



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00603

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

09/12/2016

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's connections to the United States are much greater than his connections to India. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 9, 2014, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On August 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a

determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On September 29, 2015, Applicant responded to the SOR, and he requested a hearing. (HE 3) On January 14, 2016, Department Counsel was prepared to proceed. On March 21, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 20, 2016, DOHA issued notice of the hearing, setting the hearing for July 12, 2016. The hearing was held as scheduled. I received the transcript of the hearing on July 21, 2016.

### **Procedural Rulings**

At the hearing, Department Counsel offered three exhibits, and Applicant offered eight exhibits. (Tr. 7-13; GE 1-3; AE A-H) Applicant objected to the admissibility of Applicant's Office of Personnel Management (OPM) personal subject interview (PSI) (GE 2) because it was not authenticated. (Tr. 9) I initially sustained the objection to admissibility of Applicant's OPM PSI. (Tr. 9) During his hearing statement, Applicant provided corrections to the OPM PSI and adopted the OPM PSI; Applicant's counsel withdrew his objection; and the OPM PSI was admitted as corrected. (Tr. 41-45; GE 2) There were no other objections, and I admitted all other proffered exhibits into evidence. (Tr. 8, 13; GE 1-3; AE A-H) On September 6, 2016, Applicant provided two additional documents, which were admitted without objection. (AE I, J) On September 6, 2016, the record was closed.

Department Counsel and Applicant requested administrative notice (AN) of facts concerning India. (Tr. 9-10; GE 3; AE A) The requests listed supporting documents to show detail and context for those facts. Department Counsel's AN request is quoted at pages 5-7 *infra*, with footnotes in the original omitted. Department Counsel and Applicant had no objection to consideration of information from State Department documents. (Tr. 9-10) The first two paragraphs were based primarily on State Department documents and one White House document admitted as HE 4, as well as the information Applicant submitted.<sup>1</sup> (AE A) AG ¶ 6, Foreign Influence, provides:

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.

A risk assessment in this case necessitates administrative notice of facts concerning India.

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<sup>1</sup>U.S. Department of State, *U.S. Relations With India*, Bureau of South and Central Asian Affairs, Fact Sheet (Oct. 9, 2015), <http://www.state.gov/r/pa/ei/bgn/3454.htm>. U.S. Department of State, *Background Note, India* (Apr. 17, 2012), <http://www.state.gov/outofdate/bgn/india/200052.htm> (HE 4). The White House website, Office of the Press Secretary, *U.S.-India Joint Statement, "Shared Effort; Progress for All,"* (Jan. 25, 2015), <https://www.whitehouse.gov/the-press-office/2015/01/25/us-india-joint-statement-shared-effort-progress-all>. (HE 4)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>2</sup>**

The SOR alleges: Applicant's brother is a citizen and resident of India, who retired from his Indian Government employment in 2009 (§ 1.a); his two sisters are citizens and residents of India (§ 1.b); he owns three real estate properties in India valued at about \$500,000 (§ 1.c); he has frequent contacts with someone who is a resident of India (§ 1.d); and he has three bank accounts in India (§ 1.e). Applicant's SOR response admitted the allegations in SOR § 1.c. (HE 3) He also admitted some or all of the underlying facts in the remainder of the SOR paragraphs. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 57-year-old defense contractor, who is seeking access to classified information. (GE 1) He was born in India. (GE 1) His profession is software engineering and consulting. (Tr. 14) In 1980, he received a bachelor's degree; in 1982, he received a master's degree; in 1987, he received a Ph.D.; and his degrees were earned in India. (Tr. 14-15; GE 1) He did not serve in the Indian military. (GE 1) In 1992, he immigrated to the United States. (Tr. 15-16) He worked in several areas of information technology. (Tr. 16-17). In 2004, he became a U.S. citizen. (Tr. 17) Applicant's parents have passed away. (SOR response)

In 1994, Applicant married; his spouse moved to the United States; and she became a U.S. citizen in 2004. (Tr. 57; GE 1) His spouse is employed in information technology. (Tr. 52) His two children are U.S. citizens and are ages 19 and 16. (Tr. 17-18) Applicant volunteers in his community. (Tr. 18-19) Applicant's spouse's parents have passed away. (Tr. 58) Applicant's spouse has siblings living in India. The extent of contacts with his in-laws living in India was not presented. Applicant's spouse described him as diligent, honest, and patient. (Tr. 53)

Applicant's brother's employment with the Indian Government involved auditing industrial property. (Tr. 34) After he retired from his Indian Government employment in 2009, he focused on art. (Tr. 33; SOR response) Applicant's relationship with his older brother living in India is not close, and he described his communications with his brother as casual and infrequent. (Tr. 19-20, 54) He communicates with his brother about three or four times a year. (Tr. 20, 33; SOR response)

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<sup>2</sup>To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

Applicant is not close to his two sisters living in India. (Tr. 20, 53) One sister has never married, and the other sister is a widow. (Tr. 20) He communicates with his sisters about three or four times a year. (Tr. 21, 55; SOR response) His sisters and his brother live together in the same house. (Tr. 36; SOR response) His sisters are not employed outside their home. Applicant does not provide financial support to his siblings living in India. (Tr. 35)

Applicant had a friend from college, and he was considering involvement in business in India with his friend. (Tr. 37) Applicant communicated with his friend about the possibility of an investment in India. Applicant discontinued his relationship with his friend in India when he decided to conduct his business solely in the United States. (Tr. 22, 37-38)

Applicant plans to divest himself of his properties and bank account in India. (Tr. 30) Applicant closed two of the three bank accounts he held in India. (Tr. 24; AE C; AE D) He maintained one account with \$141 in it to assist in the sale of his real estate holdings in India. (Tr. 24-25; AE I) He promised to close his remaining account within one year. (Tr. 24, 30)

Applicant transferred his interest in one property to his sister, and he currently owns two real estate properties in India. (Tr. 27-28, 39; AE B) One of the two properties is being sold. (Tr. 28, 37; AE E; AE I, AE J) The other property is in the midst of construction, which should be complete in December 2016. (Tr. 29) He plans to sell the remaining property and move all funds in India to the United States. (Tr. 28-30)

Applicant's assets in India are valued at about \$500,000. (Tr. 31, 54) Applicant's net worth in the United States is \$4,200,000. (Tr. 31, 47, 54; AE F) His U.S. annual salary is \$178,000, and his spouse's annual salary is about \$300,000. (Tr. 47-48, 57)

In the previous seven years, Applicant traveled to India in 2009, 2012, and 2016. (Tr. 46) His trip to India in 2016 was for two weeks, and its purpose was to facilitate the sale of his property in India. (Tr. 49-50)

Under Indian law, dual citizenship is not permitted.<sup>3</sup> (Tr. 59) Applicant, his spouse, and his children are exclusively U.S. citizens.

## **Character Evidence**

Applicant provided 13 character statements from friends, colleagues, and coworkers. (SOR response; AE G) The general sense of the letters is that Applicant is intelligent, professional, competent, trustworthy, conscientious about compliance with rules and security, responsible, diligent, and honest. He has made significant contributions to his company.

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<sup>3</sup>See Embassy of the United States, New Delhi, India, *Dual Nationality: India and the United States*, <http://newdelhi.usembassy.gov/acsdualnation.html>. (HE 5)

## India

India is a multiparty, parliamentary democracy with a population of approximately 1.2 billion people. The U.S. and India share common values including the rule of law, respect for diversity, and democratic government. The U.S. Department of State reported in 2012 that bilateral defense and counterterrorism cooperation between the U.S. and India had grown to reach unprecedented levels. In 2009, the United States and India launched the U.S.-India Strategic Dialogue, which is a bilateral forum focused on strengthening cooperation between the two countries in several areas, including energy, climate change, trade, education, and counterterrorism. The U.S. supports a reformed United Nations Security Council that includes India as a permanent member. The United States is one of India's largest trade and investment partners. The United States supports India's emergence as a rising world power. Recently, India has taken actions to ease travel between the United States and India.

On January 25, 2015, President Obama and Indian Prime Minister Modi held a joint press conference in India. They lauded the close and growing ties between the United States and India. President Obama emphasized the following elements of the United States—India relationship: (1) the natural partnership between two great democracies; (2) the new Declaration of Friendship formalizing that partnership; (3) increasing bilateral trade in goods and services between the two countries approaching \$100 billion; (4) breakthroughs in nuclear cooperation; (5) additional export reforms; (6) pursuit of investment treaties; (7) launching joint projects to reduce pollution and slow climate change; (8) partnerships in security matters in Afghanistan and in preventing Iran from obtaining nuclear weapons; and (9) most importantly in the context of this case, deepening defense and security cooperation. On January 11, 2015, Secretary of State John Kerry underscored the positive aspects of the United States-India association, including the growing investments of Indian citizens in the United States (now 9 billion dollars), and U.S. citizens' investments in India (now 28 billion dollars).

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage identifies India, along with seven other countries, as being involved in criminal espionage in 2008. An earlier version of that report included the results of a private industry survey in which the National Counterintelligence Center surveyed nearly a dozen Fortune 500 companies. The companies specifically named India as being among the most active collectors of U.S. economic and proprietary information. India remains on the Office of the U.S. Trade Representative's Priority Watch List in 2015, based on its history of trademark counterfeiting and copyright piracy—including one of the highest rates of video piracy in the world—and concerns regarding patents and regulatory data protection. Of particular concern is counterfeit pharmaceuticals produced in India and shipped to the United States, posing serious risk to American consumers.

In its 2009-2011 Report to Congress, the Office of the National Counterintelligence Executive reported that that sensitive U.S. economic information and technology are targeted by the intelligence services, private sector, and citizens of dozens of other countries. "Some U.S. allies and partners use their broad access to

U.S. institutions to acquire sensitive U.S. economic and technology information, primarily through aggressive elicitation and other human intelligence (HUMINT) tactics.” Some of these states have advanced cyber capabilities.

According to the U.S. Department of Justice, there have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India.<sup>[4]</sup> In November 2011, an employee of a Utah-based scientific company, an Indian citizen with a work visa and alien registration card, was charged with stealing company proprietary information for use by a relative in India. He subsequently pleaded guilty to a single count of unlawful access to a protected computer. In January 2013, the former export control manager of a Pennsylvania-based company pleaded guilty to the illegal, unlicensed export to India and China of over 57 microwave amplifiers, products that have military applications. In April 2014, six foreign nationals were indicted in federal court in Illinois for an alleged conspiracy to bribe Indian Government officials to allow the mining of titanium materials under the Foreign Corrupt Practices Act. In April 2015, the former owner of a New Jersey-based defense contracting business pleaded guilty to illegally exporting military blueprints to India without a license or prior State Department approval.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. The Indian states of Jammu and Kashmir remain unstable, and a number of terrorist groups operate there, particularly along the Line of Control separating India and Pakistani-controlled Kashmir. The State Department strongly recommends avoiding travel to the states of Jammu and Kashmir.

Anti-Western terrorist groups, including some on the U.S. Government’s list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India remains subject to violent terrorist attacks and continues to be one of the most persistently targeted countries by insurgents, domestic, and transnational terrorist groups. In November 2008, terrorists coordinated attacks on multiple locations in Mumbai, targeting areas frequented by Westerners and killing at least 183 people, including 165 civilians, and 8 individuals from the United States. Terrorist attacks in recent years underscore that India remains a target, and the attacks “have targeted public places, including some frequented by westerners, such as luxury and other hotels, trains, train stations, markets, cinemas, mosques, and restaurants in large urban areas.”

According to the State Department, the most significant human rights problems in India as of 2014 were “police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption that contributed to ineffective responses to crime, including those against women and members of scheduled castes or tribes; and societal violence based on gender, religious affiliation, and caste or tribe.” Other human rights problems included “disappearances, hazardous prison conditions, arbitrary arrest

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<sup>4</sup>There is no evidence that Applicant or any of his family members are or were involved in any criminal activity. As such this paragraph and the next paragraph have limited relevance.

and detention, and lengthy pretrial detention.” Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remain serious problems. A lack of accountability for misconduct at all levels of government persists. Investigations and prosecutions of individual cases take place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contribute to infrequent convictions.

India is reticent to discuss its nuclear security measures or allow inspections. India has also refused to accede to the nuclear Non-Proliferation Treaty, despite U.S. policy supporting its universality.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to



protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(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.

Applicant was born and educated through his Ph.D. in India. His three siblings and a friend are citizens and residents of India. He has infrequent<sup>5</sup> contact with his siblings and no longer has contact with his friend in India.

Applicant's brother had employment as an auditor of industrial equipment for the Indian Government, which ended in 2009. His current work is in the field of art. In the previous seven years, Applicant traveled to India in 2009, 2012, and 2016. (Tr. 46) His trip to India in 2016 was for two weeks, and its purpose was to facilitate the sale of property in India.

Applicant's property interests in India have a fair market value of about \$500,000. Applicant has "a substantial . . . property interest in a foreign country . . . which could subject [him] to heightened risk of foreign influence or exploitation." See *generally* ISCR Case No. 12-00120 (App. Bd. Feb. 10, 2014) (affirming denial of security clearance because of applicant's connections to India and noting administrative judge's findings of heightened risk in relation to family relationships and property interests of \$340,000 in India). See *also* ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his wife) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

Applicant and his spouse live together in the United States. His spouse has siblings living in India. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). "[A]s a matter of common sense and human experience, there is [also] 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. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Indirect influence from Applicant's siblings-in-law living in India, through Applicant's spouse to Applicant, could result in a security concern. In addition,

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<sup>5</sup>See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

Applicant has ties of affection to his siblings even through his communications with them are infrequent.

Applicant's relationships with residents of India create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help relatives living in India. For example, if terrorists or government officials in India wanted to expose Applicant to coercion, they could exert pressure on his relatives living in India or threaten his property interests in India. Applicant would then be subject to coercion through his connections to India and classified information could potentially be compromised.

Applicant and his spouse's close family ties with relatives living in India, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States, places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in India do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives or preserve property in India.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from India seek or have sought classified or economic information from or through Applicant, his spouse, or their relatives living in India, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and India has a problem

with terrorism. Applicant and his spouse's relationships with family members living in India create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in India by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant and his spouse's relationships with their families living in India and his property in India. The issue of potential foreign pressure or attempted exploitation has been raised, and further inquiry is necessary about potential application of any mitigating conditions.

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

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government

presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have some applicability. Applicant has infrequent contacts with his siblings living in India. Applicant’s spouse has siblings living in India. Loyalty to, support for, and connections to family are positive character traits. However, for security clearance purposes, those same relationships negate the possibility of full mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is little likelihood that his relationships with relatives in India could create a risk for foreign influence or exploitation.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. In 1992, he immigrated to the United States, and in 2004, he became a U.S. citizen. His spouse is a naturalized U.S. citizen; and both of their children are U.S. citizens. His spouse and children live in the United States. When he took an oath and swore allegiance to the United States, as part of his naturalization as a U.S. citizen, and when he volunteered to assist the U.S. Government as a contractor, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. When they became U.S. citizens they lost their citizenship to India because India does not recognize dual citizenship.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India. There is no evidence that terrorists, criminals, the Indian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their relatives living in India to coerce Applicant for classified or sensitive information.<sup>6</sup> As such, there is a reduced possibility that Applicant, his spouse, or their relatives living in India would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to their relatives living in India is from terrorists and other lawless elements and not the Indian Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States’ sizable financial and diplomatic investment in India. Applicant and his spouse’s relatives living in India could become potential targets of terrorists because of Applicant’s support for the United States, and Applicant’s potential

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<sup>6</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

access to classified information could theoretically add some risk to them from lawless elements in India.

AG ¶ 8(f) applies and mitigates security concerns arising from Applicant's property located in India. Applicant has a substantial investment in India with property interests having a fair market value of about \$500,000. Applicant's net worth in the United States is about \$4,200,000. Applicant and his spouse's annual U.S. salaries of about \$478,000 are important components of their economic connections to the United States. His and his spouse's U.S. economic connections are sufficient in magnitude to fully negate his India financial connections as a security concern.

In sum, Applicant and his spouse's connections to their relatives living in India and his property in India are significant and raise a security concern. His family connections in the United States are much more substantial. His financial connections to the United States are more than four times greater than his connections to India without including the value of Applicant and his spouse's salaries. Foreign influence security concerns under Guideline B are mitigated. Even if foreign influence security concerns were not mitigated under AG ¶¶ 6-8, security concerns would be mitigated under the whole-person concept, *infra*.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The factors weighing against approval of Applicant's security clearance are noteworthy; however, they are less substantial than the factors weighing towards its approval. Applicant and his spouse have siblings living in India. He has visited India three times in the last seven years. Applicant's property interests in India are valued at about \$500,000. Applicant's brother was employed in the Indian Government as an

auditor until 2009. Relationships to family in India and substantial Indian property interests make Applicant more vulnerable as a target of coercion, particularly by lawless elements in India than he would be without those connections.

Applicant's connections to India warrant less weight than his connections to the United States. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security or rule violations. When he was naturalized as a U.S. citizen in 2004, he swore allegiance to the United States. His spouse and two children are U.S. citizens and reside in the United States. Applicant volunteered to serve as a contractor supporting the DOD. Applicant's net worth in the United States of \$4,200,000, and his and his spouse's annual U.S. salaries of \$478,000 are important components of their economic connections to the United States. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or his family in India.

Applicant provided 13 character statements from friends, colleagues, and coworkers. The general sense of the letters is that Applicant is intelligent, professional, competent, trustworthy, conscientious about compliance with rules and security, responsible, diligent, and honest. He has made significant contributions to his company. Their statements support approval of his access to classified information.

A Guideline B decision concerning India must take into consideration the geopolitical situation and dangers there.<sup>7</sup> India is a dangerous place because of violence from terrorists and other lawless elements, but not as dangerous as many other countries. Terrorists continue to threaten the Indian Government, the interests of the United States, and those who cooperate and assist the United States. India and the United States have sometimes had profound policy disputes. The Indian Government does not fully comply with the rule of law or protect civil liberties in some instances. The United States and Indian Governments are allies in the war on terrorism. India and the United States have close relationships in diplomacy and trade. The positive connections between India and the United States have increased dramatically in the last ten years.

I have carefully applied the law, as set forth in *Egan, supra*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant has carried his burden and foreign influence concerns are mitigated. Eligibility for access to classified information is granted.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a to 1.e:	For Applicant

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<sup>7</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

## **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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Mark Harvey  
Administrative Judge