



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



In the matter of:

ADP Case No: 15-02966

Applicant for Public Trust Position

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/24/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the foreign influence trustworthiness concerns with respect to family members, who are citizens and residents of India, and the fact that her father is a retired member of the Indian armed forces. Based upon a review of the record as a whole, eligibility for access to a position of trust is granted.

**History of Case**

On February 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 19, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 8, 2015, and requested a hearing before an administrative judge. On March 14, 2016, DOHA assigned the case to me and issued a Notice of Hearing on April 18, 2016, setting the hearing for May 10, 2016. On that date, Department Counsel introduced Government Exhibits (GE) 1 and 2 into evidence without objection. Applicant testified and introduced Exhibit (AE) A into evidence without objection. DOHA received the hearing transcript (Tr.) on May 19, 2016.

## **Procedural and Evidentiary Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. The request and the attached documents pertinent to India are included in the record as Hearing Exhibit (HE) 1, along with 13 attachments. The documents were admitted. (Tr. 11.) The facts administratively noticed are limited to matters of general knowledge and pertinent to India, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her Answer, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.c of the SOR. Those admissions are incorporated into these findings of fact.

Applicant is 40 years old. She was born in India. After completing high school and under graduate school, she graduated from an Indian university in 1998 with a master's degree. After graduating, she and her husband married in August 1998, and she came to the United States two weeks later. Her husband previously came to the United States in 1997. They have two children, ages 14 and 8, who were born in the United States. (Tr. 12-15, 29.) Applicant became a U.S. citizen in July 2008. (GE 1.)

Both of Applicant's parents were born and raised in India. They are Indian resident citizens. Her father is 70 years old and her mother is 64 years old. Her father served in the Indian armed forces and retired after 15 years. He subsequently worked in the private sector and then retired from that work. Applicant's parents visited her in the United States in 2008 when her child was born. They stayed three months. She speaks to her parents weekly. Applicant's sister is a citizen of India and temporarily a resident of Australia. She works for a private company. Her brother is a citizen of India and has been a resident of Dubai for ten years. He works for a private company. Applicant speaks to her siblings weekly. They have not visited Applicant in the United States. Both siblings have spouses and families. (Tr. 18-23, 31.)

Applicant's husband was born in India. His father is deceased. His mother is a citizen and resident of India. Her husband speaks to his mother weekly. She has visited them twice, once in 2002 and again in 2013. (Tr. 23-24.) Her husband has two siblings

who are citizens and residents of India. They do not work for the government. Her husband does not own assets in India. (Tr. 25-27.)

Applicant traveled to India to visit her family four times since leaving in 1998: in 2000, 2003, 2010, and 2014. She may travel to India next year. (Tr. 26.) She said she destroyed her Indian passport after she became a U.S. citizen in July 2008. (GE 2.)

In 2002 Applicant began working for a bank. In 2012 she started a position with her current employer, a defense contractor. She said that her employer is aware of this hearing and the foreign preference security concerns underlying it. (Tr. 15-16.) She said her performance evaluations are “excellent.” (Tr. 35.)

Appellant’s U.S. assets total at least \$600,000. They include two pieces of real estate: one rental property that is paid, and their residence which has a mortgage. She and her and husband have retirement accounts. They do not have car loans or credit card debts. Neither she nor her husband has financial or real estate interests in India. (Tr. 16-18, 28-29, 31.) She has participated in some volunteer events with her employer. (Tr. 30.) Applicant stated that her loyalty is to the United States. She has voted in the U.S. elections and is financially stable. (Tr. 33.)

## **India**

I take administrative notice of the following facts: According to its constitution, India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion.

The Indian government generally respects the rights of its citizens, but numerous serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, the terrorists coordinated an attack at a hotel in Mumbai frequented by westerners.

The United States recognizes India as key to its strategic interests and has sought to strengthen its relationship with it. The two countries are the world’s largest democracies, both 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. However, differences over India’s nuclear weapons program and pace of economic reform exist. There are also concerns about India’s relations with Iran, including their increasing cooperation with the Iranian military.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment that

were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally export technology to entities in India.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The U.S. and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

### **Policies**

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of

the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 sets out the trustworthiness concerns for foreign influence:

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

AG ¶ 7 describes three conditions that could raise a trustworthiness concern and be potentially 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;<sup>1</sup>

(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; and

(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.

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<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, 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).

Applicant's parents and mother-in-law are citizens and residents of India. Her brother and sister are citizens of India, currently residing in other countries. Since becoming a U.S. citizen, she has traveled to India in 2000, 2003, 2010, and 2014. She may travel there in the future. She shares living quarters with her husband, who has ties to his mother in India. Disqualifying conditions AG ¶¶ 7(a) and 7(d) require both the presence of foreign contacts and a heightened risk. There is sufficient evidence regarding terrorist activities in India and its interest in acquiring U.S. technology to establish a heightened risk. AG ¶¶ 7(a) and 7(d) apply. Applicant's father is a former member of the Indian armed forces. That past connection is sufficient to raise a disqualifying condition under AG ¶ 7(b) because Applicant could be placed in a position of having to choose between her obligation to protect sensitive information or technology and her desire to help her father by providing that information.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions raised in this case:

- (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; and
- (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.

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 Applicant's family members are vulnerable to government coercion. 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 that government; the country is known to conduct intelligence operations against the United States; or there is a serious problem in the country with crime or terrorism. India's close, friendly relationship to the United States, its democratic government, its adherence to human rights standards and rule of law, its leading role in the suppression of terrorists, and the lack of evidence that India uses coercive tactics in its espionage targeting of the United States, tend to negate concerns that Applicant's relationships with her mother, siblings, mother-in-law,

and father, who retired from the Indian armed forces years ago, pose a security risk. Hence, AG ¶ 8(a) applies.

Applicant produced sufficient evidence to establish mitigation under AG ¶ 8(b). She has lived in the United States since 1998. She became a naturalized U.S. citizen in 2008. Her children were born in this country. Her husband is a naturalized U.S. citizen. She has been employed in the United States since 2002, and with her current employer beginning in 2012. She and her husband have strong financial ties to the United States with an estimated personal net worth of at least \$600,000. She does not own any property in India. She claims the U.S. as her home. She destroyed her Indian passport when she became a U.S. citizen. Based on those deep and longstanding relationships and loyalties in the United States, she can be expected to resolve any conflict of interest in favor of the United States.

AG ¶ 8(c) does not provide mitigation for the security concerns raised as a result of Applicant's contacts with her parents or mother-in-law residing in India because they are frequent and cannot be considered casual. She also maintains ongoing contacts with her siblings who are citizens of India, but residing elsewhere.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a 40-year old

woman, who was born in India. She spent her formative and college years there. Her family members are either resident citizens or citizens of India. She maintains frequent communication with them. Her husband also has family ties there. Applicant has visited India four times since 1998 and anticipates returning again. Her parents and mother-in-law have visited her in the United States. While those are facts that weigh against granting Applicant a position of trust, her connections to the United States outweigh those factors. She has lived in the United States for 18 years, and has been a naturalized U.S. citizen for 8 years. Her spouse is a naturalized U.S. citizen. Her children were born in the United States. Her financial assets are located in the United States, including two pieces of real estate. She has successfully worked for a defense contractor for about four years, as confirmed by her employer. She destroyed her Indian passport after she became a U.S. citizen in 2008.

After weighing the totality of Applicant's ties to the United States, I am persuaded that should she be placed in a position of having to choose between the interests of her family in India and the interests of the United States, she would resolve the conflict in favor of the United States. Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a position of trust. She met her burden and mitigated the trustworthiness concerns arising under the foreign influence guidelines.

### **Formal Findings**

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge