



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



In the matter of: )  
 )  
XXXXXXXXXXXXX ) ISCR Case No. 14-06965  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia Esquire, Department Counsel  
For Applicant: Jacob T. Ranish, Esquire

08/18/2016

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

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

On 8 June 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) listing 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 17 September 2015 and I convened a hearing 04 November 2015. DOHA received the transcript 16 November 2015, and the record closed.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I-II, and Applicant exhibits (AE) A-V. AE Q was admitted for the sole purpose of identifying AE A-P for the record and resolving their admissibility.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 that her father, sister, brother, mother-in-law, and father-in law (SOR 1.a) are resident citizens of India; that her brother is a major in the Indian army (SOR 1.b); and that she has \$9,000 in a joint bank account in India (SOR 1.c). She is a 38-year-old software engineer employed by a defense contractor since May 2014. She has been employed in similar positions since April 2002, except for a brief unemployment July-August 2013. She has not previously held an industrial clearance, however it appears that she has received a favorable public trust determination (Tr. 31). Her husband has held a clearance for about a year (Tr. 62).

Applicant was born and raised in India, until December 2000, when she and her husband married in India, and she returned with him to the U.S. to live. She became a legal permanent resident of the U.S. in 2008, and became a naturalized U.S. citizen in April 2011. She obtained her U.S. passport in June 2011. As required by U.S. immigration law, she maintained a valid Indian passport until just before her naturalization. Her most recent Indian passport was issued in December 2000 and expired in December 2010. She returned her Indian passport to the Indian Embassy when she became a U.S. citizen, where the passport was formally cancelled and returned to her. Her husband also became a naturalized U.S. citizen. They have two children together, both born in the U.S. (AE T).

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. However, it does not appear that this loss is automatic upon obtaining another citizenship. Nevertheless, Applicant renounced her Indian citizenship (Tr. 29).

Applicant's father, sister, brother, and parents-in-law are resident citizens of India. Applicant's father is a retired school teacher. She speaks to him about monthly. Her sister is a physics professor at a state university. They speak about every other month. Her brother is a major in the Indian army, although she does not know his job title. They also speak about every other month. Applicant's conversations with her relatives in India revolve around small talk: respective health and well-being; children's activities.

Applicant's father-in-law is a retired accountant with a semi-private company (Tr. 55). Her mother-in-law is a homemaker. Except as noted above, none of Applicant's Indian relatives have any connection to the Indian government or its military. None of them live in areas known to be subject to terrorist activity.

Applicant and her husband own two homes in the U.S. worth about \$275,000, have about \$185,000 in savings, have about \$70,000 in automobiles and household goods, and have stocks and other investment accounts worth about \$540,000 (AE R, S). She and her husband each make about \$97,000 annually (Tr. 32). Applicant and her husband also share a bank account in India, that they have used in the past for travel

expenses when they visit India, rather than carry cash. The account currently has about \$10,000-12,000 in it (Tr. 62), amounting to less than 1% of their assets. Applicant and her husband are willing to close the account, but must be in India to do so. They last traveled to India to visit relatives in December 2011.

Applicant reported her foreign relatives as required on her May 2014 clearance application (GE 1), and her September 2013 application for trustworthiness determination. She discussed her contacts with her foreign relations extensively during a subject interviews in July 2014 (GE 3), and December 2013 (GE 4). (AE A).

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 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 counter-terrorism 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 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.

Applicant has been recognized for her work record (AE U). Her work and character references, both past and present, consider her honest and trustworthy, and recommend her for her clearance (AE V). Applicant is also aware of her security obligations to report any suspicious foreign contacts to her security office.

### **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>

### **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

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

<sup>4</sup>AG ¶ 6.

<sup>5</sup>AG ¶ 7 (a).

<sup>6</sup>AG ¶ 7 (c).

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 India.

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, or that any of Applicant’s relatives live in areas subject to terrorist activity. 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 her and her spouse’s family members in India. Most of the contact is by telephone; Applicant and her family last traveled to India in December 2011. The nature and extent of her contact with her relatives abroad are what one might reasonably expect of any immigrant with a parent or in-laws living in a distant country. Still, almost by definition, the contacts cannot be considered “casual and infrequent.”

Aside from her brother, nothing about Applicant’s 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, sister, and father-in-law were employed in the private or semi-private sector. Her mother-in-law is a housewife. Applicant’s brother is in the Indian military, but their contacts do not appear to go beyond discussions of family affairs.

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

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<sup>7</sup>AG ¶ 7 (e).

<sup>8</sup>AG ¶ 7 (f).

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's Indian bank account, which she is willing to close the next time she is in India does not establish AG ¶ 7(e). The bank account constitutes barely 1% of her and her spouse's overall net worth. Nearly de minimus, this is not a substantial property interest in a foreign country that could present a heightened risk of foreign influence. Thus, the bank account is also mitigated under the first prong of 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."

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 her relatives cannot be characterized as "so minimal" for the same reasons that her contacts cannot be considered "casual and infrequent." Still, there is no similar sense of loyalty to a foreign group, government, or country. Overall, Applicant has persuaded me that she can be expected to resolve any conflict of interest in favor of the United States, where she has resided since 2000 and established firm roots.

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 and financial ties to India that potentially raise concerns of foreign influence. Applicant has also minimized the risk somewhat by not discussing her work with her relatives in India. They are unaware that she is applying for a DOD clearance. She is not likely to jeopardize herself, her spouse, or the employment that she needs to provide better opportunities for herself and her spouse. Moreover, Applicant's spouse has held a clearance for a year without apparent incident, presumably on the same facts. Applicant has demonstrated her reliability and trustworthiness to her co-workers. 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-c: 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