



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



In the matter of: )  
)  
) ISCR Case No. 11-07422  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

03/08/2013

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**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by her possession of an Overseas Citizen of India (OCI) Card, her ownership of a home in India, and her relationship with her immediate family members, all of whom are citizens and relatives of India. Clearance is denied.

**Statement of the Case**

On September 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, foreign influence, and C, foreign preference. 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).

Applicant answered the SOR on October 19, 2012, admitting all of the allegations except subparagraph 1.b, and requesting a hearing on the record. On November 27, 2012, Department Counsel submitted a File of Relevant Material (FORM). On February 1, 2013, Applicant submitted a written response to the FORM. Department Counsel did not object, and on February 19, 2013, the case was assigned to me.

### **Evidentiary Ruling**

Department Counsel requested that I take administrative notice of the facts regarding India set forth in Items I through XIV.<sup>1</sup> I took administrative notice of the facts set forth in all of these documents except Item II, the Office of National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000*. According to the Appeal Board, a “current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the [foreign] country vis a vis the United States is crucial to Guideline B cases” (ISCR Case No. 07-05686 (App. Bd. November 12, 2005) at 4, footnote 3). Item II, published more than 12 years ago, is not current. Consequently, it fails to meet the criteria set forth by the Appeal Board for evaluating Guideline B cases.

### **Findings of Fact**

Applicant is a 52-year-old single woman. She has been married twice. Her first marriage, in 1987, ended later that year in an annulment. Her second marriage, beginning in 1996, ended in divorce in 2001. Applicant has no children. (Item 3 at 16-20)

Applicant was born and raised in India. She earned a doctorate from an Indian university in 1989. (Item 3 at 6) Her field of study is unknown from the record. Also, it is unclear whether she completed her doctorate after graduating from college or whether she completed her undergraduate and doctoral studies as part of a joint program. She has taken some English courses since immigrating to the United States.

Applicant immigrated to the United States in 1999 and became a naturalized citizen in 2005. After becoming a naturalized citizen, she surrendered her Indian passport. (Items 2 at 25, 3 at 4)

Applicant is a research scientist. (Item 3 at 12) Since 2011, she has worked for a defense contractor as a human subject protection specialist. (Item 2 at 13) Her duties include ensuring that biomedical and socio-behavioral research conducted by the military complies with regulations to protect research participants from any harm. (Item 2 at 13) Applicant’s employer is seeking to assign her to a joint United States and Indian research project. (Item 2 at 13)

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<sup>1</sup>I did not annotate the administrative notice documents sequentially with the other FORM documents. Instead, I numbered the other FORM documents using Arabic numerals (Items 1-4), and used Roman numerals to distinguish the administrative notice documents. (Items I-XIV)

Applicant's parents are citizens and residents of India. Her father is a law professor. He retired in 1984. He was the law school's dean when he retired. (Item 2 at 16) Applicant's mother is a homemaker.

Applicant has two brothers, both of whom are Indian citizens and residents. Her older brother is an attorney. He attended law school in the United States, and is a partner in an Indian law firm. (Item 2 at 17) Applicant's younger brother attended law school in India and is also a partner at an Indian law firm. Neither brother has served in the Indian military or Indian government.

Applicant's older brother's wife is an Indian citizen and resident. She has a PhD in commerce and is a teacher. Applicant's younger brother's wife is an Indian citizen and resident. She has a PhD in microbiology and also teaches. It is unknown from the record whether they teach in secondary, college, or graduate schools.

Applicant has two sisters. Her oldest sister is a homemaker and her other sister is a language teacher who works at a private school. (Item 2 at 17) Her oldest sister's husband has a PhD in environmental science, and her other sister's husband has a master's of business administration degree in marketing. They work in the private sector. Both of her sisters and their husbands are Indian citizens and residents.

Applicant travels to India approximately once per year to visit her relatives. (Item 2 at 14) She talks with her parents approximately twice per week, and she talks to her siblings approximately once per week.

Applicant possesses an OCI card that she uses to travel to India. (Item 2 at 14) An OCI card holder can, among other things, travel to and from India indefinitely and hold property in India. (Item XIII at 11) It does not grant Indian citizenship, but is limited to Indian expatriates. (Item XIII at 11)

Applicant retains the OCI card to facilitate travel to India on short notice. Both of her parents are in their eighties and are in fragile health. Without an OCI card, Applicant would have to apply for a tourist visa. This application process typically takes up to one week to complete. (Item 2 at 11) Also, a visitor who has travelled to India on a tourist visa must wait two months before the Indian government will issue them another tourist visa. (Item 2 at 27) The tourist visa application process contains an exception for "emergent situations like death/serious illness in the family" for visitors seeking to return to India within two months of their last trip. (Item 2 at 29)

Applicant is concerned that if one of her ailing parents became critically ill and she had to apply for a tourist visa, she may not be able to get to India to see them before they died. (Item 2 at 11) So long as her parents are alive, she intends to retain the OCI card. (Item 2 at 12)

Applicant owns a home in India. She purchased it in January 2011. Its value is approximately \$150,000 USD. (Item 4 at 12) She purchased it as an investment property

and intends “to sell it off . . . at a reasonably appreciated price.” (Item 2 at 19) Applicant does not own any real estate in the United States.

Applicant has two bank accounts in India. The average balance on one of the accounts ranges between \$4,000 and \$6,000, and the average balance on the other account is approximately \$687. (Item 4 at 12) She uses the banks to make mortgage payments on her property in India, and for travel expenses when visiting India.

Applicant’s assets in India total approximately \$156,000. Her assets in the United States total approximately \$120,000. (Item 4 at 12,16)

### **Administrative Notice**

India is a multiparty, parliamentary, secular democracy with a population of 1.2 billion. (Item XI at 2, 7). It has 28 states and seven union territories. (Item XI at 2) United States and Indian relations have strengthened during the past ten years. (Item X at 3) Before then, their relationship was strained because India had developed nuclear weapons in contravention of international conventions, and had never signed the Nuclear Non-Proliferation Treaty. (Item XI at 15)

Currently, the United States is one of India’s largest trading partners. (Item I at 78) The growth of the United States and India’s economic ties has been accompanied by a corresponding growth in their strategic relationship. In 2006, Congress passed the Henry J. Hyde United States - India Peaceful Atomic Cooperation Act, which allows direct civilian nuclear commerce with India for the first time in 30 years (Item I at 16). This agreement “enables India to buy U.S. nuclear reactors and fuel for civilian use. (Item I at 16) There remain lingering concerns about India’s ability to prevent the distribution of potentially dangerous technology and equipment to “undesirable recipients.” (Item X at 77)

Since late 2001, security cooperation between the United States and India has flourished. (Item X at 86) India conducts more military exercises and personnel exchanges with the United States than with any other country. (Item X at 88) India is undertaking a major military modernization program and anticipates spending more than \$100 billion dollars on weapons systems over the next decade. U.S. weapons makers and security companies are “eager to gain a slice of this lucrative pie.” (Item X at 89)

India has a historically positive relationship with Iran. (Item X at 39) As India has grown closer to the United States, its Iran policy has shifted. Recently, India has moved to more fully embraced international sanctions against the Iranian regime. (Item X at 39) Although some in Congress have expressed concerns about signs of a nascent India-Iran defense cooperation, most observers view such relations “as remaining thin and patchy to date.” (Item X at 40)

The U.S. Department of Commerce Bureau of Industry and Security (BIS) maintains an Entity List composed of end-users who have been determined to present

an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. The Bureau of Industry and Security also regulates dual-use technologies that may have military applications such as electronic sensors. U.S. firms seeking to conduct business with organizations on the Entity List must obtain licenses from the Bureau of Industry and Security (Item VIII) Companies seeking to engage in such trade must be licensed, and cannot export such technologies to businesses on the Entity List without prior authorization. (Item VII)

Since 1998, several Indian entities have been subjected to case-by-case licensing requirements and have been included on the BIS Entity List. (Item X at 77) As United States/India relations have improved, the United States has modified some export licensing policies and removed several Indian entities from the Entity List. (Item X at 77)

During the summer of 2008, two Indian citizens who were permanent U.S. residents were convicted of violating the International Emergency Economic Powers Act for illegally exporting controlled microprocessors and other electronic components. (Item I at 10; Item III)

India is one of the most terror-afflicted countries in the world (Item XII at 6). Terrorism is concentrated in Kashmir, a disputed area bordering Pakistan where radical Muslim activists are present, central India, where Maoist rebels are fighting on behalf of landless laborers, and southern India, where Hindus and Muslims periodically clash. (Item XIII at 5-6; Item X at 74-75).

In 2011, India increased its counterterrorism capacity and cooperation with the international communities. (Item XII at 5) India actively combats terrorism by aggressively prosecuting terrorists, countering terrorist finance, and funding counter-radicalization programs throughout the country. (Item XII at 7)

India is firmly committed to representative government and the rule of law. (Item X at 42) It has a vibrant civil society, a free press, and a robust, democratic, political system. (Item X at 43) However, serious problems exist including extrajudicial killings of persons in custody, disappearances, and torture by police forces. (Item X at 93; XIV at 1, 4, 6-7)

India is plagued by violent secessionist movements, and deeply rooted tensions among its many ethnic and religious minorities. In 1992, Anti-Muslim Hindus rioted and destroyed a 16<sup>th</sup> century mosque. (Item X at 70) In 2002, Muslims attacked a train carrying several Hindu passengers. Fifty-eight Hindus were killed in the attack and more than 2,000 people were killed in the ensuing communal riots. (Item X at 70)

In 2008, radical Hindus rioted against Christians, burning churches, and destroying homes and businesses of Christian people. Thirty-eight people were killed and more than 50,000 people were left homeless. (Item X at 72)

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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

## **Analysis**

### **Guideline C, Foreign Preference**

Under this guideline, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. The guideline sets forth under AG ¶ 10 several conditions that could constitute a disqualifying preference. Two are potentially applicable, as follows:

(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes, but is not limited to:

- (1) possession of a current foreign passport; and
- (2) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

India does not recognize dual citizenship. Consequently, when Applicant became a U.S. citizen, she ceased to be an Indian citizen. Because the disqualifying conditions

are predicated on exercising foreign citizenship, and Applicant retains no foreign citizenship, none of the disqualifying conditions apply.

The inapplicability of the disqualifying conditions does not end the foreign preference analysis. Applicant applied for, and was issued an OCI card that enables any Indian expatriate to travel to India without applying for a tourist visa. In doing so, she availed herself of a privilege limited to former Indian citizens. I conclude this constitutes an exercise of foreign preference regardless of whether it explicitly triggers the application of any of the disqualifying conditions.

Applicant's parents are in ill health and have experienced medical emergencies that have compelled Applicant to travel to India on short notice. Applicant contends she would not be able to do this without an OCI card because India's tourist visa application process is time-consuming and onerous. An applicant's exercise of a situational preference, no matter how emotionally compelling, does not mitigate the foreign preference security concern. (ISCR Case No. 99-0424(App. Bd. (February 8, 2001))). None of the mitigating conditions apply.

## **Guideline B, Foreign Influence**

Under this guideline, "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 the United States interests, or is vulnerable to pressure or coercion by any foreign interest." Moreover, "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 ¶ 6)

Applicant's contact with her relatives who are Indian citizens and residents, her Indian bank accounts, and her Indian real estate raise the issue of whether the following disqualifying conditions apply:

AG ¶ 7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(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 coercion.

India is a United States ally with shared democratic values. The relationship between the two countries has grown significantly over the past ten years. However, the United States remains concerned about India's ability to keep nuclear technology from

falling into the wrong hands. Moreover, there have been episodes over the past five years of businessmen who are Indian foreign nationals living in the United States who have exported sensitive technology to India in circumvention of U.S. law governing transfer of such technology. Consequently, AG ¶ 7(a) applies.

Applicant's property interests in India are greater than her property interests in the United States. Consequently, AG ¶ 7(e) applies.

The following mitigating conditions are potentially applicable 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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; 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 speaks with her relatives once or twice per week and visits once per year. She possesses an OCI card to facilitate travel to India. AG ¶ 8(c) does not apply.

Applicant has lived in the United States for more than ten years, and has been a naturalized citizen for nearly eight years. However, she presented minimal evidence of her relationships in her community. AG ¶ 8(b) does not apply. Applicant owns a house in India, but does not own a house in the United States. AG ¶ 8(f) does not apply. Applicant has not mitigated the foreign influence security concern.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.



I considered the whole-person concept in my analysis of the guidelines, particularly with respect to Applicant's reason for maintaining an OCI card. I reiterate that it does not warrant a favorable conclusion.

**Formal Findings**

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a -2.d:	Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge