



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08246
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

10/12/2012

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant's clearance.

On 11 July 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 9 August 2012, and I convened a hearing 13 September 2012. DOHA received the transcript 21 September 2012.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, hearing exhibit (HE) I, and Applicant exhibits A-E.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the allegations of the SOR. He is a 31-year-old staff consultant employed by a defense contractor since January 2011. He has not previously held an industrial clearance, but recently received a favorable fitness determination from another Government agency (AE C).

Applicant was born and raised in India, until January 2001, when he immigrated to the U.S. to attend college. He obtained his bachelor's degree in May 2005 and his masters' degree in December 2010, both from U.S. universities. He became a naturalized U.S. citizen in May 2007, and obtained his U.S. passport in June 2007. As required by U.S. immigration law, he maintained a valid Indian passport until his naturalization. It expired in June 2007. He has not renewed it, but has surrendered his expired passport to his security office. He registered with Selective Service as required by U.S. law. He believes he surrendered his Indian citizenship when he became a U.S. citizen (GE 1). India does not recognize dual citizenship. Its citizenship law permits voluntary renunciation of citizenship, and states that voluntarily obtaining citizenship in another country may be grounds for involuntary loss of Indian citizenship. However, it does not appear that this loss is automatic upon obtaining another citizenship.

He married a native-born Indian citizen in August 2010. He applied for her legal permanent resident (LPR) status in September 2010. She became an LPR in July 2011 (GE2). They have no children.

Applicant's parents, parents-in-law, brother-in-law, and aunt and uncle are resident citizens of India. Applicant's father owns his own small business, making glues. His father-in-law sold fire extinguishers, but is in poor health and no longer works. His uncle owns his own small transportation company. None of their spouses are employed outside the home. Applicant's brother-in-law works for a social media company. None of these companies have any connection to the Indian government. None of his relatives in India are aware that he is under consideration for a clearance.

Applicant has regular contact with his relatives, either directly or through his wife. Unsurprisingly, his contacts with his brother-in-law and aunt and uncle are less frequent with his parents. His contacts with his in-laws fall somewhere in between. His contacts cannot be characterized as casual or infrequent.

Applicant estimates his net worth at \$350,000, of which \$20,000 consists of a bank account in India that he uses to support his parents, and as a source of cash when Applicant and his family travel to India to visit relatives. He is in the process of closing the account. The bulk of his net worth consists of two properties he owns in the U.S., one of which is a house he paid off in June 2010 (AE D).

Applicant reported his foreign relatives as required on his clearance application (GE 1). He discussed his contacts with his foreign relations extensively during a subject

interview in April 2011 (GE 3), and provided a detailed chart in his response to DOHA interrogatories (GE 2).

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. The Indian government generally respects the rights of its citizens. Recent elections have been free and fair, despite scattered instances of violence. India has a vibrant civil society, free press, and a robust democratic political system. Yet, endemic government and police corruption, 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. Because of these threats to safety, the U.S. State Department has advised 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.

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 seeks a permanent seat on the Council. It has long participated in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. 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.

Since 2000, India has been listed as 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. Differences between the United States and India still exist over India's nuclear weapons programs, the slow pace of India's economic reforms due to inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls, and India's bilateral strategic partnership with Iran.

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 in 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.

Applicant's work and character witnesses (Tr. 39-61) consider him honest and trustworthy handling company proprietary information, and recommend him for his clearance. All three of them have clearances themselves. His sister, who immigrated to the U.S. in 1997 and became a naturalized citizen in 2008, holds a public trust position with another Government agency. She lives with Applicant and his wife, and states that Applicant never discusses work information with her (Tr. 32-37). Applicant's longer-term work and character references (AE B) similarly consider him extremely honest and trustworthy. Applicant is also aware of his security obligations to report any suspicious foreign contacts to his security office.

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government

must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>3</sup>

### **Analysis**

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>4</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>5</sup> Further, security concerns may arise through 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.<sup>6</sup> In addition, security concerns may be raised by 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

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>AG ¶ 6.

<sup>5</sup>AG ¶ 7 (a).

<sup>6</sup>AG ¶ 7 (c).

exploitation.<sup>7</sup> Finally, failure to report, where required, association with a foreign national may raise security concerns.<sup>8</sup>

Concerning potential mitigating factors, 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.,” largely mitigates the Applicant’s circumstances regarding India.

While the ongoing risk of terrorist activity by rogue elements in India raises safety issues addressed by U.S. Government travel warnings, there is no evidence that terrorist elements use violence as a means of obtaining protected information. Similarly, the Indian government and companies are active collectors of such information, but there is no evidence that they use coercive means or target ex-patriate citizens or former citizens to obtain this information.

Applicant has ongoing contact with his and his spouse’s family members in India. Most of the contact is by telephone, although Applicant and his wife traveled to India in May 2011 to visit his relatives. 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 has an affiliation with the Indian government, or any military, security, or intelligence responsibilities. Applicant’s father, father-in-law, and uncle were employed in the private sector as small business owners or retail salesmen. Their respective spouses (Applicant’ mother, mother-in-law, and aunt) did not work outside the home. His brother-in-law works for a private social media company.

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

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<sup>7</sup>AG ¶ 7 (e).

<sup>8</sup>AG ¶ 7 (f).

Indian-U.S. interests are not aligned on several issues involving Pakistan and other countries. 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. Furthermore, 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.

Applicant's \$20,000 Indian bank account, which he is in the process of closing does not establish AG ¶ 7(e). The bank account constitutes less than 6% of his and his spouse's overall net worth. While not de minimis, this is not a substantial property interest in a foreign country that could present a heightened risk of foreign influence, particularly where the money is, for all practical purposes, a gift to his parents. Thus, the bank account is also mitigated 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." The nature of the interest is routine. He opened the account as the means of ready cash when he travels to India and for providing financial support to his parents.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), where "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." Applicant's sense of loyalty or obligation to his parents cannot be characterized as "so minimal" for the same reasons that his contacts cannot be considered "casual and infrequent." Yet, there is no similar sense of loyalty to a foreign group, government, or country. 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 2001 and established firm roots. He obtained both his bachelor's and master's degrees in the U.S., has purchased property here, and established his home here. He married an Indian national, but brought her to the U.S. and sponsored her for her LPR status. Their careers are here. Applicant acquired his U.S. citizenship in 2007, knowing, or at least believing that he would no longer be a citizen of India. Applicant has traveled exclusively on a U.S. passport since 2007.

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). Applicant has family and financial ties to India that potentially raise concerns of foreign influence. 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. He is not likely to jeopardize himself, his spouse, or the employment that he needs to provide better opportunities for himself and his spouse. Applicant has demonstrated his reliability and trustworthiness to his co-workers. 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. Accordingly, I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-f: For Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge