



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



In the matter of: )  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 12-08736  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esquire, Department Counsel  
For Applicant: *Pro Se*

08/01/2016

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 August 2015, the Department of Defense (DoD) issued an SOR to Applicant detailing security concerns under Guideline B, Foreign Influence.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 11 April 2016, and I convened a hearing 12 May 2016. DOHA received the transcript 23 May 2016, and the record closed.

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

<sup>2</sup>DoD acted under 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 1 September 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations. He is a 44-year-old quality assurance tester employed by a defense contractor since March 2013. He has been employed in related businesses since April 2001, first as a subcontractor to his current company, now as a direct hire. He has not previously held an industrial clearance, but received favorable trustworthiness determinations from another Government agency in September 2001 and August 2011 (GE 1; Tr. 37).

Applicant was born and raised in India, and obtained his undergraduate degree from a university in India in August 1996. He has been employed in the information technology field since graduation.

Applicant immigrated to the U.S. on an employment visa in May 1998, and became a naturalized U.S. citizen in May 2010. He obtained a U.S. passport in June 2010. India does not recognize dual citizenship. Its citizenship law permits voluntary renunciation of citizenship, and states that voluntarily obtaining citizenship in another country may be grounds for involuntary loss of Indian citizenship. Under U.S. immigration law, Applicant was required to retain his Indian passport until his citizenship status changed. Applicant's most recent Indian passport was issued in August 2005, but was cancelled by the Indian Embassy in June 2010 (GE 1).

Applicant married in December 2000 in India, and his wife immigrated to the U.S. on a spouse visa. She became a legal permanent resident of the U.S. in April 2013 (AE A). She has applied for U.S. citizenship, and has been scheduled for her initial interview in May 2016 (AE B). Applicant and his wife have two children born in August 2003 and August 2011, both U.S.-born citizens.

Applicant's mother, father, sister, mother-in-law, and father-in-law are resident citizens of India. Applicant's mother and mother-in-law are housewives. He speaks to his mother weekly and to his mother-in-law quarterly. Applicant's father and father-in-law are retired. His father retired in 2016 from his job as a marketing manager for a fertilizer company. His father-in-law was also employed in the private sector, and retired in 2007. Neither his father nor his father-in-law had any connection to the Indian Government (TR. 36). He speaks to his father monthly and his father-in-law quarterly. Applicant's sister is a self-employed dentist; he also speaks to her monthly. None of Applicant's relatives live in the areas of India that have been most subject to terrorist activity. Applicant has traveled to India with his family to visit relatives there in July 2009, August 2012, and August 2015, each time for about a month.

Applicant's father owns agricultural land in India; Indian law prohibits Applicant from inheriting the property because he is now a foreign national from India's perspective. Applicant has no financial interests in India. Applicant reported his foreign relatives as required on his clearance application (GE 1).

India is a stable, multiparty, federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The central government has broad administrative powers in relation to its states. The Indian government generally respects the rights of its citizens. Recent elections have been free and fair, despite scattered instances of violence. India has a vibrant civil society, free press, and a robust democratic political system. Yet, endemic government and police corruption, caste-based discrimination, and domestic violence and other abuses against women and children persist, despite criminal penalties for violations and government efforts to implement programs designed to empower members of the lower castes. Police and security forces often act with impunity, and serious abuses have been reported in criminal investigations and efforts to suppress domestic terrorism. Separatist and terrorist groups remain active in areas of conflict. Because of these threats to safety, the U.S. State Department has advised U.S. citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border.

India's size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and of the Non-Aligned Movement. Long a member of the United Nations, the country has held a non-permanent seat on the Security Council in 2011-2012, and seeks a permanent seat on the Council. It has long participated in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The rapidly growing software sector in India is boosting service exports and modernizing the country's economy, although excessive regulatory and bureaucratic structures and corruption present obstacles to growth. The United States, India's largest investment partner, strongly supports the market reforms undertaken by India since 1991 and urges further liberalization of trade and investment barriers. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

Since 2000, India has been listed as actively engaged in economic intelligence collection and industrial espionage directed at the United States, although there is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence. The United States has also had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. Differences between the United States and India still exist over India's nuclear weapons programs, the slow pace of India's economic reforms due to inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls, and India's bilateral strategic partnership with Iran.

At the same time, these differences no longer dominate the United States' attitude toward India. The United States recognizes India as key to strategic interests. Since 2002, the United States and India have held increasingly substantive combined exercises involving all military services. Both countries are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. The Bush and Obama administrations have been committed to establishing a strong,

dynamic partnership with India. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2007, the United States and India reached a historic milestone in their strategic partnership by completing negotiations on a bilateral agreement for peaceful nuclear cooperation. In July 2009, the Obama Administration launched a “Strategic Dialogue” calling for collaboration on energy, trade, education, and counterterrorism issues. Major U.S. arms sales to India are underway. In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for the largest-ever U.S. arms transfer to India. During a recent visit to India in June 2012, then-Secretary of Defense Panetta cited the strong, strategic, increasingly collaborative, and transparent relationship between the two countries as the foundation for a new defense strategy guiding the U.S.’ military rebalance in the Asia-Pacific region. He called for already strong mutual participation in military exercises to become more regular and complex. As evidence of the U.S.’ commitment to providing the best defense technology possible to India, Secretary Panetta pointed to work by the Obama Administration to reform export controls. He called for India to modernize its own regulations in defense procurement and nuclear liability legislation.

### **Policies**

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

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

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

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

## Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>4</sup>

Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>5</sup> Further, security concerns may arise through connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.<sup>6</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.<sup>7</sup> Finally, failure to report, where required, association with a foreign national may raise security concerns.<sup>8</sup>

Concerning potential mitigating factors, AG ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," largely mitigates the Applicant's circumstances regarding his family members living in India.

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<sup>4</sup>AG ¶ 6.

<sup>5</sup>AG ¶ 7(a).

<sup>6</sup>AG ¶ 7(c).

<sup>7</sup>AG ¶ 7(e).

<sup>8</sup>AG ¶ 7(f).

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

Applicant has ongoing contact with his parents, sister, and in-laws. Most of the contact is by telephone, although Applicant has traveled to India about every three years since July 2009 to visit his relatives. Although these contacts cannot be considered casual and infrequent, the nature and extent of his contact with his relatives abroad are what one might reasonably expect of any immigrant with a parent or in-laws living in a distant country.

Nothing about his family members' previous or present occupations or activities creates a heightened risk. None of them has an affiliation with the Indian government, or any military, security, or intelligence responsibilities. Applicant's father and father-in-law, both long retired, were employed in the private sector, with no direct connection to the national government. His sister is a dentist. His mother and mother-in-law are life-long housewives.

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. Indian scientists and chemical companies have been sanctioned by the United States in the past for transferring nuclear weapons-related equipment and technology to Iran. Furthermore, India and commercial entities in India have aggressively targeted U.S. economic intelligence in the past, as recently as 2008, although the Defense Department does not presently believe that India is exploiting U.S. technology.

Applicant has no financial assets in India. All his assets are in the U.S. Thus, Applicant is not subject to influence by Indian authorities.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), where "there is no conflict of interest, either because the individual's sense of

loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s sense of loyalty or obligation to his parents, sister, and in-laws cannot be characterized as “so minimal” for the same reasons that his contacts cannot be considered “casual and infrequent.” Yet, there is no similar sense of loyalty to a foreign group, government, or country. Moreover, 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 1998 and established firm roots. He started his family, has significant assets, and established his home here. His children are U.S. citizens; his wife and his older brother are naturalized U.S. citizens. Applicant and his children are U.S. citizens; his wife has started the naturalization process. They have no desire to live in India.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a). Applicant has family ties to India that potentially raise concerns of foreign influence. He is not likely to jeopardize himself, his spouse, or the employment that he values. Applicant has demonstrated his reliability and trustworthiness to another Government agency through past trustworthiness determinations made under the same set of circumstances. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-h: For Applicant

### **Conclusion**

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

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JOHN GRATTAN METZ, JR  
Administrative Judge