



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-11534
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

03/08/2013

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on May 24, 2010. On December 4, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOD 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) implemented by the DOD on September 1, 2006.

Applicant received the SOR and timely requested a hearing before an administrative judge. The case was assigned to me on January 23, 2013. A notice of hearing was issued on January 31, 2013, scheduling the hearing for February 21, 2013. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection.

Applicant testified, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on March 1, 2013.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about India. The request and supporting documents are attached to the record as HX I. Applicant did not object to the documents. (Tr. 13) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant denied the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in India in April 1966. He received his undergraduate degree in India. He did not serve in the military in India. He came to the United States in 1990 on a student visa and obtained an advanced degree from an American university in 1994. He has received certifications in security matters. (AX A) Since 2003, he has worked with federal agencies for defense contractors, and has been with his current employer since 2012. (GX 1) Applicant held a public trust position. (GX 1) He became a naturalized U.S. citizen in May 2006, (GX 1). Immediately after Applicant obtained his U.S. citizenship, he surrendered his Indian passport and renounced his Indian citizenship.

Applicant's wife also is a native of India. They were married in March 1998, and they have two daughters. She became a naturalized U.S. citizen in 2006. She works in the home.

Applicant's two daughters are U.S. citizens. They were born in the United States. Applicant never applied for a special status for them, such as the Overseas Citizens of India Program or the Person of Indian Origin Program (PIO). (AX A)

Applicant has three sisters who are citizens and residents of India. None of his sisters work for the government of India. They do not know the nature of Applicant's work. Two other sisters are U.S. citizens and live in the United States. Neither his sisters nor his brothers-in-law know that Applicant is seeking a security clearance. Applicant does not have extensive contact with his brothers-in-law, but he speaks to his three sisters in India once every two or three weeks.

Applicant's sister (KM) is a citizen and resident of India, and is a retired school principal. She has two children, one of whom lives in the United States. (Tr. 38) Applicant contacts his sister once every three to six months. (Tr. 40) He also sees her

when she visits the United States. Applicant's sister (PP) and husband lived in the United States for a long time but now live in India. She has three sons. Her older son is a U.S. citizen and lives in the United States. Applicant talks to her by phone almost every week. Applicant's sister (SS) is a citizen and resident of India. She teaches French in a public school in India. Applicant talks to his sister by phone once a week. (GX 3) She also visits the United States periodically.

Applicant's mother-in-law is a citizen and resident of India. His mother-in-law is 80 years old. Applicant's mother-in-law does not depend on Applicant and his wife for financial support. (Tr. 50) Applicant does not speak the same Hindi dialect as his mother-in-law, and she does not speak English. She is ill and bed ridden and does not communicate a great deal. The last time he recalls speaking to her was in 2006 to say hello. His wife calls her mother but often her mother cannot communicate as she is ill. (Tr. 49)

Applicant has friends who were his classmates in India. They are citizens and residents of India. He does not maintain regular contact with them. He regards them more as acquaintances. He has not talked with them for several years. Neither of them knows the nature of Applicant's work. (GX 2)

Applicant and his wife own two homes in the United States. His net worth is approximately \$230,000. He and his wife have savings and retirement accounts in the United States. (Tr. 63)

Applicant is the only son in a family of five sisters. By tradition and custom, he has a family obligation to be present for weddings and funerals. His role is to perform the rites of passage at death. (Tr. 47) He is the person who gives a niece or nephew to the family at a wedding. For that reason he has travelled to India frequently from 2003 until 2012. (Tr. 51) He either stays in a hotel or with one of his sisters. (Tr. 54) Applicant reported his trips to his security officer on every occasion. (Tr. 74)

Applicant explained at the hearing that he came to the United States to receive an education. He plans to live the rest of his life in the United States, and raise and educate his children in the United States. He has roots in the United States both professionally and personally. His wife and children are with him in the United States. He feels blessed to be in the United States and has been a productive part of the society. He has never had any legal difficulties. He is fiscally responsible. He values integrity, honesty, and courage. He has been a good son to his parents, a good father to his daughters, a good husband to his wife and a good neighbor in his community. He knows that his family in India also love the United States and would not cause anything that would harm the interests of the United States. Applicant has worked his adult life in the United States and has deep and long-term relationships. He has held a public trust position and handled sensitive information, providing service to the U.S. Government through his work with government contractors. Applicant was credible when he explained that if in the unlikely situation that there would be pressure on him or his family, he would immediately contact his facility security officer. (Tr. 75 )

Applicant was awarded the honor of Best Employee in 2005. He worked for a federal agency for about five years and was present with a Certificate of Recognition for his hard work.

Applicant submitted the names of five military personnel who were his superiors or colleagues throughout the years. He is admired for his sense of dedication, responsibility, and good sense of judgment. He is a loyal citizen and a responsible member of the community. (GX 1)

### **Administrative Notice**

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained independence from Great Britain in 1947 has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. Starting this year, it is a non-permanent member of the Security Council, and it seeks a permanent seat on the Security Council.

The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law. Since 2002, the United States and India have held a series of substantive combined exercises involving all military services.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

The United States and India share a common interest in fighting terrorism and in creating a strategically stable Asia. They are seeking to foster bilateral relations by establishing working groups to address (1) strategic cooperation; (2) energy and climate change; (3) education and development; (4) economics, trade, and agriculture; and (5) science and technology, health, and innovation.

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and

industrial espionage directed at the United States. The United States has longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to suppress separatist and terrorist groups. There is no evidence that India uses torture or abuse against its citizens to extract economic intelligence.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B, Foreign Influence**

The SOR alleges Applicant has three sisters who are citizens and residents of India (¶ 1.a), Applicant’s mother-in-law is a citizen and resident of India (¶ 1.b), and he has two friends who are citizens and residents of India (¶ 1.c).

The security concern under this guideline 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.

Three disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “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.” AG ¶ 7(b). Third, a security concern may be raised if an applicant is “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.” AG ¶ 7(d).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. 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 upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1990. He is a naturalized U.S. citizen. Applicant’s wife and children reside in the United States. His daughters are U.S. citizens and his wife is a U.S. citizen. Neither Applicant nor his wife and children have any special status with India.

Applicant’s three sisters and mother-in-law are citizens and residents of India. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant acknowledges that he is close to his sisters. Applicant has not rebutted this presumption.

After considering the totality of Applicant’s family ties to India as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant speaks to his sisters by phone frequently and he sees them when they visit the United

States or when he has visited India. His wife speaks to her mother on occasion. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised. Applicant's financial interests in India are nonexistent. I conclude that AG ¶ 7(e) is not an issue.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). India engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant's mother-in-law is a citizen and resident of India. His siblings are citizens and residents of India. His friends are citizens and residents of India. For these reasons, I conclude that AG ¶ 8(a) is not established.

Security concerns under this guideline can be mitigated by showing "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." AG ¶ 8(b). Applicant has held a position of public trust without incident for many years. He has worked with government contractors during this time. Applicant's financial interests are totally in the United States. He and his wife have personal assets, including a home, in the United States worth more than \$230,000. Applicant and his wife surrendered their Indian passports and use their U.S. passports. They have not taken advantage of the convenience of an Indian PIO card. I conclude that Applicant would resolve any conflict between the interests of the United States and his family in India in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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



Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 1990. He and his wife reside in the United States with their two daughters who are U.S. citizens. His wife is a U.S. citizen. He was articulate, candid, sincere, and credible at the hearing. He and his wife still have cultural, family, and emotional attachments to India, but they see the United States as the future home for their family. Applicant has been successful in the defense contracting business for many years. His current employer recommends him for his professionalism and integrity.

Applicant chose to leave his home and emigrate from India in search of an education and career opportunities. He wants to provide for his family in the United States. He has worked hard in the security field and has received praise for his work ethic and accomplishments. Applicant purchased a home and has maintained excellent credit. His family intends to remain in the United States.

India is a partner of the United States in the global war on terrorism. While terrorism and some domestic unrest exist within some areas of India, none of it appears to threaten the enclave in which Applicant's family and property are located. There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. Applicant returned to India for funerals and weddings.

Regarding Applicant's life in the United States, he is a contented American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. He and his wife intend to continue their lives in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):

FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch  
Administrative Judge