



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 12-08628

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Jacob Ranish, Esq.

03/31/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated trustworthiness concerns regarding foreign influence and foreign preference. Eligibility for holding a public trust position is granted.

History of the Case

On December 18, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing reasons why DOD adjudicators could not make the affirmative determination of whether to grant eligibility for a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (AGs) implemented by the DOD on September 1, 2006.¹

Applicant responded to the SOR on March 31, 2016, and requested a hearing. This case was assigned to me on August 22, 2016. The case was scheduled for hearing on November 17, 2016. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for eligibility to hold a public trust position. At the hearing, the Government's case consisted of two exhibits (GEs 1-2); Applicant relied on one witness (himself) and 13 exhibits. The transcript was received in November 2016 (undated).

Besides the exhibits offered by the parties, I took administrative notice of 13 documents cited in the Government's Administrative Notice. (HE 1) Covered documents included *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2008*, Office of the National Counterintelligence Executive (July 2009); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000*, Office of the National Counterintelligence Executive (undated); and *2015 Special 301 Report*, Office of the U.S. Trade Representative (2015)

Other documents cited in the Administrative Notice included the following: *Foreign Spies Stealing U.S. Economic Secrets in Cyberspace, Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, Office of the National Counterintelligence Executive (October 2011); *Summary of Major U.S. Espionage, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases, January 2008 to the Present* (January 2015); *Press Release, Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals*, U.S. Department of Justice (April 2014); and *Press Release, Former Owner of Defense Contracting Business Pleads Guilty to Illegally Exporting Military Blue Prints to India Without a License*, U.S. Department of Justice (April 2015).

Additional documents covered by the Administrative Notice included the following: *Passports & International Travel Country Information*, U.S. Department of State (April 2015); *Country Reports on Human Rights Practices for 2014: India*, U.S. Department of State (2014); *2014 Country Reports on Terrorism, Chapter 2-Country Reports, South and Central Asia Overview*, U.S. Department of State (2014); *2008 Country Reports on Terrorism, Chapter 2-Country Reports: South and Central Asia Overview*, U.S. Department of State (April 2009); *Passports & International Travel Alert Warnings*, U.S. Department of State (July 2015); and *CRS Report for Congress: U.S.-India Security Relations: Strategic Issues*, Congressional Research Service (January 2013).

1. A memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," covering the handling of trustworthiness cases under the Directive was issued on November 19, 2004. This memorandum directed DOHA to continue to utilize DOD Directive 5220.6 in ADP contractor cases for trustworthiness determinations (to include those involving ADP I, II, and III positions). (HE 4) Parenthetically, the Directive was designed to implement Exec. Or. 10865.

In addition to the documents requested by Department Counsel for official notice, I also took official notice of *Background Note: India*, U.S. Department of State (April 2012) This document contains important background information covering India. See *Administrative Notice, infra*, at 3-4, 6-7. I took official notice of Applicant's administrative notice request (HE 2) and supporting documents (Nos. I through XVI), as well as a U.S. Department of State document covering dual nationals and India's OCI program (No. XVII). I also accepted a DOHA decision for guidance (HE 3)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein, Administrative Law*, Section 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in India and India's relationship with the United States, consistent with the provisions of Rule 201 of Fed. R. Evid.

Procedural Issues

Before the close of the hearing, Department Counsel moved to withdraw the allegation covered by SOR ¶ 1.a. For good cause shown, Department Counsel's motion was granted.

Summary of Pleadings

Under Guideline B, Applicant allegedly (a) has in-laws who are citizens and residents of India; (b) owns real property in India, valued at approximately \$300,000 USD, which he uses as a rental; and (c) maintains a bank account in India, valued at approximately \$20,800 USD. Allegations covered by SOR ¶ 1.a. were withdrawn.

Under Guideline C, Applicant allegedly has an Overseas Citizens of India (OCI) card. Allegedly, this card was issued to him in 2011.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He denied the allegations contained in SOR ¶ 1.a (since withdrawn). He claimed he has infrequent contact with his father-in-law and mother-in-law who reside in a country (India) which has friendly relations with the United States. He claimed the old residential property he owns in India draws nominal rental income to meet maintenance expenses. He further claimed that he purchased this property in 1990 and lived in the house with his wife before he immigrated to the United States with his wife in 1999. Applicant claimed he has paid U.S. taxes on this property every year since 1999 and derives no privileges from India as an ex-Indian citizen.

Applicant also claimed in his SOR response that the balance in his Indian bank account (currently \$7,330 USD) is used for repairs and maintenance on his residential property and for personal and travel expenses when he visits India every three or four years. And he claimed he has undertaken no transactions from the United States to this Indian bank account, or used the account in any way that is not in U.S. interests.

Findings of Fact

Applicant is a 59-year-old business process consultant for a defense contractor who seeks eligibility to hold a public trust position. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in India. (GEs 1-2; Tr. 29) His mother passed away when he was seven years of age. (GEs 1-2; Tr. 71) Applicant's father left Applicant and his mother when Applicant was very young and remains estranged from him. (GEs 1-2; Tr. 71, 83) Applicant was raised by his grandparents who passed away when Applicant was in the ninth grade. (Tr. 71)

Applicant married in 1985 in India and has two adult children from this marriage. (GEs 1-2; Tr. 31) One son is a systems architect for a major information technology (ITT) firm, and the other is a practicing attorney in another state. (Tr. 31-32) All of Applicant's immediate family are citizens and residents of the United States. (GEs 1-2; Tr. 33)

Applicant and his wife were married in India and immigrated to the United States in April 1999. (GEs 1-2) Both became naturalized U.S. citizens in May 2011. (GEs 1-2; Tr. 31) When they became U.S. citizens in 2011, they renounced their Indian citizenship and surrendered their Indian passports. (GEs 1-2 and AE A; Tr. 52) Applicant surrendered his Indian passport in May 2016. (AE B) Applicant earned a bachelor's degree in India in July 1980, and a master's degree in India in February 1983. (GE 1; Tr. 28) He claimed no additional educational credits in the United States. Nor did he claim any U.S. military service or additional educational credits in the United States. (GEs 1-2) Applicant is registered to vote in the U.S. state of his residency. (AE H)

In July 2011, Applicant and his wife applied for and received OCI cards from the Indian government. (GE 2; Tr. 73-74) These cards are made available to former Indian citizens for convenience purposes without regard to their current citizenship to enable them to travel to India without visas. (GEs 1-2; Tr. 52-53) They are not substitutes for Indian passports, convey no Indian privileges, and are required to be used with U.S. passports for former Indian citizens traveling to India. (GEs 1-2; Tr. 52) To obtain an OCI card requires the submission of a detailed application that includes the providing of a most recent Indian passport, a naturalization certificate, and a renunciation form. Presumably, Applicant included the required paperwork before he was approved for an OCI card, which Applicant equated to an issued green card. (GE 2; Tr. 96) He used his OCI card once within the past few years, along with his U.S. passport, when he visited India. (Tr. 70-71, 74)

Applicant has worked for his current employer as a business profit consultant (directly or indirectly) since May 2012. (GEs 1-2; Tr. 27-28) He worked for another firm

on a subcontractor or affiliate basis as a senior consultant between November 2008 and May 2012. (GE 1) Previously, he worked for his current firm as a full-time senior programmer analyst between December 2000 and November 2008. (GEs 1-2)

Foreign Influence issues

In 1989, Applicant, while still an Indian citizen, purchased property in India. (GE 2; Tr. 37-38, 43) He and his wife lived in this house before they immigrated to the United States in 1999. (GE 2; Tr. 38) Currently, the property is managed by local friends. (Tr. 67) Applicant estimated the property to be worth around \$69,000 USD in his June 2012 interview with an investigator of the Office of Personnel Management (OPM) and currently. See GE 2 handwritten corrections and Tr. 39, 82. Annual property taxes on the Indian property approximate \$50 USD. (AE D; Tr. 41-42) Recent upward valuations in the India-U.S. exchange rate (from one USD for 50 Indian rupees in early 2016 to one USD for 68.0036 Indian rupees in November 2016) account for some upward market valuations and inflated assessments of Indian real estate by local real estate agents in what is generally considered to be a highly volatile Indian real estate market. (AE F; Tr. 39-40) The property currently generates \$230 in monthly rents. (Tr. 41-42) Most of the rental revenue is devoted to maintenance. (Tr. 43)

Applicant hopes to sell his Indian property, but recognizes the difficulty of doing so without his presence in India and a licensed realtor to market the property. (Tr. 40, 44-4, 85) He estimated it would be about five years before he could realistically dispose of the property. (Tr. 44-45)

Applicant's aging in-laws (ages 79 for his mother-in-law and 89 for his father-in-law) are citizens and residents of India. (GEs 1-2; Tr. 33-35) Both in-laws are retired and have no affiliations or associations with the Indian government or military. (GE 2; Tr. 34) They reside in a southern region of India that is much safer and less vulnerable to violence and terrorism than other regions of the country. (Tr. 64-65, 75-76) Applicant's father-in-law is currently being treated for chronic diabetes. (AE G)

Applicant has a brother-in-law who is a citizen and resident of India. His brother-in-law is privately employed and has no affiliation or association with the Indian government or military. (GE 2) Neither Applicant nor his in-laws provide any financial support to each other. (Tr. 36) Applicant maintains telephonic contact with his in-laws every three to four months. (GE 2; Tr. 34-36) He has no plans to retire in India. (Tr. 72)

In October 1986, Applicant opened checking and savings accounts in India and has continuously maintained these accounts for practical purposes to pay his property taxes on the property and maintain the property. Between the two accounts they totaled \$23,880 in 2012. (GE 2; Tr. 45-46) He closed one of the Indian accounts in December 2016 and currently has about 80 to 90 USD in a retained Indian account following major withdrawals to cover heavy maintenance expenses and repairs. (AEs C and E; Tr. 45-46, 50, 86-90)

Applicant currently grosses \$103,000 annually from his job and maintains an individual retirement account (IRA) with about \$110,000 in the account. (AE I; Tr. 47-49, 78) He has a U.S. savings account with about \$26,000 in deposits, a U.S. checking account with a current balance of about \$7,330, and a home in the United States valued at around \$439,000, subject to a carried mortgage of \$240,892. (AE I; Tr. 44-50) Applicant has earned Social Security benefits that entitle him to \$2,213 a month at full retirement age. (AE K)

Altogether, Applicant has about \$341,000 in listed net U.S. assets. (AE I; Tr. 81) He estimates his Indian home and bank accounts to represent about 20 per cent of the total value of his U.S. assets. (Tr. 49-50, 79-81) Applicant is registered to vote in the United States and is fully committed to U.S. interests and values. (AE H; Tr. 53-54) He assured he has no family members in India who are at risk to pressure, coercion, or influence. Applicant's assessments of his assets, even if his estimates are not completely accurate without professional real estate appraisals, reflect credible, good-faith attempts to value his respective assets and are accepted.

Character references, awards, and certifications

Applicant is highly regarded by his managers, colleagues, family members and friends. (AE M) Uniformly, they consider him to be trustworthy and reliable with a strong work ethic. He was credited a with special recognition in appreciation of his contributions to his employer and a certification crediting him with demonstrated organization experience, knowledge, and performance. (AE J)

Applicant earned high performance ratings in all rated categories of his 2015 performance evaluation. (AE L) His performance evaluation credited him with exceeds or meets mission goals in each of the measured categories.

Country information on India

Considered the world's largest democratic republic, India is also a very diverse country, in population, geography, and climate. (*Background Note, India, supra*, at 2-4) India is the world's second most populous country and the world's seventh largest country in area. (*Id.*)

India is a constitutional democracy, whose Constitution defines it as a "sovereign, socialist, secular democratic republic." (*Background Note: India, supra*) It is a "multiparty, federal, parliamentary democracy with a bicameral parliament" and it has an historical reputation for respecting the rights of its citizens. *See id.*

However, there have been reports of extrajudicial killings of persons in custody, disappearances, torture and rape by police and security forces, who generally enjoy *de facto* impunity. (Country Reports on *Human Rights Practices for 2014: India, supra*, at 2-12) The basic problem stems from the lack of clear accountability, which too often has resulted in cited human rights violations going unpunished. (*Id.*, at 1) Police and

security officials reportedly use torture and threaten violence during interrogations to extort money and summarily punish prisoners. (*Id.* at 6-8)

Since gaining its independence from Great Britain in 1947, India has been involved in wars with Pakistan in 1947, 1965, and 1971, and has had to defend itself against a 1999 intrusion of Pakistani-backed forces into Indian-held territory that nearly turned into full-scale war. (*CRS Report for Congress: U.S.-India Security Relations, supra*, at 7; *Background Note: India, supra*, at 3-4) India survived a 1975 declaration of a state of emergency that carried a suspension of many civil liberties. (*Id.* at 3) The country has experienced two assassinations of its leaders: Prime Minister Indira Gandhi in October 1984 and Prime Minister Rajiv Gandhi in May 1991. (*Id.*)

In recent years, India has been confronted with sporadic outbreaks of religious riots that resulted in numerous deaths and casualties, and violent attacks by by insurgents and domestic and international terrorist groups in various parts of the country. See *Administrative Notice, supra*, at 4; *Passports & International Travel Country Information, supra*, at 2; and *2014 Country Reports on Terrorism, Chapter 2-Country Reports, South and Central Asia Overview, supra*, at 1, 5. The Indian state of Jammu and Kashmir remains unstable, and a number of terrorist groups operate there, particularly along the Line of Control that separates Indian and Pakistani-controlled Kashmir. See *Administrative Notice, supra*, at 4; *Passports & International Travel Country Information, supra*; and *Country Reports on Human Rights Practices for 2014: India, supra* at 2. Serious examples include the coordinated attacks in November 2008 on multiple locations in Mumbai, targeting areas frequented by Westerners and killing at least 183 people, including 165 civilians and eight individuals from the United States. See *2008 Country Reports on Terrorism, Chapter 2-Country Reports: South and Central Asia Overview, supra*, at 3 and *Passports & International Travel Alert Warnings, supra*, at 2.

Before its demise in the early 1990s, the Soviet Union was India's principal and most reliable trading partner, and an important source of economic and military assistance. (*Background Note: India, supra*, at 8-9) U.S. efforts to strengthen its ties with India have been hampered some by U.S. differences over India's nuclear weapons programs, its cooperation with the Iranian military, its lack of a negotiated resolution of the Kashmir dispute with Pakistan, and the pace of India's efforts to achieve long-planned economic reforms. (*CRS Report for Congress: U.S.-India Security Relations, Strategic Issues, supra*, at 11, 22-23, and 45)

Important U.S. concerns have been raised, too, over reported cases involving government-sponsored entities and their illegal export, or attempted illegal export, of U.S. restricted dual use technology to India, including: (1) military night vision components; (2) vibration amplifiers and cable assemblies for use in both military and civilian aircraft; (3) manufacturing equipment related to improving the accuracy of strategic ballistic missiles with nuclear capabilities; and (4) multiple cases involving illegal export of products presenting what the U.S. Government deemed to be an unacceptable risk of diversion to programs for the development of weapons of mass

destruction: or related delivery systems. See Administrative Notice, *supra*, at 3-4, and the specific cases referenced therein. (*Id.*)

Still, India and the United States continue to recognize their longstanding strategic partnership and have taken important steps to strengthen and shape their joint commitments to international security, regional and global peace, prosperity and stability. Their joint commitments were recognized in their January 2015 India-U.S. Delhi Declaration of Friendship. See Applicant's Administrative Notice Brief, *supra*, supporting documents.

Recommended travel restrictions do exist for U.S. citizens visiting India. The State Department cautions U.S. citizens to avoid travel in general (with several noted exceptions) to the state of Jammu and Kashmir. (Administrative Notice, *supra*, at 3-4; *Background Note: India*, *supra*; and *Passports & International Travel, Country Information: India*, *supra*) Because India does not permit its citizens to hold dual nationality, it created an OCI program in 2006. See *U.S. Passports and International Travel: India 2016* at 2, U.S. Department of State (November 2016). This program does not grant Indian citizenship. (*Id.*) It is similar to a green card and enables the holder to travel to and from India indefinitely, work in India, study in India, and own property in India (with exceptions). An OCI holder does not receive an Indian passport, cannot vote in Indian elections, and is not eligible for Indian government employment. (*Id.*)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified {privacy} information. These guidelines include "[c]onditions that could raise a trustworthiness concern [public trust position] and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate [trustworthiness concerns]."

The AGs must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable public trust risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. See AG ¶ 9.

Foreign Influence Concerns

The Concern: Foreign contacts and interests may be a [trustworthiness] 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. See AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a public trust position may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a public trust position depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that

the facts proven have a material bearing to the applicant's eligibility to obtain or maintain public trust position eligibility. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused privacy information before it can deny or revoke eligibility to hold a public trust position. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to protect privacy information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all [trustworthiness] determinations be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her trust eligibility. “[T]rustworthiness] determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Trustworthiness concerns are raised over Applicant's possession of an OCI card, raising a foreign preference concern. Foreign influence concerns are raised over Applicant's having (a) extended family members (in-laws) who are citizens and residents of India and (b) property interests in India (i.e., real property and a bank account). Both Applicant and his wife, and their families, have deep roots in India, a country rich in history and socio/political traditions, constitutional government, and institutional respect for human rights, intermixed with periodic reports of abuses by police and government authorities. Despite encouraging efforts in the development of strategic partnerships between India and the United States in recent years, there have been cited instances of illegal and damaging export practices by Indian firms and individuals to create dual use diversion risks.

Foreign Preference Concerns

Preference concerns necessarily entail allegiance assessments and invite critical considerations of acts indicating a preference for the interests of the foreign country (India) over the interests of the United States. By electing to obtain an OCI card for himself, his wife, and their children that entitle them to special access privileges when entering and exiting India, he demonstrated some disposition for obtaining travel privileges not available to other U.S. citizens entering and exiting India.

Since obtaining an OCI card, Applicant has taken one trip to India with his wife and children using his OCI card and U.S. passport. These exercises of travel privileges reflect some active indicia of Indian preference. Because Applicant elected to obtain and use his Indian OCI card after his wife became a naturalized U.S. citizen, he acquired travel privileges not available to other U.S. citizens. The Government may apply certain provisions of disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, “exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or

through the foreign citizenship of a family member. This DC includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

Specifically, DC ¶ 10(a)(3) has some application to the established facts and circumstances herein. By obtaining and using his OCI card, which replaces the need for a foreign visa for travel to India, Applicant was able to achieve travel privileges and conveniences not available to other U.S. citizens. There are limitations, however, on his OCI card. The card does not convey dual citizenship on the holder and the privileges that are conferred on Indian citizenship. Further, the card does not entitle the holder to an Indian passport and does not entitle the holder to eligibility to work for the Indian government.

In Applicant's case, he provided proof of his (a) renouncing his India citizenship when he became a naturalized U.S. citizen in July 2011 and (b) surrendering his Indian passport in May 2016. Except for his OCI card, he has no other special access privileges with India. As a result, Applicant no longer has any potentially conflicting dual citizenship or Indian passport that could realistically create split preferences between India and the United States.

Whole-person precepts are helpful to Applicant in surmounting the Government's preference concerns herein. The positive trust impressions he has forged with his program managers and colleagues corroborate his claims of undivided loyalty and preference for the United States.

Overall, Applicant is able to persuade that his current preference is solely with the United States. While he made limited use of Indian privileges associated with his obtaining and retaining an Indian OCI card, he exercised no other privileges typically associated with Indian citizenship. Applicant absolved himself, accordingly, of foreign preference concerns associated with his holding and using an Indian OCI card he

obtained after renouncing his Indian citizenship and surrendering his Indian passport. Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence Concerns

The Government urges additional trustworthiness concerns over risks that Applicant's in-laws could be subjected to coercion, pressure, or undue influence that could make Applicant vulnerable to succumbing to pressure to disclose sensitive information in his custody or control. It urges trustworthiness concerns as well over Applicant's sister and in-laws residing in India, who might be subject to undue foreign influence by Indian government authorities to access sensitive information in Applicant's possession or control.

Positions designated as ADP I and ADP II are classified as "sensitive positions." See DOD Regulation 5200.2-R, *Personnel Security Program*, ¶¶ C3, 1.2, 1.1.7, and C3. 1.2..3 (Jan. 1987, as amended) (the Regulation). Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor.

Because Applicant's in-laws and brother-in-law have Indian citizenship and residency in India, they present potential heightened trustworthiness risks covered by disqualifying condition (DC) ¶ 7(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," of the AGs for foreign influence. The citizenship/residence status of these extended family members in India poses some potential concerns for Applicant because of the risks of undue foreign influence that could potentially impact the privacy interests subject to Applicant's control.

Although ADP I and ADP II positions are not expressly covered by Exec. Or. 10865 or the Directive, which apply to contractor personnel, historically, the same principles covering these positions have been applied in Regulation 5220.2 governing military and civilian personnel. The definitions used in the Regulation to define ADP I and ADP II positions have equal applicability to contractors covered by the Directive.

Neither Applicant's wife (a U.S. naturalized citizen who resides with Applicant in the United States) nor his in-laws and brother-in-law who reside in India have any identified Indian government or military service affiliation. As a result, less consideration of DC ¶ 7(b), "connection 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 DC ¶ 7(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," are warranted. To be sure, there is no evidence in the record that Applicant's parents, sister, and in-laws residing in India, have any history of being subjected to any coercion or influence, or appear to be vulnerable to the same.

The AGs do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. See ISCR Case No. 00-0317 at 6 (App. Bd. March 29, 2002) The AGs take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

While the reports of human rights abuses and terrorist activities in certain sectors of India, along with identified illegal exporting of potential dual-use technology to India, are matters of continuing security concern to the United States, India's emergent status as a strategic partner of the United States in controlling the proliferation of nuclear weapons is an important political development that serves to promote political solidarity, and reduce security risks and concerns between the two nuclear powers.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the United States," has partial application to Applicant. Neither Applicant's in-laws nor brother-in-law residing in India pose any heightened security risks that could subject them to potential pressures and influence from Indian government and military officials. Any heightened country risks that might be posed due to India's economic collection practices are more than outweighed by the country's close bilateral relations with the United States and Applicant's demonstrated commitments to protecting the United States' security and privacy interests.

Applicant's property interests in India consist of a home worth a reported \$69,000 USD based on Applicant's accepted good-faith estimate, and a small bank account. By contrast, his U.S. assets are far more substantial: \$709,000 (not factoring in any mortgage on his real estate) by Applicant's estimation. Complications attributable to Indian requirements of a minimum pre-sale stay in the country and the lack of a real estate marketing agent have contributed to his lack of disposing his Indian realty to date, which Applicant hopes to remedy.

Based on the information provided by Applicant, his Indian assets appear to be relatively low-valued assets relative to Applicant's reported assets in the United States where Applicant and his wife and children reside. The relatively modest assets he holds in India are not enough to warrant any serious concerns about potential conflicts of interest.

Another mitigating condition available to Applicant is MC ¶ 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 individual has such deep and longstanding relationships and loyalties in the United States, that the

individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated loyalty and professional commitments to the United States are well demonstrated and sufficient under these circumstances to neutralize any potential conflicts that are related to his relationships with his parents, sister, and in-laws.

Whole-person assessment is available also to minimize Applicant’s exposure to potential conflicts of interests with his parents, sister, and in-laws. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that his parents, sister, and in-laws residing in India might be exposed to.

So, in Applicant’s case, the potential risk of coercion, pressure, or influence being brought to bear on him, his parents, sister, and in-laws is minimal and mitigated. Applicant has lived in the United States since 1999 and has been a naturalized U.S. citizen since 2011. He has enjoyed success in his U.S. employment relationships and has two children who are citizens of the United States by birth.

Overall, potential trustworthiness concerns over Applicant’s having extended family members in India are sufficiently mitigated to permit safe predictive judgments about his ability to withstand risks of undue influence attributable to his familial relationships in India. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE B (FOREIGN INFLUENCE): FOR APPLICANT

Subparagraphs 1.b-1.c:	For Applicant
Subparagraph 1.a:	Withdrawn

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Subparagraph 2.a:	For Applicant
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Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s eligibility to hold a public trust position. Eligibility to hold a public trust position is granted.

Roger C. Wesley
Administrative Judge

