



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-02216
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Craig S. King, Esquire, Applicant's Counsel

October 22, 2013

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 21, 2010. On November 9, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and B for Applicant. 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 3, 2012. He answered the SOR in writing through counsel on December 21, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on December 27, 2012, and I received the case assignment on April 1, 2013. DOHA issued a notice of hearing the next day on April 2, 2013, and I convened the hearing as scheduled on May 15, 2013. The Government offered Exhibits (GXs) 1 through 6, which were received

without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through R, which were received without objection. DOHA received the transcript of the hearing (TR) on June 4, 2013. I granted Applicant's requests, one made at his hearing and one made after his hearing, to keep the record open until July 24, 2013, to submit a closing statement and additional matters. In a timely fashion he submitted a closing statement and Exhibit S, which was received without objection. As Department Counsel was on sick leave recovering from an operation, the record closed on August 23, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding ¶ 2.g., alleging Applicant has "contracts with Indian Government entities valued at about \$6 million dollars over a period of two years." (TR at page 115 line 8 to page 117 at line 21, and at page 146 line 15 to page 147 line 8). Applicant's counsel objected to the motion, arguing that Department Counsel had not shown good cause for failing to raise the allegation sooner and that the lack of notice denied Applicant the opportunity to prepare to respond to the allegation at the hearing. This objection was denied, but Applicant was given an additional four weeks to respond to the new matter, as required by ¶ E3.1.17 of the Directive. (TR at page 157 at line 25 to page 158 line 20).

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Republic of India. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

### **Guideline E - Personal Conduct**

Applicant, a native of India, attended college there; but came to the United States at the age of 21, where he received a Master's Degree in 1974 and a Doctoral Degree in 1977. (TR at page 55 line 8 to page 56 line 5, and at page 122 lines 8~13.) After completing a Post-Doctoral Thesis, he began work in U.S. defense industries, becoming a U.S. citizen in 1982 and receiving a security clearance soon thereafter. (TR at page 56 line 6 to page 61 line 19.) He has lived and worked in the United States for the last 42 years. (TR at page 122 lines 8~13.)

1.a. From 1984 to 2010, Applicant was the CEO and one of the owners of a research and development company (Company 1). (TR at page 61 line 20 to page 63 line 2.) At the behest of the U.S. Air Force, Company 1's function was the following: "what it entailed was hiring students with the help and guidance of all the Air Force Labs across the country, for them to come for interviews as to see whether they get selected, to pay for their travel and for their summer studies." (TR at page 76 lines 10~16.) However, it quickly became evident that Company 1 could not survive when incurring these up front travel and study expenses. (TR at page 76 line 21 to page 77 line 19.) As a result, Applicant and his program manager met with the Air Force's program manager and the Air Force's contracting officer. (TR at page 78 line 1 to page 80 line 17, and GX 4 at page 3.) They were advised by the Air Force's representatives that Company 1 "could pre-bill" the Air Force for its up front expenses. (*Id.*) Though well meaning, this advice turned out to be wrong, and resulted in illegal conduct. (TR at page 80 line 20 to page 83 line 1, see *also* TR at page 131 line 7 to page 138 line 4.)

1.b.~1.e. In July of 2006, Criminal Information was filed in federal district court against Company 1 for a violation of 18 U.S.C. Section 1001 - False Statements, for over billing the United States regarding the above mentioned contact. (TR at page 83 line 2 to page 85 line 2, and GX 5.) In September of 2006, Company 1 pled guilty to one count of a violation of 18 U.S.C. Section 1001 - False Statement, and was placed on probation for three years and fined \$400. (*Id.*) Applicant was also debarred for three years from conducting contract actions with the U.S. Government. (TR at page 83 line 2 to page 85 line 2, and GX 5.)

In June of 2007, Applicant started a new research and development company (Company 2). (TR at page 63 line 17 to page 65 line 17, and AppX D.) As a result of Company 2's contribution to national security, Applicant's debarment was lifted after two years. (TR at Page 67 line 15 to page 70 line 11, at page 75 lines 4~19, page 86 line 22 to page 87 line 6, at page 94 line 10 to page 97 line 9, and AppXs A~M.) An Independent Monitor was put in place from June of 2007 to June of 2010 to monitor "the Administrative Agreement between . . . [Company 2] and the United States Air Force." (AppX C.) This Independent Monitor avers, in part, the following: "Following the lifting of his disbarment, . . . [Applicant] resumed his position as president of . . . [Company 2]. During that period . . . [Applicant] demonstrated a firm commitment to honesty and integrity." (*Id.*)

## **Guideline B - Foreign Influence**

2.a. Applicant's sister is a citizen and resident of India. She is a retired school teacher. They have a somewhat strained relationship, but "more recently," he has seen her "one to three times a year." He provides no financial support for her. (TR at page 102 lines 8~18, and at page 121 line 24 to page 123 line 19.)

2.b. Applicant's mother-in-law is a citizen and resident of India. She "is 86 years old, . . in the final stages of her life," and "she cannot talk." He provides no

financial support for her. (TR at page 102 line 19 to page 103 line 5, and at page 123 line 20 to page 124 line 8.)

2.c. Applicant's sister-in-law is a citizen and resident of India. She "is a housewife," and he "very rarely" contacts her. He provides no financial support for her. (TR at page 103 lines 5~10, and at page 124 lines 9~24.)

2.d. and 2.e. Applicant's two brothers-in-law are citizens and residents of India. Both are retired from the Indian Army. One retired as a Lieutenant Colonel and the other as a Colonel. He has little contact with his brothers-in-law, at most "once every four or five years." (TR at page 103 lines 11~21, and at page 124 line 25 to page 126 line 24.) He provides no financial support for either of them.

2.f. Applicant owns land in India worth "between \$100,000 to \$200,000," and a condominium apartment worth about "\$60,000." (TR at page 105 line 16 to page 107 line 9, and at page 126 line 25 to page 128 line 8.) His net worth in the United States is between \$8,000,000 to \$10,000,000. (*Id.*)

2.g. Applicant has contracts with Indian Government entities valued at about \$6 million dollars over a period of two years. These contracts have been approved by the U.S. "State Department," as evidenced by State Department documents. (TR at page 107 line 14 to page 109 line 22, and AppXs J~M.) In 2012, Applicant's company's business dealings with Indian Government entities represented only "7.2% of the combined revenues from these companies." (AppX S.) In 2013, Applicant's company's business dealings with Indian Government entities represented only "12.8% of the combined revenues from these companies." (*Id.*) No contracts have been signed "to be performed after 2013." (AppX S.)

Applicant avers, credibly, that he is not subject to coercion vis-a-vis his Indian relatives or his foreign financial interests. (TR at page 103 line 22 to page 128 line 8.)

I also take administrative notice of the following facts. India is among the most active collectors of U.S. economic and proprietary information. It also continues to experience terrorist and insurgent activities that may affect U.S. citizens. Also, many of India's more than one billion citizens suffer from oftentimes serious human rights abuses. Constraints on religious freedom are another matter of concern. Finally, although the United States has sought to strengthen its relationship with India, there are some differences between the United States and India, including differences over India's nuclear weapons program, and the pace of India's economic reforms.

## **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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 E - Personal Conduct

The security concern for Personal Conduct is set out in AG Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(b), "*deliberately providing false or misleading information concerning relevant facts to an . . . other government representative*" may be disqualifying. Arguably this is applicable, as Applicant's Company 1 pre-billed for services not yet rendered. But this is clearly mitigated by Subparagraph 17(c), as "*it happened under such unique circumstances that it is unlikely to recur and does not cast a doubt on the individual's reliability, trustworthiness, or good judgment.*" Here, the pre-billing, which occurred more than seven years ago, was done with the concurrence of representatives of the U.S. Air Force. Furthermore, Applicant's reliability, trustworthiness, and good judgment has been recognized to the extent that his disbarment was lifted early so that his Company 2 might contribute to our national security, and also shows rehabilitation.

### Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Subparagraph 7(a) is applicable: "*contacts with a foreign family member . . . 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's sister and in-laws are citizens of and reside in India. This is countered, however, by the first mitigating condition, as "*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*" Applicant's Indian in-laws have little connection with the Indian government. His brothers-in-law, who he sees at most "once every four or five years," are now retired from the Indian Army. His elderly mother-in-law is mute, one sister-in-law is a housewife, and he has a strained

relationship with his own sister. Furthermore, Applicant credibly avers that he would not be subject to coercion vis-a-vis his Indian relatives.

The disqualifying condition found in Subparagraph 7(e) is also arguably applicable. Applicant has “*substantial . . . financial, or property interest*” in India. He owns real estate valued at most at about \$260,000, but this pales in comparison to his \$8,000,000 to \$10,000,000 net worth in the United States. Furthermore, his companies dealings with Indian, which are sanctioned by the our State Department, are at most “12.8% of the combined revenues from . . . [his] companies.” As such, I find under Subparagraph 8(f) that “*the value . . . of the foreign business . . . 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.*”

### **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. 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.

The Administrative Judge should also 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.

Applicant understands his responsibility to the U.S. while holding a security clearance; and as such, meets the eligibility criterion. Furthermore, he has the unqualified support of those who know Applicant in the defense industry. (AppXs A~C). A highly placed member with the Office of the Chief of Naval Operations avers, in part, the following: “I know . . . [Applicant] as an energetic and loyal American; dedicated to bringing advanced technology to the U.S. Armed Forces. His dealings with me have always been honest and decent. I see no reason not to renew his security clearance.” (AppX B.)

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 alleged Personal Conduct and 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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola  
Administrative Judge