



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



In the matter of: )  
)  
) ISCR Case No. 12-03773  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2013

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of southern India who relinquished his Indian citizenship on his U.S. naturalization in September 2010. His mother, brother, and parents-in-law are all resident citizens of India. Applicant owns two properties collectively worth between \$150,000 and \$200,000 in India, including the lot on which his mother built her current residence. The foreign influence concerns raised by his security significant ties to India are overcome by his strong ties to the United States, where he and his spouse have chosen to make their home, pursue their professional careers, and raise their children. Clearance granted.

**Statement of the Case**

On October 3, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant.<sup>1</sup> The DoD acted under Executive Order 10865, *Safeguarding Classified Information*

<sup>1</sup>Applicant's first name was misspelled in the SOR. The case caption is correct.

*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 Department of Defense on September 1, 2006.

Applicant responded to the SOR on October 31, 2012, and he requested a hearing. On November 29, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant, and I scheduled a hearing for December 21, 2012.

I convened the hearing as scheduled. Two Government exhibits (GEs 1-2) and three Applicant exhibits (AEs A-C) were admitted. Applicant also testified, as reflected in a transcript (Tr.) received on January 3, 2013. At the Government's request, I agreed to take administrative notice of pertinent facts related to India and its foreign relations, including with the United States.

### **Procedural and Evidentiary Rulings**

The Government's request for administrative notice, dated November 15, 2012, was received on December 11, 2012. It was based on publications from the Office of the National Counterintelligence Executive, the National Counterintelligence Center, the U.S. Department of Justice, the U.S. Department of Commerce, the Congressional Research Service, and the U.S. State Department.<sup>2</sup> Applicant did not object to my taking administrative notice.

I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See *e.g.*, ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). Accordingly, I informed both parties of my intent to consider the Department of Defense and U.S. State Department's encouragement of closer ties between the United States and India, as shown in the DOD news transcripts of remarks by Defense Secretary Leon Panetta at the Institute for Defence Studies and Analyses in New Delhi, India, on June 6, 2012, and by the Commander of the U.S. Pacific Command, Navy Adm. Locklear, at the India Ministry for Defence in October 2012; and in the transcript of remarks by the State Department's Deputy Secretary William Burns at the Center for American Progress on October 26, 2012.<sup>3</sup> The Government and the Applicant had no objection. The facts administratively noticed are set forth in the Findings of Fact, below.

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<sup>2</sup>The Government's formal request and the attached documents were not admitted into evidence but were included in the record.

<sup>3</sup>The Government and the Applicant were directed to the DOD website ([www.defense.gov](http://www.defense.gov)) and State Department website ([www.state.gov](http://www.state.gov)) where the respective transcripts were available, and they were advised that they could file a response or propose new facts for administrative notice. Neither party proposed any new facts for administrative notice.

## Findings of Fact

The SOR alleged under Guideline B, foreign influence, that Applicant's mother (SOR 1.a), parents-in-law (SOR 1.b), and brother (SOR 1.c) are resident citizens of India. Applicant allegedly co-owns a residential property in India (SOR 1.d). Applicant admitted the allegations without explanation. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 41-year-old computer web administrator. In late November 28, 2011, he began working as a subcontractor in the information services department of a university-affiliated prototype development laboratory. He seeks his first security clearance. (GE 1; Tr. 37.)

Applicant was born in southern India in 1971 to resident citizens of India. His father owned 10 or 11 acres of agricultural land that was farmed or rented out, and he had no affiliation with the Indian government before his death in February 2007. (Tr. 38-39.) Applicant's mother did not work outside the home. (Tr. 44.) She lives in India with Applicant's brother, who was born in 1974. Applicant's brother and mother are both lifelong citizens of India. (GEs 1, 2.)

Applicant earned his bachelor's degree in electronics and telecommunications engineering from a public university in southern India in 1993. (Tr. 33-35.) In July 1993, Applicant obtained an Indian passport, which was valid for ten years. (GE 2.) It was "a dream" of Applicant's to come to the United States. (Tr. 26.) He was accepted into a master's degree program in information technology in the United States, but he did not receive a visa. (Tr. 31, 35.) He pursued graduate studies full time at a technological university in Australia from February 1995 to September 1996, and in June 1997, he was awarded his master's degree. (GE 1; Tr. 36.)

In December 1998, Applicant came to the United States on a work visa. (Tr. 31.) In February 1999, he began working as a contractor for a financial investment company. In December 1999, he began working directly for the company as a planning analyst. The company sponsored his U.S. permanent residency. (GEs 1, 2.)

Applicant traveled to India for four to five weeks in late 1999 to visit his parents and brother. (Tr. 46.) He returned to India for his arranged marriage to an Indian resident citizen in May 2000. (Tr. 30.) Applicant's spouse joined Applicant in the United States where their first child, a son, was born in June 2001. (GE 1.)

In May 2002, Applicant took his spouse and son to India for about a month to visit his parents, his brother, and his spouse's parents. Applicant's father purchased for \$25,000 two parcels of undeveloped land, of 5,100 square feet and 1,900 square feet, with money that Applicant had sent him around 2000 for medical expenses. Applicant's father put Applicant on the deeds to protect Applicant's mother from potential swindlers.<sup>4</sup> Applicant's mother subsequently built her home on one of the lots. The other

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<sup>4</sup> On his e-QIP, Applicant listed his brother and mother as co-owners. (GE 1.) At his hearing, he testified

parcel is undeveloped. (Tr. 21-23.) Applicant has no ownership stake in his father's agricultural property in India, which is now co-owned by his mother and brother. (GE 2; Tr. 39.) Applicant's brother, who is physically disabled because of an accident (Tr. 21-22.), cares for and manages the rent from a separate parcel on which there is an auto shop. (Tr. 41-42.) Applicant's brother pays the taxes on the two properties owned by Applicant in India. Applicant's family members do not receive any financial assistance from the Indian government. (Tr. 43.)

Applicant and his immediate family went to India to visit family members in October 2005. In February 2007, Applicant went to India, unaccompanied, for his father's funeral. (GE 2; Tr. 47.)

In February 2008, Applicant and his spouse had a daughter, who is a U.S. citizen from birth. (GE 2; Tr. 25.) After years of renting living quarters in the United States, Applicant and his spouse bought their present home in July 2008. (Tr. 31.) In January 2009, Applicant and his family traveled to India to visit their relatives. (GE 1; Tr. 25.) Applicant traveled on his Indian passport, which he renewed in February 2003. On all of his trips to India, Applicant had routine contact with Indian border officials. (GE 2.)

In September 2010, Applicant and his spouse became naturalized U.S. citizens. Applicant took the oath of U.S. naturalization with the understanding that he was relinquishing his Indian citizenship. Applicant chose to be a citizen of the United States because of his "love [for] the country." (Tr. 32.) In October or November 2010, Applicant completed the paperwork at the Indian Embassy to officially negate his Indian citizenship and void his Indian passport. Applicant did not use his Indian passport for foreign travel after becoming a U.S. citizen. (GE 2.) Applicant has an Overseas Citizen of India card which eliminates the need for him to obtain a visa to travel to India on his U.S. passport. (Tr. 48-49.) Applicant intends to travel to India to visit his mother and brother in the future, "maybe next year." (Tr. 47.) He does not intend to return to India to live. (Tr. 51.)

In mid-October 2010, Applicant was laid off because the investment firm closed its local operations. He was unemployed until April 2011, when he was hired as a performance engineer by a software company. Applicant left that job in October 2011 due to the commute and long work hours. In November 2011, Applicant was hired by his current employer, who placed him as a subcontractor at the university-affiliated laboratory in late November 2011. (GEs 1, 2; AE B.)

On October 27, 2011, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance needed to work at the laboratory. Applicant indicated that he had previously been a citizen of his native India and possessed two Indian passports used for foreign travel before he acquired his U.S. citizenship. He possessed a U.S. passport, which was issued in October 2010. Applicant also disclosed the Indian citizenship and residency of his mother and brother, with whom he had weekly contact. He reported annual contact with his parents-in-law,

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discrepantly that he was sole owner of the two parcels. (Tr. 40.)

who are also resident citizens of India. Applicant answered “Yes” to whether he, his spouse, or his dependent children had any foreign financial interests, and he indicated he co-owned with his mother and brother property currently valued at \$50,000 in India.<sup>5</sup> Concerning whether he had ever voted in a foreign election, Applicant indicated that he had voted only once, around July 1990, in India, and he was no longer eligible to vote in India. (GE 1.)

On December 5, 2011, Applicant was interviewed by an Office of Personnel Management (OPM) investigator about his employment history, his foreign ties, and his foreign travel. Applicant recalled that his single instance of voting in an Indian election occurred in 1993 or 1994. Applicant explained that he held both Indian and U.S. passports after he acquired his U.S. passport in October 2010 until he went to the Indian Embassy where his Indian passport was voided and he completed the paperwork negating his Indian citizenship. Concerning his contacts with Indian citizens, Applicant indicated that one of his e-QIP personal references was a citizen of India working in the United States. Otherwise, his contact with Indian citizens was limited to his and his spouse’s family members living in India. Applicant admitted that he sees his mother and brother when he visits India, and he speaks with them at least once a week. Applicant first became acquainted with his parents-in-law in May 2000. Applicant’s mother-in-law had worked as a school principal, and Applicant’s father-in-law had been a civil engineering professor, but they are now retired. To Applicant’s knowledge, neither parent-in-law ever worked for the Indian government. Applicant reported annual telephone contact with his in-laws. He sees them during visits to India. As for his real estate interest in India, Applicant indicated that he co-owns the home in which his mother and brother reside. The property was purchased by his father for about \$25,000 and was currently worth around \$50,000. Applicant denied any vulnerability to foreign influence because of the property, which was not of significant importance to his overall net worth. Applicant indicated he would relinquish his ownership interest, if required. (GE 2.)

On March 14, 2012, Applicant’s employer notified the DOD that Applicant had surrendered two Indian passports to her, including the passport issued in 2003.<sup>6</sup> (AE A.) Applicant had retained the cancelled passport as a record of his past foreign travel. (Tr. 32.)

Applicant’s parents visited him twice in the United States: in 2001 when Applicant’s son was born and on another occasion before 2007. (Tr. 57.) Applicant has telephone contact with his mother and brother on a weekly basis as of December 2012.

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<sup>5</sup> Applicant’s combined real estate assets in India are now worth between \$150,000 and \$200,000. (Tr. 46.) His mother and brother moved into their home around 2011. (Tr. 23.) It is unclear whether the appreciation in the value of his foreign real estate is due to the construction of the home, appreciation in land values, or a combination.

<sup>6</sup> The company’s president also serves as the FSO. In her letter, the president/FSO does not indicate whether the passports were expired or had been voided in some way. The Government did not allege any Guideline C concerns related to possession or use of a foreign passport as a U.S. citizen.

He also maintains contact with them via the computer, including through Skype, so that his children can have a relationship with them. (Tr. 44-45.)

Applicant speaks to his parents-in-law once every few months. His spouse has more frequent contact with her parents, about once every two weeks. (Tr. 45, 61.) Applicant's spouse has two older siblings, who immigrated to the United States in 1995. Both siblings are U.S. citizens and physicians by occupation. (Tr. 45, 58-59.) Applicant's parents-in-law have visited him and his spouse in the United States. Applicant's mother-in-law has U.S. permanent residency. She stayed in Applicant's home for one month within the past year. (Tr. 56-58.)

Applicant's spouse is a physician at hospital-affiliated family medicine clinic in the United States. (Tr. 30, 63.) Applicant and his spouse's U.S. assets consist of their home, 401(k) accounts, and bank deposits. (Tr. 44, 60-61.) Their home, purchased for \$580,000 is now worth \$530,000. They owe between \$190,000 and \$200,000 on their mortgage. Their joint income is around \$250,000 annually. They have \$800,000 to \$900,000 in combined bank deposits and 401(k) assets. (Tr. 60-61.) As of December 2012, Applicant was willing to divest himself of his property interests in India, which together are now worth between \$150,000 and \$200,000. (Tr. 41, 46.) His preference would be for his mother to stay in her home for as long as she wants. (Tr. 21.) Applicant professes complete loyalty to the United States. (Tr. 51.) He pays his U.S. taxes on time, and he votes in U.S. elections. (Tr. 56.) Applicant's son attends the local public school where he excels academically. (Tr. 52, 64.) He plays football in his local youth league. (Tr. 52.)

Applicant has not violated any of his employer's security requirements. (AE B.) Applicant has worked on several high profile projects at the laboratory and performed above his customer's expectations. An information technology services manager at the laboratory would rate Applicant's performance as a 9 on a 10-point scale. Applicant has demonstrated that he understands the importance of the sensitive nature of the work at the laboratory. (AE C.)

### **Administrative Notice**

After reviewing U.S. government publications concerning India and its relations with the United States, I take administrative notice of the following facts:

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. Indian society and political organization are determined largely by the Hindu caste system of occupational and social hierarchies, by religion, and language, although the influence of these factors has been diluted if not subsumed in the economically prosperous and heterogeneous cities. The Indian government generally respects the rights of its citizens. The Congress Party-led coalition government, known as the United Progressive Alliance (UPA), in power since May 22, 2004, presided over May 2009 elections that were considered free and fair,

despite scattered instances of violence. India has a vibrant civil society, a free press, and a robust democratic political system. Yet, endemic corruption in the government and police forces, 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, such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt.

In the wake of the coordinated terrorist attacks in Mumbai in November 2008, the Indian parliament enacted laws, such as the Unlawful Activities Prevention Act, which permits authorities to detain persons for up to 30 days without charge in cases of suspected insurgency or terrorism. Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government's list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Recent incidents include bombings in February 2012 of an Israeli diplomatic vehicle in New Delhi, in September 2011 at New Delhi's High Court, and in July 2011 in crowded areas in Mumbai. Such threats to safety have led the U.S. State Department to advise 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. The Maoist extremist groups or Naxalites, which are active in rural areas of East Central and Southern India, are responsible for more terrorist attacks in the country than any other organization through an ongoing campaign of violence and intimidation. The Naxalites have not specifically targeted U.S. citizens, but they have attacked symbolic targets that included Western companies and rail lines.<sup>7</sup>

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 held a non-permanent seat on the Security Council in 2011-2012, and it seeks a permanent seat on the Council. It has a long tradition of participating in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The United States welcomes India's role in Afghanistan while recognizing Pakistan's security interests in having a friendly western neighbor. Three full-scale wars and a constant state of military preparedness on both sides of the border have marked more than six decades of bitter rivalry between India and Pakistan. The United States strongly encourages an ongoing India-Pakistan peace initiative and remains concerned about the potential for conflict over Kashmiri sovereignty and "cross-border terrorism." Beijing's military and economic support for Pakistan is a major source of friction between China and India. China and India have ongoing cooperation in other areas, such as finance, agriculture, water

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<sup>7</sup>In its April 3, 2012 *India Country Specific Information*, the U.S. State Department lists the areas of active terrorism and civil unrest. Applicant's native area, where his family members reside and where he owns real estate, is not among them.

resources, energy, environment, and tourism. The Chinese are reportedly increasingly wary over the growing strategic relationship between the United States and India.

India continues to obtain the bulk of its imported military hardware from Russia, which had been India's major benefactor for the first four decades of its independence. Russia's status as main supplier of defense equipment has been threatened by alleged substandard work by Russia, some cost overruns, and major delays. In recent years, Israel roughly equaled Russia in the value of defense exports to India. As of 2000, India was listed as one of many countries 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. As of 2008, there had been several incidents of international businesses illegally exporting, or attempting to export, restricted, dual-use technology from the United States to India. A number of Indian governmental entities have been on the U.S. export control "Entity List" of foreign-end users involved in weapons proliferation activities, although as of May 14, 2012, only three entities, all with its Department of Atomic Energy, were still on the list. Differences between the United States and India still exist over India's nuclear weapons programs; the slow pace of India's economic reforms because of inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls; and India's bilateral strategic partnership with Iran. Between 2004 and 2006, the United States sanctioned Indian scientists and chemical companies for transferring nuclear weapons-related equipment and technology to Iran. India imported about \$10 billion worth of crude oil from Iran in 2009, although New Delhi has apparently abandoned its plan to construct a gas pipeline to deliver Iranian natural gas to India through Pakistan, which the United States has strongly opposed. In recent years, India has moved to more fully embrace the international sanctions against Tehran.

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 to 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. During a visit to India on October 15, 2012, the current commander of the U.S. Pacific Command encouraged a closer defense relationship between the United States and India in which they addressed shared interests to promote long-term regional security and stability.

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.

India does not permit its citizens to hold dual citizenship. In 2006, India launched the Overseas Citizens of India (OCI) program. It is not a dual nationality program and does not grant Indian citizenship. A U.S. citizen who obtains an OCI card can travel to and from India indefinitely, work in India, study in India, and own property in India (except for certain agricultural and plantation properties). An OCI card holder is ineligible for an Indian passport or for Indian government employment and cannot vote in Indian elections.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 are required to 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 overall 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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**

### **Guideline B—Foreign Influence**

The security concern relating to the guideline for foreign influence 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.

Applicant has foreign connections that present a potential risk of divided loyalties or undue foreign influence. Applicant's mother, his brother, and his spouse's parents, are resident citizens of India. Also, Applicant owns two properties in India, including the property on which his mother built her current residence. The foreign real estate is collectively valued between \$150,000 and \$200,000. Four disqualifying conditions under AG ¶ 7 are potentially applicable:

- (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.

The salient issue under AG ¶¶ 7(a), 7(b), 7(d), and 7(e) is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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). 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist

activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant has ongoing contact with his and his spouse's family members in India. As of December 2012, he had telephone contact weekly with his mother and brother. His spouse talks to her parents on average every other week. Applicant has traveled to India six times since he came to the United States in December 1998, including for his marriage in May 2000. Applicant's spouse accompanied him on trips to see their parents in May 2002, October 2005, and January 2009. Applicant is considering a trip to India sometime in 2013. 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. To Applicant's knowledge, none of them had a direct affiliation with the Indian government, or any military, security, or intelligence responsibilities. Applicant's father owned agricultural lands, which he farmed or rented out before his death in 2007. Applicant's mother did not work outside of the home. Applicant's brother manages and collects the rent for a property leased by an auto shop. Applicant's father-in-law was a civil engineering professor before he retired. It is unclear whether his father-in-law taught at a private or public institution in India, but there is no indication that he had any governmental responsibilities. Applicant's mother-in-law previously worked as a school "headmistress" (principal).

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 Indian-U.S. interests are not aligned on several issues involving Pakistan and other countries. India relies on Iran and Russia for oil and gas supplies. Russia has historically been India's largest supplier of military hardware, and 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. While U.S.-Russian relations have improved since the end of the Cold War, Iran is a state sponsor of terrorism and avowedly anti-American. Furthermore, it is noted that 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.<sup>8</sup> AG ¶¶ 7(a) and 7(b) are established because of Applicant's ties to his mother and brother, and albeit primarily through his spouse, to his parents-in-law in 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 (App. Bd. Feb. 20, 2002). Applicant has not rebutted that presumption. AG ¶ 7(d) also applies because of Applicant's relationship with his spouse, who has close ties to her parents in India.

Furthermore, Applicant's ownership of real estate in India valued between \$150,000 and \$200,000 establishes AG ¶ 7(e). Although the property represents less than one-sixth of his and his spouse's overall net worth in the United States, it is a substantial property interest in a foreign country that could present a heightened risk of foreign influence.

Concerning potential factors in mitigation, 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.," is difficult to satisfy, given the ongoing risk of terrorist activity by rogue elements in India, although there is no evidence that the region in southern India at issue here has been targeted or victimized.

Applicant has infrequent contact with his parents-in-law by telephone, but AG ¶ 8(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," is not satisfied because of his spouse's frequent contacts with her parents, and Applicant's and his spouse's in-person contacts with them. Applicant's mother-in-law stayed with Applicant's family in the United States for one month within the past year.

Applicant did not set out to own property in India, and he does not consider it important to his overall financial situation. He expressed a willingness to divest himself of the foreign real estate if necessary. At the same time, it is difficult to conclude that his interest in the property is routine under 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," because Applicant's mother and brother live on one of the properties. Applicant testified to his desire that his mother reside there for as long as she wishes.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the

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<sup>8</sup> In New Delhi on July 23, 2012, to urge closer U.S.-India defense cooperation, Deputy Defense Secretary Ashton Carter stated, in part, "We trust India and know that India is not a re-exporter or exploiter of our technologies." See [www.defense.gov](http://www.defense.gov)

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.” Given his brother’s physical disability, and his mother’s age, Applicant conceivably may face obligations in the future concerning their care in India. Applicant has adamantly denied any intent to return to India to live. Even so, his trips to India to visit them, his regular telephone calls, and the computer contact via Skype to establish a relationship between his children and their grandmother and uncle, reflect understandable bonds of affection. Applicant may not share a similar bond with his parents-in-law, but his spouse’s ties to her parents cannot be characterized as “so minimal.”

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 late 1998 and established firm roots. It was “a dream” of Applicant’s to come to the United States. He desired to obtain his graduate degree in the United States, but he was thwarted in doing so because he lacked a visa. After earning his master’s degree in Australia, he chose to work in the United States. He was employed by an investment firm for almost 12 years when he was laid off due to a closure of the local operations. He married an Indian citizen, who joined him in the United States. She has since pursued a successful career as a physician. In July 2008, Applicant and his spouse purchased their home in the United States. Their two children were born in the United States, and they are U.S. citizens. Applicant’s 11-year-old son plays football with his peers, and he excels academically in his local school.

In September 2010, Applicant and his spouse became naturalized U.S. citizens, knowing that they would no longer be citizens of India. Shortly thereafter, Applicant obtained his U.S. passport, and he completed the paperwork to void his Indian nationality and Indian passport. Applicant has an Overseas Citizen of India card, which entitles him to travel to India indefinitely, work in India, study in India, and own property in India (except for certain agricultural and plantation properties). However, he obtained the card only to facilitate travel to visit family members. He does not intend to work in India, is ineligible for an Indian passport, and cannot vote in Indian elections. He pays his taxes in the United States on time, and he votes in U.S. elections. Applicant professes a “love” for, and loyalty to, his adopted homeland, and there is nothing about his lifestyle inconsistent with his American citizenship.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>9</sup> Applicant has family and real estate ties to India that raise concerns of

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<sup>9</sup> The factors under AG ¶ 2(a) are as follows:

- (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

foreign influence. At the same time, these foreign ties are in an area of southern India which has not been targeted or victimized by terrorist or insurgent violence. Applicant has established firm roots in the United States, where he was given the opportunity to excel in information technology in the financial and software industries. Since late November 2011, he has provided quality work for a defense contractor as a web administrator at a university-affiliated laboratory. Given the rapidly growing computer software industry in India, Applicant could conceivably use his knowledge and skills to his benefit in India. Yet he intends to remain in the United States. He is not likely to jeopardize “the good life and safety” that he and his immediate family enjoy in the United States. 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.

### **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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge

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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.