



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



In the matter of:)
)
 ---) ADP Case No. 15-05717
)
 Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

09/13/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding foreign influence. Eligibility to occupy a public trust position is granted.

Statement of the Case

On March 3, 2015, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On March 8, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.² The SOR alleged trustworthiness concerns under

¹ GE 1 (e-QIP, dated March 3, 2015).

Guideline B (Foreign Influence), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the Department of Defense, and recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on March 24, 2016. On April 11, 2016, he responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 3, 2016. The case was assigned to me on September 19, 2016. A Notice of Hearing was issued on February 22, 2017. I convened the hearing as scheduled on March 15, 2017.

During the hearing, two Government exhibits (GE) 1 and GE 2 and one Administrative exhibit were received into evidence without objection. Applicant testified. The transcript was received on March 24, 2017. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity, and he timely submitted six documents, which were marked and admitted as Applicant exhibits (AE) A through AE F, without objection. The record closed on May 3, 2017.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of India (India) appearing in 13 U.S. Government publications which were identified, but only fragments of extracts of those publications were attached to the request. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding India in publications of the U.S. Department of State,³ U.S. Department of Justice,⁴ the Executive

² Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this trustworthiness review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

³ U.S. Department of State, Bureau of Consular Affairs, *Passports & International Travel, Alerts & Warnings: Worldwide Caution*, updated July 29, 2015; U.S. Department of State, *Quick Facts: India*, dated April 24, 2015; U.S. Department of State, Bureau of Counterterrorism, Ch. 2, Country Reports: South and Central Asia Overview, *Country Reports on Terrorism 2014*, undated; U.S. Department of State, Office of the Coordinator for Counterterrorism, Country Reports: South and Central Asia Overview, *Country Reports on Terrorism 2008*, dated April 30, 2009; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Executive Summary, Country Reports on *Human Rights Practices for 2014: India*, undated.

⁴ U.S. Department of Justice, Press Release, *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases*, updated January 23, 2015; U.S. Department of Justice, Press Release, *Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals*, dated April 2, 2014; U.S. Department of Justice, Press Release, *Former Owner of Defense*

Office of the President of the United States, Office of the United States Trade Representative,⁵ the Congressional Research Service,⁶ the Office of the National Counterintelligence Executive,⁷ and the Office of National Counterintelligence Center.⁸

The press releases and the summary of cases from the U.S. Department of Justice were presented apparently to substantiate that India actively pursues collection of U.S. economic and propriety information, and, therefore, Applicant's relationships with his various family members and extended family members in India raises suspicion of him. None of the cases cited involves Applicant personally or involved espionage through any familial relationship. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family or extended family, was ever involved in any aspect of the cited cases or ever targeted by any Indian intelligence official. Furthermore, these press releases are little more than self-congratulatory public relations products issued by public relations offices, with the collateral effect of deterring other criminals contemplating possible attacks on our national security.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁹ as set forth below under the India subsection. However, while I do not reject the facts set forth in the various press releases, the inference that somehow Applicant or his family, or his extended family

Contracting Business Pleads Guilty to Illegally Exporting Military Blueprints to India Without a License, dated April 1, 2015.

⁵ Executive Office of the President of the United States, Office of the United States Trade Representative, *2015 Special 301 Report*, undated.

⁶ Congressional Research Service, Library of Congress, *U.S. - India Security Relations: Strategic Issues*, dated January 24, 2013.

⁷ Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2008, dated July 23, 2009; Office of the National Counterintelligence Executive, *Foreign Spies Stealing US Economic Secrets in Cyberspace (Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011)*, dated October 2011.

⁸ Office of National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000*, undated.

⁹ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

participated in criminal activity was not argued during the hearing and is specifically rejected.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, six of the factual allegations pertaining to foreign influence (¶¶ 1.a. through 1.f.) of the SOR. Although he commented on the remaining allegations, he failed to admit or deny those allegations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor. He has been serving as a lead database engineer since April 2015, and he was previously an enterprise resource planning (ERP) analyst with another employer from 1999 until 2012, and a systems analyst from 2012 until 2015. He has never served with the U.S. military or any other military. He received a bachelor's degree in applied sciences-computer technology in 1990, and a master's degree in information systems management in 2001. Applicant has never held a public trust position.

Foreign Influence¹⁰

Applicant was born in 1970 in India to Indian citizen-residents. He completed his primary education and earned his bachelor's degree in India and worked there as an intern, programmer analyst, and team leader for software development in the private sector for several years. He immigrated to the United States in September 1997, and he has resided in the United States since that time. In 1999, Applicant returned to India, and he was married there. His wife was also born to Indian citizen-residents and raised in India. Applicant returned to the United States with his wife that same year. His two daughters were born in the United States in 2002 and 2007. Applicant and his wife were naturalized as U.S. citizens in July 2010. When they became naturalized U.S. citizens, they took an oath of allegiance to the United States. That oath included the words: "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen."¹¹ Applicant renounced his Indian citizenship and surrendered his Indian passport upon becoming naturalized, and he obtained a U.S. passport. Applicant currently possesses an Overseas Citizen of India (OCI) card, which is issued to both former and current Indian citizens.¹²

¹⁰ General source information pertaining to Applicant and his family members discussed below can be found in the following exhibits: GE 1, *supra* note 1; Applicant's Answer to the SOR, dated April 11, 2016; and GE 2 (Personal Subject Interview, dated April 17, 2015).

¹¹ 8 C.F.R. § 337.1(a) (1995).

¹² GE 1, *supra* note 1, at 8; Tr. at 60. An OCI card holder is entitled to the following benefits: a multiple entry, multi-purpose life-long visa for visiting India; exemption from registration with local police authority for any length of stay in India; parity with non-resident Indians in respect of economic, financial and educational fields, except in relation to acquisition of agricultural or plantation properties; OCI can be used as identity proof for application of a Permanent Account Number (PAN) Card and driving license as well as for opening a bank account if the OCI card

Since he emigrated from India in 1997, Applicant has visited India on six occasions, four of which occurred before he became a U.S. citizen: 2004, 2006 (when his mother was recovering from a prolonged illness), 2010 (when his father was hospitalized), 2010 (upon his father's death to make funeral arrangements and grieve), 2013, and 2016. He has no plans to return to India at any time in the near future.

As noted above, Applicant's wife is a naturalized U.S. citizen residing in the United States, and his two daughters are native-born U.S. citizens residing in the United States. There appear to be no trustworthiness issues pertaining to them. His wife served as an agricultural officer with a private company in India, and, aside from being a homemaker, she is a coding auditor for a health care consultant. Applicant's father was, before his death, a statistical assistant with a state department of public health in India. Applicant's wife has a brother – a naturalized U.S. citizen – who resides in the United States.

There are five other members of Applicant's family who remain citizen-residents of India, in areas relatively distant from publicized terrorist activities. His mother, now a widow in her 80s, was for many years a teacher and homemaker. Applicant's sister, a woman now in her 50s with mental issues, has never worked outside the home, and she now cares for her mother. Applicant's brother, also in his 50s, served in a non-combat, administrative position with the Indian military for 20 years before retiring, and he now works in a clerical position for a not-for-profit company furnishing aid to military retirees. Applicant's mother-in-law, a woman in her late 60s, has never worked outside the home and, before her husband passed away, she was a homemaker. Applicant's father-in-law was, before his death, an owner of a small manufacturing company who had been retired over a decade earlier. Applicant's brother-in-law is a scientific officer employed by the Indian Government. Applicant's parents, sister, and in-laws have never had any affiliation with the Indian government or intelligence service. Because of their past or present employment, the focus of trustworthiness significance is on Applicant's brother and brother-in-law. The frequency of Applicant's on-going telephone contacts with the members of his family is varied: with his mother several times per week; with his sister on a weekly basis; with his brother, once every two months; with his mother-in-law, once every three months; and with his brother-in-law, two or three times per year.

Applicant contends that he has strong connections to the United States, and he considers them to be stronger than his connections to India. He has made his home here and is raising his family here. He greatly values his new motherland, and he will always be loyal to the U.S. While he is morally obligated to provide support for his mother and sister in India, he stated unequivocally that his allegiance to the United States is first and foremost ahead of anything. He also noted that the value of his assets in India are negligible when compared with his more substantial assets in the U.S.

Nearly two and one-half decades ago, Applicant purchased an apartment in India for about \$25,000 to provide a comfortable residence for his parents and siblings. He

holder is residing in India. An OCI card holder is not entitled to: vote; to be a member of a legislative assembly or of a legislative council or of the Parliament of India; to hold Indian constitutional posts such as that of the President, Vice President, Judge of the Supreme Court or High Court, etc. He/she cannot normally hold employment in the Indian Government. The OCI is similar to the "green card" in the United States. See <https://www.indian.embassy.org>.

estimated that the current value of the apartment is \$122,070. Before he became a U.S. citizen, he also purchased some undeveloped land for \$42,000 with the original plan to build a house on the property as a potential retirement location. His plans changed when he became a naturalized U.S. citizen. He estimates the value of the property to be \$65,000, and now believes he might sell it in the future to fund his children's education.

Applicant also maintains two bank accounts in India. He opened the first account with a deposit of about \$100 when he was in college over 25 years ago, and because he has a sentimental attachment to the account, he is keeping it open. He estimates that he has \$750 in the account. Over 15 years ago, Applicant also opened another bank account with an initial deposit of about \$1,000, to enable him to transfer funds to meet his parents' unexpected living and medical expenses, and to pay his life insurance premiums. He estimates that he has less than \$10,000 in his two accounts, combined. Once his mother passes away, Applicant intends to close both bank accounts.

In addition to his investments, Applicant also maintains three life insurance policies with an Indian insurance company. He purchased them before he decided to become a U.S. citizen. One is on his life, and the other two are to generate educational funds for each of his daughters. The first policy cost him \$2,500 at the time he purchased it, and has an estimated value of \$10,000. Now that he is a U.S. citizen, Applicant considers the policy to be redundant, and he plans to liquidate it and donate the funds to various U.S. charities. The other two policies, now worth a combined \$12,000, are also deemed redundant, for Applicant started investing in 529 college tuition plans to fund his children's education. He intends to allow the policies to mature, and then he intends to donate the funds to U.S. charities.

Applicant's financial interests and investments in the United States generally dwarf his Indian financial interests. He and his wife have a \$451,000 residence with a \$435,000 mortgage; \$279,000 in several bank accounts; \$134,000 in investment accounts; and approximately \$587,000 in retirement accounts.¹³

India

In 1947, the United Kingdom partitioned the Indian subcontinent into the largely Hindu India and the Muslim Pakistan, and granted them independence. The relationship between India and Pakistan has been strained, if not actually hostile, ever since, essentially over a dispute about Kashmir. During the Cold War, India's foreign policy was one of nonalignment with either of the two major power blocs. Nevertheless, while the United States generally aligned itself with Pakistan, India moved closer to the Soviet Union and received significant military support from the relationship. However, since the collapse of the Soviet Union in 1991, India has moved closer to the United States. The United States and India are the world's largest democracies, and the United States is India's largest trade and investment partner. They have common principles and shared national interests, including defeating terrorism, preventing weapons proliferation, and

¹³ AE B (Financial Assets, dated April 30, 2017).

maintaining regional stability. They are also both committed to political freedom protected by representative government.

In the course of its history since independence, two Indian prime ministers were assassinated, and there have been continuing hostilities between India and Pakistan. Anti-western Islamist extremist/terrorist groups, including some on the U.S. Government's list of foreign terrorist organizations, are active in India, and there have been Islamic terrorist attacks in India, most notably the coordinated terrorist attacks on multiple locations in Mumbai in November 2008. After the Al-Qaeda attacks on the United States on September 11, 2001, Indian intelligence agencies provided the United States with substantial information on that terrorist organization's activities in Pakistan and Afghanistan. Since that time, the U.S.-India security cooperation has flourished, with greatly increased counterterrorism cooperation. U.S. diplomats rate military cooperation among the most important aspects of the transformed bilateral relations. The two countries have held a series of unprecedented and increasingly substantive combined military exercises.

In 2008, Secretary of State Clinton acknowledged the new administration's desire to "further strengthen the excellent bilateral relationship" between the two countries. There is considerable support for a deepened U.S. partnership with India, and congressional advocacy of closer relations with India is generally bipartisan and widespread. However, disagreements exist. Some Indian officials express concern that the United States is a "fickle" partner that may not always be relied upon to provide the reciprocity, sensitivity, and high-technology transfers sought by India. Some U.S. government officials have criticized India's extensive trade and investment barriers, its nuclear weapons programs, the pace of India's economic reforms, its human rights practices, and its inadequate laws and ineffective enforcement of intellectual property rights protection.

In 2010, addressing a joint session of the Indian Parliament, President Obama noted some fundamental common interests held by India and the U.S. when he said:

We are two great republics dedicated to the liberty and justice and equality of all people. And we are two free market economies where people have the freedom to pursue ideas and innovation that can change the world. And that's why I believe that India and America are indispensable partners in meeting the challenges of our time.¹⁴

Under its constitution, India is a "sovereign, socialist, secular, democratic republic." It is a multiparty, federal, parliamentary democracy, with a bicameral parliament, including the Council of States and the House of the People. While the central government has greater power in relation to its states, the position of president is largely ceremonial. The real national executive power is centered in the Cabinet (senior members of the Council

¹⁴ Congressional Research Service, Library of Congress, *U.S.- India Security Relations: Strategic Issues*, dated January 24, 2013, at 39, citing White House transcript for Nov. 8, 2010, at <http://www.whitehouse.gov/the-press-office/2010/11/08/remarks-president-joint-session-indian-parliament-new-delhi-india>.

of Ministers), led by the prime minister. India's independent judicial system began under the British, and its concepts and procedures resemble those of Anglo-Saxon countries. Nevertheless, there are significant human rights issues in India. As of 2014, the most significant human rights problems in India 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 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 takes 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.

There is evidence that India and some Indian nationals are active participants in economic espionage, industrial espionage or trade secret theft, and violations of export-control regulations.

Character References

One friend whom Applicant has known for over 25 years since their college days, considers Applicant to be very dependable, responsible, honest, and courteous, as well as a person with great integrity and high family and moral values.¹⁵ Other friends and colleagues who have known him between 4 and 12 years also characterize him in positive terms: Applicant is very sincere, trustworthy, reliable, honest, considerate and supportive. Everyone commented on his high moral values.¹⁶

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 [position of public trust]."¹⁷ 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. Department of Defense contractor personnel are afforded the right to the

¹⁵ AE D (Character Reference, dated April 29, 2017).

¹⁶ AE C (Character Reference, dated April 26, 2017); AE E (Character Reference, dated April 27, 2017); AE F (Character Reference, dated April 5, 2017).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

procedures contained in the Directive before any final unfavorable access determination may be made.¹⁸

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."¹⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁰

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on

¹⁸ It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

¹⁹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

the side of denials.²¹ 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.

Analysis

Guideline B, Foreign Influence

The trustworthiness concern relating to the guideline for Foreign Influence is set out in AG ¶ 6.

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 7:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's mother, sister, brother, mother-in-law, and brother-in-law are Indian citizens who reside in India. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family member must

²¹ *Egan*, 484 U.S. at 531.

be analyzed.²² 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 sensitive information.²³ 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. Moreover, Guideline B is not limited to countries hostile to the United States.²⁴ Furthermore, “even friendly countries can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”²⁵ Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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 operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.²⁶

As noted above, there is substantial evidence to reflect that India engages in economic espionage, industrial espionage, trade secret theft, violations of export-control regulations, and military intelligence activity directed toward the United States, and that there is evidence of terrorist activities within areas of the country. The activities of Indian authorities as well as those insurgent and terrorist groups, the risks of kidnappings by gangs, and the danger of radicalized ISIL sympathizers in India are sufficient to establish a “heightened risk” – a risk that is greater than the normal risk inherent in having a family member living under a foreign government. In this instance, Applicant’s relationships with his mother, sister, brother, mother-in-law, and brother-in-law, are slightly varied, but they are essentially close, rather than casual. In addition, Applicant owns some real estate and has modest funds in two bank accounts in India. AG ¶¶ 7(a), 7(b), and 7(f) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under 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

²² ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

²³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

²⁴ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) (“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.”).

²⁵ ISCR Case No. 00-00317 at 6 (App. Bd. Mar. 29, 2002).

²⁶ See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the 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;

(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 of exploitation; 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.

AG ¶¶ 8(a), 8(b), and 8(f) apply. AG ¶ 8(c) does not apply. Applicant's ties to the United States run deep. While he was born in India of Indian citizen-residents, and he attended school in India, after residing in the United States, he took affirmative action to make the United States his motherland. He and his wife are naturalized U.S. citizens, and his two daughters are native-born U.S. citizens. His wife's brother is also an Indian-born, naturalized U.S. citizen, residing in the United States. The estimated value of Applicant's (and his wife's) foreign financial interests is insubstantial when compared with his financial interests in the United States. With the exception of his brother and brother-in-law, Applicant's parents, sister, and in-laws have never had any relationship with the Indian government or intelligence service. However, because of their past or present employment, the focus of trustworthiness significance is on Applicant's brother and brother-in-law. There is no evidence that any of Applicant's family members have ever been approached or threatened by a terrorist or anyone affiliated with the Indian government, its military, or intelligence services. Those family members reside in areas relatively distant from publicized terrorist activities. I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the United States, that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest."

The Government has submitted facts to reflect that India engages in economic espionage and military intelligence activity directed toward the United States, as well as the presence of insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of India that might heighten the risk for Applicant's mother, sister, brother, mother-in-law, and brother-in-law residing in India. In such a situation, India and all its citizens become potential victims of terrorism. The terrorism situation is not unlike the situations in other countries that have seen acts of terrorism – France, United Kingdom, Germany, and Belgium – and yet, the "heightened risk" in those countries is considered reduced. In fact, just as U.S. law enforcement and the DOD strive to protect

U.S. citizens from terrorists, incidents such as those in Fort Hood, Texas; San Bernardino, California; New York City, New York; and Dallas, Texas, have not raised the banner of “heightened risk” over the United States to suggest that it is unsafe to have family members reside here. With some relatively low-profile family members (a retired mother and a sister and mother-in-law who never worked outside of the home), there is a very low potential of forcing Applicant to choose between the interests of the United States and those of India, a terrorist organization, or those family members.

The issue regarding Applicant’s brother and brother-in-law is slightly different because of their past or present connections to the Indian Government. Applicant’s brother served in a non-combat, administrative position with the Indian military for 20 years before retiring, and he now works in a clerical position for a not-for-profit company furnishing aid to military retirees. Considering the nature Applicant’s brother’s work relationships, both past and present, there is a very low potential of forcing Applicant to choose between the interests of the United States and those of India, a terrorist organization, or his brother. Although Applicant’s brother-in-law is a scientific officer employed by the Indian Government, the heightened risk is potentially elevated, but not to the point where it would be alarming. Applicant will not have access to classified information. Under these circumstances, the heightened risk as it pertains to Applicant’s brother-in-law is the same as it pertains to his other low-profile family members. If there were any potential issues, they would be related to terrorist activities, and Applicant’s brother-in-law is physically located far from most publicized terrorist activity.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position 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 SEAD 4, Appendix (App.) A, ¶ 2(d):

- (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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁷

²⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's situation. Applicant's mother, sister, brother, mother-in-law, and brother-in-law are Indian citizens who reside in India. India engages in economic espionage and military intelligence activity directed toward the United States. There are insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of India that might heighten the risk for Applicant's mother, sister, brother, mother-in-law, and brother-in-law residing in India. Moreover, Applicant's brother-in-law is a scientific officer employed by the Indian Government.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems, or mishandling protected information. As noted above, Applicant's entire life, emotionally and financially, is now centered in the United States. This is where his two daughters were born and are growing up. He and his wife are naturalized U.S. citizens. Applicant is well respected by his friends and colleagues. That he and his mother, sister, brother, mother-in-law, and brother-in-law keep in relatively close contact should not be considered a negative factor.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all of these reasons, I conclude Applicant has mitigated the potential trustworthiness issues arising from his foreign influence concerns. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

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. through 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with the Department of Defense. Eligibility is granted.

ROBERT ROBINSON GALES
Administrative Judge