While working in the U.S. embassy in Country X, Applicant had access to sensitive information, but not classified. He was responsible for the logistics for visiting dignitaries, procurement, property transfers, the motor pool, and various other responsibilities. He supervised 22 personnel. Part of his compensation contract with the U.S. government was for him to return to India at least once a year, paid for by the U.S. government.<sup>3</sup>

Applicant married his wife in India, in 1983, and brought her to Country X. Their three daughters were born in Country X and attended an international Indian school. His two older daughters completed high school there, and his youngest daughter completed high school in the United States. All of his family was granted permanent residency

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<sup>1</sup> Tr. 72-73, 96-97-98.

<sup>2</sup> Tr. 28-31, 53, 72-79; 81. Department Counsel conceded that Country X was not an issue.

<sup>3</sup> Tr. 31-34.

status when they immigrated in 2005. In 2010, after waiting the required five years, they all became citizens of the United States. His oldest daughter earned a bachelor's degree from an American university. She married a citizen of India. They live in the United States. He works as an engineer and was originally sponsored by his employer. Applicant's daughter has now sponsored him for citizenship. He has been approved for permanent residency status. Applicant's middle daughter is completing an advance degree program in college, and his youngest daughter is attending college. Applicant's wife works in a different department, but for the same employer as Applicant. They both hold public trust positions. As soon as Applicant became a United States citizen, he formally renounced his Indian citizenship by completing the proper documents.<sup>4</sup>

Applicant's parents are citizens and residents of India. His father is 87 and his mother is 82. They live in the ancestral house in India. His father is a retired farmer, and his mother is a homemaker who has never been employed outside of the home. Neither receives a government pension. The house has been passed down for five generations, and by custom, it will be inherited by the youngest son; in this case Applicant. Due to his parents' failing health, they transferred the property to him, on the condition that he assist them, if they need it, until they die. Applicant provides about \$150 to \$200 in support to them every three to four months. At this point, he anticipates when his parents pass away he will either transfer the property to his brother in India, or sell it. Applicant has no intentions of returning to India, so he has no reason to keep it.<sup>5</sup>

Applicant has two sisters, who are citizens of India, and both live in Country X. They are both married. His eldest sister is 57 years old and has lived in Country X for 27 years. She is a nurse and her husband works for a private trading company. Her husband is a citizen of India. His younger sister is 42 and is a homemaker. Her husband works for a construction company and is a citizen of India. Neither have any contact or ties with the Indian or Country X government.<sup>6</sup>

Applicant has two brothers. One is deceased and his wife and children are citizens and residents of the United States. The other brother is a citizen and resident of India. He served in the Indian Coast Guard and retired 30 years ago. He receives a pension for his military service. His brother has no other contact with the government of India.<sup>7</sup>

Applicant's mother-in-law is a citizen and resident of India. She is 77 years old and a homemaker. She does not receive a government pension. She has not visited

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<sup>4</sup> Tr. 43-44, 47; 64-67, 79-86, 90-92; Answer to SOR.

<sup>5</sup> Tr. 35-37, 49-52, 54, 70, 94-95.

<sup>6</sup> Tr. 37-42, 53, 88-90.

<sup>7</sup> Tr. 42-43, 86-88.

Applicant and his wife in the United States. Applicant and his wife visit her when they are in India.<sup>8</sup>

Applicant traveled to India about once a year or at times every other year from 1997 to 2009. It was part of his employment compensation package with the United States government. In 2008, he traveled twice to see his ailing father who was suffering from cancer. In 2009, he made one trip to see his parents because his father continued to have health problems. He has not made any other trip to India since then. He talks to his parents about once or twice a month. He talks to his siblings during special occasions.<sup>9</sup>

While living in Country X, Applicant saved his money and put some of it in certificates of deposit in India. He estimated that at maturity the total amount will be around \$87,000. By the end of 2012, all of the certificates will have matured and he intends to transfer the assets as they mature to his account in the United States. He anticipates having to pay U.S. taxes on these investments.<sup>10</sup>

Applicant purchased a home in the United States in 2007, for approximately \$450,000. He estimated his total assets in the United States, excluding his house, to be about \$100,000. He contributes to his company's retirement plan.<sup>11</sup>

Applicant never voted in Indian elections. He voted for the first time in a U.S. election after he became a U.S. citizen.<sup>12</sup>

Applicant worked for the U.S. embassy in Country X during combat military operations that were being conducted in the region. He was involved in supporting diplomatic visits, State Department operations, and military operations during his 24-year employment tenure.

A high ranking retired foreign services officer testified on behalf of Applicant. He served with Applicant twice during his long career. The first time was in 1983, when the witness was a junior diplomat. He had 15 people working for him and he was also the security officer. Shortly after the bombing of the U.S. embassy in Beirut, he was notified to secure the embassy compound in Country X. He relied heavily on Applicant to help him plan, advise, and execute the best way to provide protection and security for the embassy. In 1993, the witness returned to Country X for a second posting. Applicant worked directly for him during his three-year tenure. Applicant continued to be an exemplary and loyal employee to the United States. While working at the embassy,

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<sup>8</sup> Tr. 42.

<sup>9</sup> Tr. 45-48.

<sup>10</sup> Tr. 36, 44-45, 54-60; AE A.

<sup>11</sup> Tr. 65-68.

<sup>12</sup> Tr. 92.

Applicant was required to pass background investigations every five years. He did so without any issues. The witness explained that he believes Applicant to be loyal to the United States and he actually encouraged him to immigrate to the United States. With his background and experience, he stated that he trusts Applicant and believes he is more loyal than many other citizens he has met. He has maintained contact with Applicant over the years and fully supports his application for a security clearance.<sup>13</sup>

Applicant provided numerous letters of appreciation from then Vice President George H. W. Bush, Ambassadors, General Officers, and other high ranking officials. All of them express their appreciation for his dedication to the success of the mission.<sup>14</sup>

Applicant moved to the United States because he has worked for the United States government for 24 years. He stated this is where he wanted to educate his children. All of his friends are in the United States. He stated he is “a stranger in India.”<sup>15</sup>

## **India**<sup>16</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.

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 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, terrorists coordinated an attack at a hotel in Mumbai, frequented by westerners.

The United States recognizes India as key to 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 their increasing cooperation with the Iranian military.

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<sup>13</sup> Tr. 29, 99-115.

<sup>14</sup> Tr. 48, 93; AE B.

<sup>15</sup> Tr. 71, 92-95.

<sup>16</sup> HE I.

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. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

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 United States 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 list potentially disqualifying conditions and mitigating conditions, which are used 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. I have considered all of them and especially considered the following:

- (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.

AG ¶¶ 7(a), (b), (d) and (e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”<sup>17</sup>

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”<sup>18</sup> Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.<sup>19</sup>

Applicant’s parents, one sibling, and mother-in-law are citizens and residents of India. He has certificates of deposit worth about \$87,000 in Indian banks and owns the ancestral home. These facts potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. Therefore, I find AG ¶¶ 7(a), 7(b), (d) and 7(e) apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following are potentially applicable:

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<sup>17</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>18</sup> ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

<sup>19</sup> See generally, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).



(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;

(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 has had a longstanding relationship with the United States. He served at the United States embassy in Country X for 24 years before becoming a citizen. He was granted a Special Immigration Visa because of his long service to the United States, which streamlined his entry and permanent residency status. Applicant maintains a relationship with his parents in India and cares for them when necessary. He and his wife maintain a relationship with her mother. I find AG ¶ 8(c) does not apply because his relationship with his parents and mother-in-law is more than casual. When his parents pass he anticipates either selling their home or transferring it to a sibling. He has no interest in it because he does not intend on returning to India. He maintains the property only so his parents have a place to live. Prior to becoming a citizen of the United States he invested in certificates of deposit in India. It would be financial imprudent to terminate the certificates before their maturity. He credibly testified that when they mature, he intends on transferring them to his American bank and will likely have to pay taxes on them. Applicant's immediate family and the majority of his assets are located in the United States. This is his home and where he intends to remain. Although he has assets in India, when balanced with his substantial assets in the United States, and his long-term commitment and loyalty to the United States, I find these foreign assets are unlikely to result in a conflict or be used to influence, manipulate, or pressure him. I find AG ¶ 8(f) applies.

The United States government has already recognized Applicant's loyalty by providing him with a Special Immigration visa. He and his family did not have to go through the normal procedures to immigrate. He has been subject to numerous background investigations during his past because of his employment in the embassy. Other than his parents who actually live in India and some contact with his mother-in-law there, he has very little contact with the country. He has minimal contact with his

one brother in India. He has proven his dedication and commitment to the United States. I find there is no conflict of interest because Applicant's sense of loyalty to India is minimal. However, he continues to have a sense of loyalty to his parents and mother-in-law. They have little contact with the Indian government. Under the circumstances, I believe because of Applicant's deep and longstanding relationship and loyalties in the United States, that he would resolve any conflict of interest in favor of the United States interests. During his tenure at the embassy, he repeatedly took action to protect and safeguard the personnel and assets, during turbulent times. I find mitigating conditions AG ¶ 8(a) and 8(b) apply.

### **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 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.

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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has been loyal and dedicated to the United States since 1981. He was recognized for his outstanding devotion and service to the United States by being granted a Special Immigration visa. His former supervisor, a career diplomat, holds him in the highest regard because of what he personally observed during his years of service. He attested to Applicant's commitment to the security of the embassy and its personnel during turbulent times. The Appeal Board has held that "generally an applicant's statements by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>20</sup> Although Applicant has

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<sup>20</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

some ties to India, both familial and financial, I am convinced that he will resolve any issues in favor of the United States, regardless of the stakes. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

### **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
Subparagraphs 1.a-1.j:	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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge