



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



In the matter of: )  
)  
) ISCR Case No. 12-00327  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: Martin P. Hogan, Esquire

12/27/2012

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline B, Foreign Influence. Clearance is denied.

**Statement of the Case**

On May 9, 2011, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On August 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and

the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 28, 2012, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on September 27, 2012. I convened a hearing on November 9, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced two exhibits (Ex.) 1 and Ex. 2, which were entered in the record without objection. The Government also offered for administrative notice two summary memoranda containing facts about Israel and India. The facts about Israel were drawn from 12 official U.S. Government documents, and the facts about India were drawn 14 official U.S. Government documents. The Government provided, for the record, the source documents from which the facts in the summary memoranda were derived. I marked the Government's summary memorandum and accompanying source documents about Israel as Hearing Exhibit (HE) 1. I marked the summary memorandum and accompanying source documents about India as HE 2. Applicant did not object to my taking notice of the facts about Israel and India in the summary memoranda or in the source documents.

Applicant testified and called no witnesses. At the hearing, he introduced three exhibits, which were identified as Ex. A through Ex. C and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on November 19, 2012.

### **Findings of Fact**

The SOR contains nine allegations under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted all nine allegations. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, all exhibits, all relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 40 years old, married, and the father of two young children. He was born and raised in India. Applicant and his wife, who was also born and raised in India, were married in the United States in 1998, and they became U.S. citizens in 2006. (Ex. 1; Tr. 84-85.)

As a citizen and resident of India, Applicant earned an undergraduate degree and received additional training in computer science. He came to the United States in 1997 as the employee of an Indian technology company. In 1998, Applicant took a position with a U.S. technology firm, which sponsored him for permanent resident status. He earned a Master's degree in information technology at a U.S. university in 2001. After achieving permanent resident status, Applicant took a position with another

company where he worked for four and one-half years as an analyst in information technology and software development. He formed his own information technology company in 2005. Since April 2010, he has worked for his current employer as a software developer specializing in continuous integrations. (Tr. 33-35, 42-54.)

Applicant was raised in the Jewish faith in India. In 1996, his parents immigrated to Israel and became Israeli citizens. In 2002 and in 2011, Applicant's mother visited him and his family in the United States. Applicant speaks with his mother in Israel once a week. (Tr. 67, 101, 103, 105.)

In 2007, Applicant was informed that his father was dying. He left the United States as soon as possible to visit his father, who died in Israel in January 2007. Applicant remained in Israel for two weeks to take part in religious ceremonies connected with his father's death and burial. One month later, he returned for Israel for his father's grave marking. For each of the five years since his father's death, Applicant has returned to Israel to take part in commemorative religious ceremonies. He also traveled to India in 2009 to attend a religious ceremony for his nephew, and he visited family in Israel in July 2010. In August 2012, he traveled to Israel to visit his 72-year-old mother, who was not feeling well. (Tr. 68-69, 100, 130.)

Applicant has four siblings: two brothers and two sisters. His two brothers are residents and citizens of Israel. Applicant's older brother is 49 years old. He works in the hotel business in Israel. He is married to a woman who is of Nepalese citizenship. Applicant believes his sister-in-law, who works as a housekeeper, has applied for permanent resident status in Israel. Applicant speaks with his older brother and his wife once or twice a year on the telephone, and he also exchanges e-mails with this brother. He sees his older brother and his wife once each year when he visits Israel. (Tr. 110-112.)

Applicant's younger brother is 37 years old and works as a quality manager for a U.S. technology firm in Israel. This brother serves in the Israeli military reserves, and he is married to a Russian-born Israeli citizen. Applicant's sister-in-law works as a nurse in Israel. Applicant speaks on the telephone with his younger brother once or twice each month because his mother now resides in the younger brother's household, and Applicant calls his brother to check on his mother's health. Applicant also sees this brother and his wife when he travels to Israel each year. (Tr. 113-117.)

Applicant has a 45-year-old sister who is a citizen and resident of Israel. This sister works as an exchange rate manager in an Israeli discount bank. The sister's husband, an Israeli citizen who was born in India, works as an electrician. Applicant speaks with his older sister at least once a week when his mother is staying with his sister. Applicant sees his older sister and her husband once a year when he visits his family in Israel. (Tr. 102-106.)

Applicant also has a 42-year-old sister who is a citizen and resident of India. Applicant's sister and her husband, also a citizen and resident of India, work as

accountants. Applicant speaks with his sister in India once or twice a year by telephone. He sees her and her husband whenever he travels to India. (Tr. 107-109.)

Applicant's wife's parents, who are retired, were citizens and residents of India. However, since Applicant's wife's brother also resides in the United States, her parents came to the United States frequently to visit their adult children and their families. When visiting the United States, Applicant's in-laws stayed with Applicant and his wife. They have recently become permanent residents of the United States, and they now live in senior citizen housing in the United States. (Tr. 117-120.)

Applicant and his siblings grew up in a condominium apartment in India. The building is old and may someday be torn down to make way for a new condominium. Applicant's mother gave the family condominium to him. Applicant accepted the gift from his mother with the understanding that he and his four siblings would share ownership of the apartment and any increase in value that may come in the future. The current value of the property is approximately \$73,000. Applicant estimates that his share of the property is about \$10,000, after payment of Indian taxes. He also has a bank account in India with a balance of approximately \$70 that he uses to pay expenses associated with the family condominium. (Ex. A; Tr. 74-79, 85-88, 93-96.)

Applicant estimated the net worth of his holdings in the United States at \$1,780,000. He and his wife own two automobiles and two homes, one of which he rents. He has set aside \$90,000 in a college fund for his two children, and he has approximately \$600,000 in life insurance. He values his 401(k) plan at \$130,000. (Tr. 91-94.)

Applicant provided a letter of character reference from a supervising team leader. The individual praised Applicant's professionalism and work ethic, and he stated that Applicant is a valued and trustworthy employee. (Ex. C.)

I take administrative notice of the following facts about Israel, as contained in official U.S. Government documents provided by Department Counsel to Applicant and to me:

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified, technologically advanced economy that is growing at about 5% a year, and the United States is Israel's largest trading partner. The major industrial sectors include high-technology electronic and biomedical equipment, chemicals, and transport equipment.

Although the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests, there are some issues in U.S.-Israeli relations. The United States is concerned with Israeli military sales, inadequate protection of U.S. intellectual property, and espionage cases. The United States and

Israel have regularly discussed Israel's sale of sensitive security equipment and technology to various countries, especially China. Israel reportedly is China's second major arms supplier, after Russia.

In November 1985, Jonathan Pollard (a civilian U.S. Naval intelligence employee) and his wife were charged with selling classified documents to Israel, and Mr. Pollard was sentenced to life in prison. Four Israeli officials also were indicted, although the Israeli government claimed the espionage was a rogue operation. In 1996, Israel granted Mr. Pollard citizenship and [in 1998] acknowledged that Mr. Pollard had been its agent.

The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the active collectors of proprietary information. The 2006 Report states that the major collectors have been repeatedly identified as targeting multiple U.S. Government organizations since at least 1997. Furthermore, Israeli military officers have been implicated in this type of technology collection in the United States.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel, including: (1) oscilloscopes that are export controlled "for nuclear nonproliferation and anti-terrorism reasons"; (2) epitaxial wafers and oscillator chips that could be used in communications and radar systems; (3) an infrared camera, the export of which is controlled "for national security reasons because of its potential application in military surveillance"; and (4) diode lasers that have "potential military applications and are controlled for national security and nuclear nonproliferation reasons." Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology, and acquisition of sensitive U.S. technology by private entities does not slow its flow to foreign governments or its use in military applications.

Several groups operating in Israel, the West Bank, and Gaza have been designated by the U.S. State Department as Foreign Terrorist Organizations. U.S. citizens, including U.S. Government personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. In the past, armed gunmen have kidnapped foreigners, including Americans, in Gaza and the West Bank.

I take administrative notice of the following facts about India, as provided by the Government to Applicant and to me:

According to its constitution, India is a "sovereign, socialist, secular democratic republic."

India's political history since it gained independence from Great Britain in 1947 has included: (a) wars with Pakistan in 1947, 1965, and 1971, and the 1999 intrusion of Pakistani-backed forces into Indian-held territory that nearly turned into full-scale war; (b) a 1975 declaration of a state of emergency, with the suspension of many civil liberties; (c) the assassination of Prime Minister Indira Gandhi in October 1984; (d) the assassination of Prime Minister Rajiv Gandhi in May 1991 while he was campaigning for parliamentary elections; (e) sporadic outbreaks of religious riots, in which numerous people have been killed; and (f) violent attacks by a variety of separatist and terrorist groups in different parts of the country. In late November 2008, terrorists coordinated attacks in Mumbai, targeting areas frequented by Westerners, which highlighted the risk of Americans becoming intended or unintended victims of terrorism in India.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the U.S. Government's list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India is one of the world's most terrorism-afflicted countries and one of the most persistently targeted countries by transnational terrorist groups such as Lashkar-e-Tayyiba.

The Soviet Union was India's main foreign benefactor for the first four decades of Indian independence. After the 1979 Soviet invasion of Afghanistan, India implicitly supported the Soviet occupation. India had long-standing military supply relationships with the Soviet Union, and India continues to obtain the bulk of its military supplies from Russia.

Although the United States has sought to strengthen its relationship with India, there are some differences between the United States and India, including differences over India's nuclear weapons programs and the pace of India's efforts in economic reforms. In July 2009, however, the United States and India issued a joint statement of their intentions 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.

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists India, along with seven other countries, as being involved in criminal espionage and U.S. export controls enforcement cases in 2008. An earlier version of that report specifically lists India as being among the most active collectors of U.S. economic and proprietary

information and highlights specific incidents wherein India engaged in attempts to acquire export-restricted products.

There have been numerous instances of violations of U.S. export laws involving India, which evidences India's desire to acquire U.S. technology regardless of the laws protecting that technology. In March 2008, the owner of an international electronics business pleaded guilty to conspiracy to illegally export controlled technology to government entities in India that participate in the development of ballistic missiles, space launch missiles, and fighter jets. Furthermore, there have been other cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to India, including: (1) high-tech testing equipment that posed an unacceptable risk of being diverted to a weapons of mass destruction program; (2) equipment which can be used in military and civilian aircraft to extract vibration information from engines and to simulate output for calibrating, servicing, and testing that equipment; (3) equipment that is used to manufacture a material that improves the accuracy of strategic ballistic missiles with nuclear capabilities; (4) an animation system to an Indian entity determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery; (5) nuclear pulse generators to two Indian entities that have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or missiles used to deliver these weapons; and (6) heat treating containers to an Indian entity 'determined to present an unacceptable risk of diversion to developing weapons of mass destruction or missiles used to deliver these weapons. The National Counterintelligence Executive warned that the threat to the United States from foreign economic intelligence collection and industrial espionage has continued unabated with foreign collectors continuing to target a wide variety of unclassified and classified information in a range of sectors.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no 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 an applicant's 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 and modified.

When evaluating an applicant's suitability for a security clearance, an 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, which are used 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, the administrative judge applies these guidelines 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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).



## Analysis

### Foreign Influence

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

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.

AG ¶ 7 indicates three 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; 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.

AG ¶¶ 7(a), 7(b), and 7(e) apply in this case. Applicant’s mother, his older brother, his younger brother and his spouse, and one of his sisters and her spouse are citizens and residents of Israel. He has one sister who is a citizen and resident of India.

Applicant’s wife’s parents are citizens of India who have been granted permanent resident status and reside in the United States. SOR ¶ 1.g. alleges that Applicant’s father-in-law is a citizen and resident of India. SOR ¶ 1.h. alleges that Applicant’s mother-in-law is a citizen and resident of India. Accordingly, since SOR ¶¶ 1.g. and 1.h. do not accord with the facts derived at the hearing, I conclude them for Applicant.

Applicant has close connections with family members living in Israel and in India. He is particularly close to his mother, who is a citizen and resident of Israel. He speaks with her by telephone once a week. Additionally, Applicant owns a condominium in India, which could subject him to a heightened risk of foreign influence.

While the United States and Israel share common democratic values, religious and cultural affinities, and security interests, the United States has concerns about Israel's inadequate protection of U.S. intellectual property. Moreover, Israel is an active collector of proprietary information and has targeted major U.S. Government organizations in order to acquire U.S. technology. Attempts have been made to illegally export U.S. restricted, dual-use technology to Israel. American citizens with immediate family members who are citizens or residents of Israel could be vulnerable to coercion, exploitation, inducements, or pressure by those seeking to acquire proprietary or otherwise restricted U.S. technology.

India is also known to be an active collector of U.S. economic and proprietary information. In recent years, India has attempted to illegally acquire export-restricted technology products from U.S. companies that are federal contractors. In 2008, terrorists attacked areas in Mumbai, India, that were frequented by Westerners. Since that time, there has been a continuing threat that U.S. citizens might become the intended or unintended victims of terrorism in India.

Applicant became a U.S. citizen in 2006. Since 2007, he has traveled to Israel nine times, and he has traveled to India once. Applicant has undertaken these trips to visit his mother and siblings, to carry out family duties, and to take part in religious ceremonies. When he returns to the United States, Applicant communicates frequently with his mother and with at least two of his siblings in Israel. He is in less frequent contact with one brother in Israel and his sister in India. He sees most of his family members when he travels to Israel once a year.

Applicant's relationships with his mother and his siblings and their spouses are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with citizens and residents of Israel and India create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" family members who are in Israel or India. For example, if either the Israeli or the Indian governments wanted to coerce Applicant, it could exert pressure on his family members in Israel or India.

The nature of a nation's government, its relationship with the United States, and its record in seeking protected or proprietary information held by U.S. government contractors is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country is known to conduct intelligence collection operations against the United States. The relationships of Israel and India with the United States place a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his family members living in

Israel and India and his spouse's relationships with her family members who are citizens of India do not pose a security risk. 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 mother, siblings, or in-laws.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317 at 4-5 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from Israel or India seek or have sought classified or economic information from or through Applicant, his spouse, or his family members living in India and Israel, it is not possible to rule out such a possibility in the future. Applicant's continuing relationships with family members create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist his family members in the event they should be pressured or coerced for sensitive or classified information.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a) and 8(c) have limited applicability. From 2007 to the present, Applicant has traveled to Israel nine times and to India once. He has close relationships with his family members in Israel and India. Because of these relationships and connections, Applicant is not able to fully meet his burden of showing there is little likelihood that his relationships with relatives who are Israeli and Indian citizens could create a risk for foreign influence or exploitation.

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has resided in the United States since 1996. He became a U.S. citizen in 2006, and he has built his personal and professional life in the United States. He reported a net worth of approximately \$1,780,000. His children are U.S. citizens, and Applicant has set aside funds to provide for their educations.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members in Israel and India. He communicates frequently with his mother and his relatives in Israel. There is no evidence, however, that terrorists, criminals, or those conducting espionage have approached or threatened Applicant or his family in attempts to coerce Applicant or his family for classified or sensitive information. However, there is an increased possibility that Applicant or Applicant's family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavy evidentiary burden to overcome in order to mitigate foreign influence security concerns.

While AG ¶¶ 8(d) and 8(e) do not apply, AG ¶ 8(f) applies in this case. Applicant has a property interest in a condominium in India. However, he testified credibly that his actual interest in the property is only one-fifth of its total value of \$73,000. It is unlikely that Applicant's minimal interest in the Indian property could cause a conflict of interest or be used to coerce him.

In sum, the primary security concern is Applicant's close relationship with family members in Israel and India, two countries with histories of seeking proprietary and other protected information from U.S. Government contractors. Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security

clearance 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.”

### **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.

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 worked diligently to provide value to his employer. He is attentive and devoted to his mother and siblings who are citizens and residents of Israel and India. He is an admirable family member. However, he failed to mitigate the security concerns raised by his close familial contacts and relationships with his mother, siblings, and in-laws who are citizens and residents of Israel and India.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, Foreign Influence.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.f.:	Against Applicant
Subparagraphs 1.g. - 1.i.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge