



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-00120
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

11/05/2013

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s parents, sister, aunts, and in-laws, are citizens and residents of India. His wife is an Indian citizen living in the United States. He maintains a home, bank account, and other investment property in India. The foreign influence security concern has not been resolved. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on April 11, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 September 1, 2006.

consistent with the national interest to grant or continue Applicant's security clearance. On April 22, 2013, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated July 24, 2013, which contained 21 attachments.

On August 22, 2013, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due<sup>2</sup> on September 22, 2013. As of October 16, 2013, no response had been received. On October 17, 2013, I was assigned the case.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel requested I take administrative notice of certain facts relating to India. The material was included in the FORM attachments. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted all of the allegations except for one. In response to SOR 1.m, he states the \$190,000 worth of residential, investment property in India was not purchased by him, but by his parents who purchased it in his name. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 46-year-old consultant who has worked for a defense contractor since March 2009, and seeks to obtain a security clearance. Applicant was born in India in 1967. He became a naturalized U.S. citizen in 2009. (Item 3) In 1990, he obtained his master's degree in mechanical engineering from a university in India. From 1991 through 1995, he attended a U.S. university obtaining his doctorate degree in December 1995. In 1996, he married his wife, a quality assurance engineer and Indian citizen. (Item 3, 5) She is a resident alien living in the United States. He has two children, ages 11 and 15, who are U.S. citizens having been born in the United States. In 2010, he renounced his Indian citizenship.

Applicant's mother, a housewife, and father are citizens and residents of India. From 1964 to 1998, his father was a municipal sanitation inspector for a local government in India. His father is now retired. (Item 5) He has telephone contact with his parents three times a week and visits them every one to two years. (Item 5) He has monthly contact with a sister, a citizen and resident of India, who is not currently working. (Item 5) He has another sister, an accountant, who is a Canadian citizen living in Canada. (Item 3) He has weekly contact with this sister. He has two aunts who are

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<sup>2</sup> Responses to the FORM are due 30 days after receipt of the FORM.

citizens and residents of India whom he calls seven or eight times a year and sees when he visits India. (Item 5) Before retiring, one previously worked as an accountant for a state government and the other worked as a section manager for the state government. (Item 5)

Applicant's mother-in-law, a housewife, and father-in-law, a farmer, are citizens and residents of India. He has monthly telephone contact with his father-in-law and mother-in-law. (Item 5) He sees both of them when he visits India. He has two sisters-in-law, citizens and residents of India, who work at various levels of government in India. One is an excise official working in revenue collections for the state government and another is an engineer who works for a municipality as a town planner. (Item 5) He has telephone contact with his sisters-in-law two to four times a year and sees them when he visits India. (Item 5)

Applicant has numerous other relatives and in-laws who are citizens and residents of India. He has two brothers-in-law, three other sisters-in-law, an uncle, seven cousins, and other individuals related to these people. He contacts these individuals two to four times<sup>3</sup> a year and sees them when he returns to India. (Item 5)

Applicant has a friend in India who owns a business school and management center. (Item 5) He talks with his friend every two weeks. Between 2008 and 2010, Applicant gave his friend advice on managing the school for which he received no compensation. (Item 5)

Applicant's parents live in a home he owns in India worth \$150,000. (Item 5) He owns three pieces of residential property worth \$50,000 (purchased in 1989), \$60,000, (purchased in 2004), and \$80,000 (purchased in 1992). (Item 3, 5) In his response to the SOR, he states the land was purchased by his parents and placed in his name. (SOR Response) The property was purchased for investment purposes. (Item 5) He spent 21 days in India in 2012, 18 days in 2011, 8 days in 2008, 21 days in 2007, 22 days in 2006, and 21 days in 2005. (Item 3, Item 5) He has a bank account in India with a balance of approximately \$5,000. (Item 5) The funds are for his parents' benefit and he also uses the funds when he travels in India. (Item 5)

There is nothing in the record showing what assets Applicant owns in the United States. From the record, it is uncertain if he owns a home, has bank accounts, or has other property in the United States.

### **India -- Administrative Notice**

India, the world's most populous democracy, uses a federal form of government, similar to the United States, but with more authority vested in the central government. It has a bicameral legislature modeled after Britain's parliament, and its members are selected through open elections involving several political parties. India also has an

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<sup>3</sup> Applicant has telephone contact with one cousin ten to eleven times a year. (Item 5)

active market-oriented economy, and conducts most of its international trade with the United States.

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. 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.

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. 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 long-standing 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**

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 must 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 overarching 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 interests of 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 describes four conditions that could raise a security concern and may be disqualifying in this case:

- (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.

Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in India. While there is a significant degree of overlap between AG ¶ 7(a) and ¶ 7(b), the concern under AG ¶ 7(b) is that Applicant has such close bonds to his parents and sister in India that he could be placed in the position of having to choose between their interests and his obligation to protect classified information. Applicant has frequent contact with his parents, who are residents and citizens of India. He has less frequent contacts with his sister and in-laws. These relationships with family members create a heightened risk of

foreign pressure. His connections to his family also create a potential conflict of interest because the relationships are sufficiently close in nature and could raise a security concern over his desire to help his family, including his wife's mother, father, and sister.

Applicant came to the United States in 1991 and obtained a Doctorate degree from a U.S. university. Since 2009, he has been a U.S. citizen. He has a home in India worth \$150,000, \$190,000 worth of property purchased by his parents, but titled in his name, and a \$5,000 bank account in India. The record is silent as to assets Applicant may have in the United States.

I have considered all of the disqualifying conditions under the foreign influence guideline. His relationships with immediate family members in India create a concern about Applicant's "obligation to protect sensitive information or technology." The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(e). The Government produced substantial evidence of foreign preference disqualifying conditions and the burden shifted to Applicant to produce evidence and prove mitigation.

Four of the mitigating conditions under AG ¶ 8 are potentially applicable:

(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.;

(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;

(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.

Considering the totality of the facts and circumstances, Applicant could be placed in a position of having to choose between the interests of his relatives living in India and the interests of the United States. Applicant's contact with his foreign family members creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. None of the mitigating conditions apply to Applicant's relationship with his parents and sister.

If 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, then AG ¶ 8(c) might apply. However, Applicant's relationships with his parents, sister, and parents-in-law are not casual but familial and committed. AG ¶ 8(c) does not apply to these individuals.

Applicant's communications with his parents are frequent, and he provides financial support to them. He has contact with his parents three times a week and sees them when he visits India. He has monthly communication with his sister and parents-in-law. He visited his parents, sisters, and in-laws during six of the last eight years. Applicant has strong ties of affection for, or obligation to, his parents and his sister and to a lesser extent, to his in-laws.

Applicant frequent familial communications reflect Applicant's ties of affection with his family members living in India. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members." ISCR Case No. 01-03120 at 3 (App. Bd. Feb. 20, 2002). Applicant provided no information to rebut the presumption. Applicant contacts with his foreign family members raise concerns because of the close relationships he has with these individuals. Additionally has relationships with these individuals are strong and enduring. AG ¶ 8(a) does not apply.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant shares living quarters with his wife, who is an Indian citizen who is a U.S. resident alien. His two children are U.S. citizens having been born in the United States. Applicant's wife and children live in the United States. I do not find his relationship with his wife to be a security concern and find for him as to SOR 1.a.

If 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, then AG ¶ 8(b) might apply. Applicant has been a resident of the United States for 22 years and has been a U.S. citizen for four years. These facts, without more, are insufficient, to establish that Applicant has a deep and long-standing relationship and loyalties to the United States. He has extensive financial holdings in India and the record fails to show any assets in the United States. AG ¶ 8(b) and 8(f) do not apply.

One of Applicant's sisters-in-law is an excise official working in revenue collections for the state government in India and another is an engineer who is a town

planner for a municipality. He has telephone contact with his sisters-in-law two to four times a year. Applicant has numerous other relatives and in-laws who are citizens and residents of India with which he has communication two to four times<sup>4</sup> a year. (Item 5) Contact with these individuals is casual and infrequent. AG ¶ 8(c) applies to these individuals. I find for Applicant as to SOR 1.e, 1.f, and 1.i.

I do not find it a security concern that Applicant's father worked as a municipal sanitation inspector until his retirement in 1998. I find for Applicant as to SOR 1.d. It is not a security concern that Applicant's retired aunts had previously worked as an accountant and a section manager for a state government. I find for Applicant as to SOR 1.g and 1.h. Nor is it a security concern that between 2008 and 2010, he gave advice to a friend in on managing a school. I find for Applicant as to SOR 1.j. It is not a security concern he has visited India between 2005 and 2012. I find for Applicant as to SOR 1.n.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of the whole-person concept and all the facts and circumstances surrounding this case. Applicant has been a U.S. citizen for four years. His wife is a U.S. resident alien. He has worked for a U.S. government contractor for four years. He has numerous close family members and in-laws in India. He has substantial financial assets in India. His financial

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<sup>4</sup> Applicant has telephone contact with one cousin 10 to 11 times a year. (Item 5)

interests in India and his relationships and contacts with family members raise serious unmitigated concerns about his vulnerability to coercion and his heightened risk for foreign influence.

Because Applicant chose to have this matter handled without a hearing, Applicant's demeanor or appearance cannot be evaluated, nor can positive determinations as to his truthfulness, sincerity, honesty, or openness be made. Additionally, in requesting an administrative determination, Applicant chose to rely on the written record. However, in so doing, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the foreign influence security concerns. He failed to offer evidence of his connections to the United States. By failing to provide such information, and in relying on only a scant explanation in his response to the SOR, the foreign preference security concerns remain. Clearance is denied.

### **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, B, Foreign Influence:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Subparagraphs 1.d – 1.j:	For Applicant
Subparagraphs 1.k – 1.m:	Against Applicant
Subparagraph 1.m:	For Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge