



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



In the matter of: )  
)  
) ISCR Case No. 11-04512  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

07/31/2012

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of southern India who relinquished his Indian citizenship upon his U.S. naturalization in September 1999. His parents and an uncle, as well as his spouse's parents and her sister, are all resident citizens of India. Applicant also owns an undeveloped parcel of land in his native region, which is valued around \$350,000. He plans to sell the foreign property to pay for his children's college educations in the United States, and his foreign relatives have no ties to the Indian government or military. The foreign influence concerns raised by his security significant ties to India are overcome by his strong ties to the United States, where he has chosen to make his home, pursue his career, and raise his children. Clearance granted.

**Statement of the Case**

On February 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, foreign influence, and explaining why it was unable to grant a security clearance to Applicant. DOHA acted 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 responded to the SOR on February 28, 2012, and he requested a hearing. On June 6, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant, and I scheduled a hearing for July 25, 2012.

I convened the hearing as scheduled. Before the introduction of any evidence, the Government withdrew SOR allegation 1.c. Two Government exhibits (GEs 1-2) and three Applicant exhibits (AEs A-C) were admitted. Applicant also testified, as reflected in a transcript (Tr.) received on July 2, 2012. At the Government's request, I agreed to take administrative notice of pertinent facts related to India and its foreign relations, including with the United States.

### **Procedural and Evidentiary Rulings**

The Government's request for administrative notice, dated March 16, 2012, was based on publications from the U.S. State Department, the Congressional Research Service, the Office of the National Counterintelligence Executive, the National Counterintelligence Center, the U.S. Department of Justice, and the U.S. Department of Commerce.<sup>1</sup> Applicant did not object to my taking administrative notice, although he expressed concern about the relevance of some of the information to his case. I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). Accordingly, I informed both parties of my intent to consider the DOD news transcript of recent remarks by Defense Secretary Leon Panetta at the Institute for Defence Studies and Analyses in New Delhi, India, on June 6, 2012,<sup>2</sup> as well as any updates to the government's official positions on India, including revisions to the State Department's *Background Note: India*, *India Country Specific Information*, and *Human Rights Reports: India*.<sup>3</sup> The Government and the Applicant had no objection. The facts administratively noticed are set forth in the Findings of Fact, below.

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<sup>1</sup>The Government's formal request and the attached documents were not admitted into evidence but were included in the record.

<sup>2</sup>The Government and the Applicant were directed to the DOD website ([www.defense.gov](http://www.defense.gov)) where the transcript was available, and they were advised that they could file a response or propose new facts for administrative notice. Neither party proposed any new facts for administrative notice.

<sup>3</sup>The Government's March 16, 2012 Administrative Notice request is based, in part, on *Background Note: India*, dated July 14, 2010 (XI); *India Country Specific Information*, dated July 28, 2011 (XIII); and *2010 Human Rights Reports: India*, dated April 8, 2011 (XIV). Before Applicant's hearing, the State Department issued a *Background Note: India* on April 17, 2012; an *India Country Specific Information* on April 3,

## Findings of Fact

As amended with the withdrawal of SOR 1.c, the SOR alleges under Guideline B, foreign influence, that Applicant's mother (SOR 1.a), father (SOR 1.b), parents-in-law (SOR 1.d), sister-in-law (SOR 1.e), and uncle (SOR 1.f) are resident citizens of India. Applicant allegedly also owns a parcel of real estate in India valued around \$350,000 (SOR 1.g).

Applicant denied the allegations, although he then explained why his family relations in India do not pose a threat. Similarly, Applicant denied SOR 1.g concerning his real estate ownership in India, but he then explained that he purchased the land as an investment in 2007 with the intent to sell it within a year or two. The global financial crisis of 2008 led him to defer his plan to divest himself of the property. Applicant indicated that he will have to sell the land within the next two or three years to cover his daughter's college expenses in the United States. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 46-year-old computer language developer, who is being sponsored for a DOD top secret security clearance to work as a subcontractor at a university-affiliated prototype development laboratory. He has not previously held a DOD security clearance. (GE 1; Tr. 19, 46.)

Applicant was born in southern India in 1966 to resident citizens of India. His father worked as an accountant in the private sector his entire career. (Tr. 49.) He retired in 1999. (Answer.) Applicant's mother never worked outside the home. (GE 2; Tr. 47.) They had no other children. During his youth, Applicant visited his maternal uncle with some regularity, about every three or four months. When Applicant was in his teens, his uncle moved to another town, and their visits became less frequent. (Answer.)

Applicant earned his undergraduate degree in India. He never served in the Indian military. (Tr. 43.) In September 1987, he was admitted to a graduate program in computer science in the United States. (Tr. 25, 43-44.) His hard work and diligence was quickly rewarded, and he received a graduate research stipend after only a few months. (AE A; Tr. 25.) On earning his master's degree, he began working in the United States. (Tr. 25, 80.) With his career in the United States progressing, Applicant decided to make the United States his home. (Tr. 80.) From September 1994 to June 1999, Applicant successfully pursued a second master's degree at night while working in the computer field. (GE 1; Answer.)

In June 1993, Applicant, then a U.S. permanent resident, traveled to India for his marriage. His spouse was from a neighboring city in India, and they met when Applicant was in college. (GE 1; Tr. 68-69.) In August 1993, Applicant renewed his Indian passport. (GE 1.) After they married, Applicant's spouse came to the United States on a

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2012; and *India--Country Reports on Human Rights Practices for 2011*. See [www.state.gov](http://www.state.gov). The updated information was considered in determining the facts appropriate for administrative notice.

student visa. (Tr. 44. 68-69.) She has a graduate degree from a private university in the United States. (Answer; Tr. 40, 44.) In August 1995, Applicant and his spouse bought their first home in the United States for \$220,000. (Tr. 63.) In September 1998, they had a daughter. Their son was born in August 2005. Both children are U.S. citizens by birth, and they have never held Indian passports. (GE 1; Tr. 41.) They do not speak any Indian languages. (Answer.)

In September 1999, Applicant became a naturalized U.S. citizen. Applicant was no longer a citizen of India because the country does not recognize dual citizenship, and he discarded his Indian passport, which was scheduled to expire in August 2004. (GE 2.) Applicant holds a U.S. passport, which was renewed in September 2009. (GE 1; Tr. 39.) Applicant's spouse acquired her U.S. citizenship in 2010. (Tr. 40.)

When Applicant's then employer ceased operations in June 2002, he turned to consulting in computer software development. Applicant worked in software development on a contract basis for a succession of firms in the financial industry until July 2010. (GE 1; Tr. 44.) His income as a consultant has varied from \$150,000 to \$200,000 annually while his spouse earns between \$100,000 and \$110,000 per year from her employment as a software engineer for a bakery café company. (GE 2; Tr. 40, 64.) While they focused on their life in the United States, they maintained telephone contact with their parents in India and traveled to India for family visits and vacations. Applicant went to India, at times by himself (Tr. 78), in January 2003 and again in February 2006 for 21 days; in June 2006 and in May 2007 for 10 days; in June 2008 for 15 days; in January 2010 for 10 days; and in October 2011 for eight days to visit family. When in India, Applicant stayed mostly with his parents, while his wife has stayed with her parents. They have also stayed in hotels when vacationing outside of their parents' immediate area. (Tr. 53.)

Applicant's parents stayed with him in the United States for two months in June 2001, May 2002, and June 2004; for three months in February 2006; and for two months in May 2011. (GE 2; Tr. 61.) Applicant's parents-in-law came to the United States for three month stays in August 2004, August 2005, and July 2006. (GE 2.)

After Applicant lost some money in the stock market in the "dot com" crash, he began looking at real estate as a more secure investment. He and his spouse wanted the best education for their children, and interest checking would not provide the return needed to pay for his children's college educations in the United States. Due to the high price of real estate in the United States around 2005, they began considering investing in Indian real estate because the market there was "up and coming," and the country was encouraging foreign investment. (Tr. 57.) After they had been looking for about a year, Applicant's spouse learned from her father about a suitable parcel near him. After both sets of parents had checked out the property, Applicant purchased an undeveloped one-acre plot in southern India for about \$350,000 in March 2007. His plan was to sell it within a couple of years and then purchase something in the United States. (GEs 1, 2; Tr. 58, 67.) He bought it with savings and a \$200,000 home equity loan through a U.S. bank, which he has paid off. (Tr. 58, 62-63.) Applicant does not have an

annual tax obligation in India on the property, although he will have to pay taxes on the equity realized in any sale. (Tr. 69.) As of June 2012, Applicant had not yet sold the land in India, which is being informally monitored by his parents and parents-in-law. The value of the property has been flat, and with the depreciation of the rupee against the dollar, Applicant would take a currency hit if he sold it now. (Tr. 58-59.) Applicant intends to sell this foreign asset within the next couple of years, by the time his daughter is in the 10<sup>th</sup> grade, or sooner if the Indian rupee appreciates in value against the dollar. (Tr. 70.) Applicant has no other financial assets in India. (Answer; Tr. 56.) In the event of an attempt to gain influence on him through his foreign property, Applicant indicates he would “just walk away from [the parcel] . . . take the loss and move on.” (Answer.) Also, if required to sell the land for his security clearance, Applicant would do what was necessary for his clearance, including give the land away. (Tr. 60.) Applicant has taken no action to divest himself of this foreign asset because he has not been back to India for the time needed, “at least a week,” to discuss a possible sale with a realtor. (Tr. 76-77.)

With their daughter entering middle school in the fall of 2010, Applicant and his spouse decided to purchase a new home in a better school district. They sold their old home in June 2010, and purchased their present home in July 2010 for about \$1 million. (GE 1; Tr. 42, 65.) They had around \$250,000 in equity in their previous residence (Tr. 65) and \$100,000 to \$150,000 in savings that they put toward their new home. (Tr. 73.) They also took out a low interest home equity loan of less than \$500,000, on which he pays \$2,000 to \$3,000 per month. (Tr. 73-74.) Most of their spare income has gone to pay down the home loan, so they currently owe around \$350,000 on the house. (Tr. 64, 74.)

In July 2010, Applicant contracted to perform software design work at a university-affiliated research and development laboratory involved in DOD projects. On July 22, 2010, he completed an Electronic Questionnaire for Investigations Processing (e-QIP) for a top secret security clearance. (GE 1; Tr. 45.) Applicant disclosed the Indian citizenship and residency of his parents and parents-in-law. In response to any foreign contacts, he disclosed contact by telephone, in person, and email about three to seven times a year with his wife’s sister, who is also a resident citizen of India. As for any foreign financial interests, Applicant reported his ownership of land in southern India from March 2007 to present valued at \$350,000. Applicant listed his foreign travel, including six trips to India since January 2003. (GE 1.)

On September 8, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his contact with his and his spouse’s relatives in India. Applicant indicated that he sees his parents, parents-in-law, and sister-in-law about once a year. He has telephone contact with his parents twice weekly, with his parents-in-law once monthly, and with his spouse’s sister four times a year. Concerning his unlisted contact with his uncle in India, Applicant had telephone contact with him about once a year and in-person contact six times since 2003. He averred that none of his relatives in India had any affiliation with a foreign government. They also did not know that he was being considered for a DOD security clearance. He

denied any vulnerability or preference for India because of these family relationships. Applicant indicated that his land in India was of no importance to his overall financial situation. (GE 2.) As of June 2012, he and his spouse's joint net worth in the United States was about \$1.5 million.<sup>4</sup> (Tr. 71.) Applicant asserts sole loyalty to the United States, where he has spent his adult life and developed deep roots over the past 25 years. (GE 2.)

Applicant and his spouse have discussed possibly traveling to India before the end of this summer. (Tr. 77.) Applicant does not intend to return to India to live, even to care for his elderly parents ("they have to fend for themselves"). (Tr. 38.) They have not talked to him about possibly moving to the United States. (Tr. 61.) Applicant's contact with them ranges from once a week to once every two weeks as of June 2012, and their conversations revolve around his children, his parents' social activities, or the weather in India. Applicant does not discuss his work. (Answer; Tr. 47-49.) They do not rely on Applicant for any financial assistance. (Answer.)

Applicant's parents-in-law are also retired and living in India. His father-in-law owned a small business that sold granite until 2001. Applicant does not share particularly close bonds with his in-laws. His spouse contacts her parents once a month on average. Applicant speaks to them once every three to six months. (Answer, Tr. 50.) They do not rely on any financial support from Applicant or his spouse. (Answer; Tr. 79.)

Applicant's sister-in-law lived with her parents until 2008. She works as a software engineer for a private computer software company in India. (Answer; GE 2; Tr. 51.) As of June 2012, Applicant had contact with his sister-in-law "once every six months maybe." (Tr. 51.) He visited with her for a few hours each time during his trips to India in January 2003, February 2006, June 2006, May 2007, June 2008, and January 2010. She spent time with Applicant and his spouse during a two-week trip to the United States in September 2011. (GE 2,)

Applicant's maternal uncle has been retired for over 20 years. Applicant is not clear about his uncle's former employment other than that it was with a company, and his uncle had no association with the Indian government or military. (Tr. 51-52.)

Outside of work, Applicant's and his spouse's activities revolve around their children. Applicant's daughter is an excellent student, who is gifted in mathematics. (AE B.) Her extracurricular activities consist of math club, swimming, and dance, while Applicant's son is involved in soccer, tennis, karate, and music lessons. (AE C.) Applicant and his spouse hold no official positions, but they help with the school's parent teacher organization and at their children's sporting and educational events. (Tr. 55-56.) As to whether their children will attend college in India, Applicant responded,

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<sup>4</sup>The value of the investment assets held by Applicant and his wife was established solely through his testimony. No corroboration of the value of their U.S. assets, or the property in India, was presented by way of tax assessments, independent appraisals, contracts of sale, or similar documents. Since Department Counsel did not contest the evidence regarding the value of the assets, I accepted Applicant's testimony as true and accurate.

“Never, not in a million years, no.” (Tr. 38-39.) Applicant and his spouse want their children to attend better schools than they did. (Answer; Tr. 26.) Applicant is not involved in the Indian expatriate community in his area. (Tr. 54.)

A close friend of Applicant's, who has known Applicant since he came to the United States for graduate studies, believes Applicant is “extremely reliable and trustworthy and has deep roots in our society.” Two laboratory employees, who interviewed Applicant for the position for which he seeks classified access, attest to Applicant being an asset to the project. He has been diligent about finishing his tasks on time and has earned the respect of team members for his technical contributions and interpersonal skills. (AE A.)

### **Administrative Notice**

After reviewing U.S. government publications concerning India and its relations with the United States, I take administrative notice of the following facts:

India is a stable multiparty federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The central government has broad administrative powers in relation to its states. Indian society and political organization are determined largely by the Hindu caste system of occupational and social hierarchies, by religion, and language, although the influence of these factors has been diluted if not subsumed in the economically prosperous and heterogeneous cities. The Indian government generally respects the rights of its citizens. The Congress Party-led coalition government, known as the United Progressive Alliance (UPA), in power since May 22, 2004, presided over May 2009 elections that were considered free and fair, despite scattered instances of violence. India has a vibrant civil society, a free press, and a robust democratic political system. Yet, endemic corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children persist, despite criminal penalties for violations and government efforts to implement programs designed to empower members of the lower castes. Police and security forces often act with impunity, and serious abuses have been reported in criminal investigations and efforts to suppress domestic terrorism. Separatist and terrorist groups remain active in areas of conflict, such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt.

In the wake of the coordinated terrorist attacks in Mumbai in November 2008, the Indian parliament enacted laws, such as the Unlawful Activities Prevention Act, which permits authorities to detain persons for up to 30 days without charge in cases of suspected insurgency or terrorism. Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government's list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Recent incidents include bombings in February 2012 of an Israeli diplomatic vehicle in New Delhi, in September 2011 at New Delhi's High Court, and in July 2011 in crowded areas in Mumbai. Such threats to safety have led the U.S. State Department to advise U.S.

citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border. The Maoist extremist groups or Naxalites, which are active in rural areas of East Central and Southern India, are responsible for more terrorist attacks in the country than any other organization through an ongoing campaign of violence and intimidation. The Naxalites have not specifically targeted U.S. citizens, but they have attacked symbolic targets that included Western companies and rail lines.<sup>5</sup>

India's size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and of the Non-Aligned Movement. Long a member of the United Nations, the country has a non-permanent seat on the Security Council in 2011-2012, and it seeks a permanent seat on the Council. It has a long tradition of participating in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The United States welcomes India's role in Afghanistan while recognizing Pakistan's security interests in having a friendly western neighbor. Three full-scale wars and a constant state of military preparedness on both sides of the border have marked more than six decades of bitter rivalry between India and Pakistan. The United States strongly encourages an ongoing India-Pakistan peace initiative and remains concerned about the potential for conflict over Kashmiri sovereignty and "cross-border terrorism." Beijing's military and economic support for Pakistan is a major source of friction between China and India. China and India have ongoing cooperation in other areas, such as finance, agriculture, water resources, energy, environment, and tourism. The Chinese are reportedly increasingly wary over the growing strategic relationship between the United States and India.

India continues to obtain the bulk of its imported military hardware from Russia, which had been India's major benefactor for the first four decades of its independence. Russia's status as main supplier of defense equipment has been threatened by alleged substandard work by Russia, some cost overruns, and major delays. In recent years, Israel roughly equaled Russia in the value of defense exports to India. As of 2000, India was listed as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States, although there is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence. The United States has also had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. As of 2008, there had been several incidents of international businesses illegally exporting, or attempting to export, restricted, dual-use technology from the United States to India. A number of Indian governmental entities have been on the U.S. export control "Entity List" of foreign-end users involved in weapons proliferation activities, although as of May 14, 2012, only three entities, all with its Department of Atomic Energy, were still on the list. Differences between the United States and India still exist over India's nuclear weapons programs; the slow pace of India's economic reforms because of inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and

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<sup>5</sup>In its April 3, 2012 *India Country Specific Information*, the U.S. State Department lists the areas of active terrorism and civil unrest. Applicant's native area, where his family members reside and where he owns real estate, is not among them.



regulatory and foreign investment controls; and India's bilateral strategic partnership with Iran. Between 2004 and 2006, the United States sanctioned Indian scientists and chemical companies for transferring nuclear weapons-related equipment and technology to Iran. India imported about \$10 billion worth of crude oil from Iran in 2009, although New Delhi has apparently abandoned its plan to construct a gas pipeline to deliver Iranian natural gas to India through Pakistan, which the United States has strongly opposed.

At the same time, these differences no longer dominate the United States' attitude toward India. The United States recognizes India as key to strategic interests. Since 2002, the United States and India have held increasingly substantive combined exercises involving all military services. Both countries are 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. The Bush and Obama administrations have been committed to establishing a strong, dynamic partnership with India. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2007, the United States and India reached a historic milestone in their strategic partnership by completing negotiations on a bilateral agreement for peaceful nuclear cooperation. In July 2009, the Obama Administration launched a "Strategic Dialogue" calling for collaboration on energy, trade, education, and counterterrorism issues. Major U.S. arms sales to India are underway. In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for the largest-ever U.S. arms transfer to India. During a recent visit to India in June 2012, Secretary of Defense Panetta cited the strong, strategic, increasingly collaborative, and transparent relationship between the two countries as the foundation for a new defense strategy guiding the U.S.' military rebalance to the Asia-Pacific region. He called for already strong mutual participation in military exercises to become more regular and complex. As evidence of the U.S.' commitment to providing the best defense technology possible to India, Secretary Panetta pointed to work by the Obama Administration to reform export controls. He called for India to modernize its own regulations in defense procurement and nuclear liability legislation.

The rapidly growing software sector in India is boosting service exports and modernizing the country's economy, although excessive regulatory and bureaucratic structures and corruption present obstacles to growth. The United States, India's largest investment partner, strongly supports the market reforms undertaken by India since 1991 and urges further liberalization of trade and investment barriers. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

India does not permit its citizens to hold dual citizenship. In 2006, India launched the Overseas Citizens of India (OCI) program. It is not a dual nationality program and does not grant Indian citizenship. A U.S. citizen who obtains an OCI card can travel to and from India indefinitely, work in India, study in India, and own property in India

(except for certain agricultural and plantation properties). An OCI card holder is ineligible for an Indian passport or for Indian government employment and cannot vote in Indian elections.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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. . . .” The applicant 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 that the applicant may deliberately or inadvertently fail to 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B—Foreign Influence

The security concern relating to the guideline 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.

Applicant has foreign connections that present a potential risk of divided loyalties or undue foreign influence. Applicant's parents, a maternal uncle, his spouse's parents, and his spouse's sister, are resident citizens of his native India. Also, he owns an undeveloped one-acre plot in southern India valued around \$350,000. Four disqualifying conditions under AG ¶ 7 are potentially applicable:

- (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.

The salient issue under AG ¶¶ 7(a), 7(b), 7(d), and 7(e) is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because

of the respective foreign tie, contact, or interest. The “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, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, “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. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant has ongoing contact with his and his spouse’s family members in India. As of September 2010, he had telephone contact with his parents about twice weekly, with his parents-in-law once monthly, with his sister-in-law four times a year, and with his uncle once a year. While the frequency of the contact has declined somewhat as of June 2012, Applicant has traveled to India to visit them on average annually since at least 2003. He went to India for eight days when his mother was ill in October 2011, and he and his spouse have discussed a possible trip to India before their children return to school in September 2012. When in India, Applicant stays primarily with his parents or in a hotel. Yet the nature and extent of his contact with his relatives abroad are what one might reasonably expect of any immigrant with a parent or in-laws living in a distant country.

Nothing about his family members’ previous or present occupations or activities creates a heightened risk. None of them had an affiliation with the Indian government, or any military, security, or intelligence responsibilities. Applicant’s father was an accountant in the private sector until he retired in 1994. Applicant’s father-in-law was a small business owner in granite sales before his retirement in 2001. Applicant’s sister-in-law is a software engineer for a private company. Applicant knows little about his elderly uncle’s previous occupation. Applicant’s mother and mother-in-law did not work outside the home.

India and the United States have significantly improved their bilateral relations in the past decade. They have held a series of substantive combined exercises involving all military services since 2002. As evidence of the U.S.’ commitment to provide the best defense technology possible to India, India signed in 2009 a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for

the largest-ever U.S. arms transfer to that country. The Obama administration characterizes the relationship between the two nations as strong, strategic, increasingly collaborative, and transparent. India has also been a reliable ally of the United States in the fight against international terrorism. The country has taken steps since the Mumbai attacks to make it more difficult for insurgents or terrorist groups to operate with impunity. Human rights abuses in India largely involve harsh treatment of persons suspected of terrorist activity. India is not known to coerce its law-abiding citizens. Yet Indian-U.S. interests are not aligned on several issues involving Pakistan and other countries. India relies on Iran and Russia for oil and gas supplies. Russia has historically been India's largest supplier of military hardware, and Indian scientists and chemical companies have been sanctioned by the United States in the past for transferring nuclear weapons-related equipment and technology to Iran. While U.S.-Russian relations have improved since the end of the Cold War, Iran is a state sponsor of terrorism and avowedly anti-American. Furthermore, it is noted that India and commercial entities in India have aggressively targeted U.S. economic intelligence in the past, as recently as 2008, although the Defense Department does not presently believe that India is exploiting U.S. technology.<sup>6</sup> AG ¶¶ 7(a) and 7(b) are established because of Applicant's ties to his parents and uncle, and albeit primarily through his spouse, to her parents and sister in India.

Furthermore, Applicant's ownership of real estate in India valued around \$350,000 establishes AG ¶ 7(e). Although the property represents only about a quarter of his and his spouse's overall net worth, it is a substantial property interest in a foreign country that could present a heightened risk of foreign influence.

Concerning potential factors in mitigation, AG ¶ 8(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.," is difficult to satisfy, given the ongoing risk of terrorist activity by rogue elements in India, although there is no evidence that the region in southern India at issue here has been targeted or victimized.

Applicant has infrequent contact with his maternal uncle in India, but 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," is not satisfied with respect to his other relatives. Applicant may speak to his sister-in-law on a few times a year, but she visited Applicant and his spouse in the United States as recently as September 2011.

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<sup>6</sup> In New Delhi on July 23, 2012, to urge closer U.S.-India defense cooperation, Deputy Defense Secretary Ashton Carter stated, in part, "We trust India and know that India is not a re-exporter or exploiter of our technologies." See [www.defense.gov](http://www.defense.gov)

The foreign parcel is of such value in relation to Applicant's overall portfolio to make it difficult to mitigate under the first prong of AG ¶ 8(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 is counting on this asset to pay for his children's college educations in the United States. However, the nature of the interest is routine. Applicant has no emotional tie to the land. It is not an ancestral property or one that his family members rely on for their livelihood. He bought it as an investment well before he knew that he would need a security clearance for defense contract work. Applicant's original intent was to own the property for only a couple of years and then sell it. The decline in the value of the rupee and the economic slowdown, factors over which he had no control, led him to delay any sale. When questioned about the foreign asset in September 2010, Applicant indicated that he could abandon the property if necessary. At his hearing, he reiterated that he would be willing to divest himself of the asset if necessary to obtain the security clearance. When asked about his failure to take any action in this regard, Applicant reasonably explained that he wanted to deal with a realtor "face-to-face," and he needed at least a week in India to do so. The value of the investment is considerable, but the nature of the interest is routine for Applicant.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(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." As an only child with elderly parents, Applicant conceivably may face obligations in the future concerning their care in India. Applicant has adamantly denied any intent to return to India to live, and he has made it clear to his parents that his life is in the United States. Even so, his annual trips to India to visit them and his regular telephone calls show some understandable affection for his parents. Applicant may not share a similar affection for his in-laws, but his spouse's ties to her parents and sister also cannot be characterized as "so minimal."

However, Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States, where he has resided since 1987 and established firm roots. Applicant places a high value on education, so he came to the United States to earn his graduate degree in computer science. He is appreciative of the graduate stipend that he earned based on his hard work (AE A), and he obtained a job in the United States after he graduated. Shortly thereafter, he decided to remain here. In 1993, he married an Indian national, whom he had known since college, but he made it clear to her that they would be living in the United States. She came to the United States on a student visa after their marriage and then obtained her graduate degree. In 1995, Applicant and his spouse purchased their first home in the United States. Their careers are here. Applicant acquired his U.S. citizenship in 1999, his spouse hers in 2010, knowing that they would no longer be citizens of India. Applicant has traveled exclusively on a U.S. passport since 1999. There is no evidence that Applicant or his spouse has acquired an Overseas Citizen of India card.

Moreover, their two children were born in the United States, and they have been raised like their U.S. peers. Applicant has made no effort to obtain Indian language training for his children, despite visits to India to see family and to vacation. Applicant is not involved in activities of the local Indian expatriate community. Instead, he and his spouse are dedicated to their children and children's school and extracurricular activities. Applicant is justifiably proud of his daughter's academic accomplishments, as shown by AE B. Applicant has made it clear that his children will attend college in the United States, and in that regard, his investment in Indian real estate reflects his commitment to paying for the best educations possible for his children. He professes sole affiliation to his adopted homeland,<sup>7</sup> and there is nothing about his lifestyle inconsistent with his American citizenship.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>8</sup> Applicant has family and real estate ties to India that raise concerns of foreign influence. At the same time, these foreign ties are in an area of southern India which has not been targeted or victimized by terrorist or insurgent violence. Applicant has also minimized the risk somewhat by not discussing his work with his relatives in India. They are unaware that he is applying for a DOD clearance. Since September 1987, Applicant has established firm roots in the United States, where he was encouraged and given the opportunity to excel in his chosen field of computer software design. Given the rapidly growing software industry in India, Applicant could conceivably use his knowledge and skills to his benefit in India. Yet he intends to remain in the United States. He is not likely to jeopardize his spouse or children, who are U.S. resident citizens, or the employment that he needs to provide better opportunities for his children than he had. Applicant has demonstrated his reliability and trustworthiness to his co-workers at the laboratory. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance.

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<sup>7</sup>Applicant considered himself "a patriotic American in mind, body, and spirit long before [he] became a U.S. citizen in 1999. (Tr. 27.)

<sup>8</sup>The factors under AG ¶ 2(a) are as follows:

- (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.

## Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Withdrawn
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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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Elizabeth M. Matchinski  
Administrative Judge