



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



In the matter of: )  
)  
) ISCR Case: 15-05864  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

August 10, 2017

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the concerns related to foreign influence raised by his relatives in India. His request for a security clearance is denied.

**Statement of Case**

On August 31, 2014, Applicant submitted a security clearance application (SF-86). (Item 5.) On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines B (Foreign Influence), and C (Foreign Preference). (Item 1.) The action was taken under Executive Order 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*.

Applicant answered the SOR on April 27, 2016. (Item 4.) He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On August 15, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on September 30, 2016, and received by him on October 7, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM in a submission dated October 27, 2016, received by DOHA on October 31, 2016. He did not object to Items 1 through 6. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on July 11, 2017. Items 1 through 6 are admitted into evidence. Applicant's response to the FORM is marked as exhibit (AE) A and is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Procedural Rulings**

1. In the FORM, the Government requested I take administrative notice of certain facts relating to India. Department Counsel provided a seven-page summary of the facts, supported by ten Government documents pertaining to India, identified as Item 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

2. Department Counsel made a motion in the FORM to amend the SOR by withdrawing "SOR paragraph 1 and subparagraphs 1.a and 1.b," in order to conform to the evidence, pursuant to Directive ¶ E3.1.17. Applicant expressed no objections to the amendment and previously denied these allegations in his Answer. The motion to amend is granted.

## Findings of Fact

Applicant is 57 years old. He was born in India. He immigrated to the United States in December 1997, and became a naturalized U.S. citizen in June 2008. He attended college in India, earning a bachelor's degree in 1979 and master's degrees in 1983 and 1985. He married his wife, a naturalized U.S. citizen, in India prior to his immigration to the United States. He has one adult daughter who was born in India and is a naturalized U.S. citizen. He has been working for his present employer, a U.S. Government contractor, since November 2013. He worked in the commercial sector and for a state government in the United States from December 1998 to May 2012. He worked for a different Federal contractor from May 2012 to November 2013. Applicant held a position of public trust in that job. (Item 5.)

Applicant cancelled his Indian passport in 2008. (Item 4; AE A.) He maintains a Persons of Indian Origin (PIO) card. (Item 4; AE A.)

Applicant admits that his mother is a citizen and resident of India. (Item 4.) She is approximately 80 years old and resides with Applicant's sister in India. She is supported by a "family pension" she receives as a result of her deceased husband's work as a state government employee in the "irrigation department." (AE A.) Applicant estimated that he has weekly telephonic contact with his mother on his SF-86. (Item 4; Item 5.)

Applicant admits that his sister is a citizen and resident of India. (Item 4.) She is a 50-year-old homemaker. She cares for Applicant's mother. She is married. Her husband works for a state-run auto insurance company. They have one child. Applicant communicates with his sister and her family once or twice per month by telephone. (AE A; Item 4; Item 5.)

Applicant admits that his brother-in-law (his wife's brother) is a citizen and resident of India. (Item 4.) He is a retired accountant for a private firm. Applicant has telephonic contact with him on a quarterly basis. (AE A; Item 4; Item 5.)

Applicant traveled to India in 2004, 2007 to 2008, 2010, and 2013, for approximately 11 to 20 days on each visit, to spend time with friends and family there. (Item 5.) He traveled to India in 2010 and 2013 using his U.S. passport. (AE A; Item 4.)

### India<sup>1</sup>

India is the world's largest democracy and is the world's second most populous country. India is a multiparty, federal, parliamentary democracy with a bicameral parliament.

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<sup>1</sup> Item 6.

India has a history of being involved in criminal espionage and is an active collector of U.S. economic and proprietary information. India remained 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 Americans consumers. 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 which 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.

A 2015 Human Rights Report on India reflects that the most significant human rights problems in India involve police and security forces who engage in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeates the government and security forces, creating an atmosphere in which human rights violations go unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In addition, a number of terrorist groups operate in regions of India, which makes travel to these regions dangerous.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

The security 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 security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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

(e) shared 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.

Applicant's mother, sister, and brother-in-law are citizens and residents of India. India is the world's largest democracy. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and has a history of seeking restricted dual-use technology, which has been illegally exported to India from the United States. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>2</sup> It also creates a potential conflict of interest. AG ¶¶ 7(a), (b), and (e) have been raised by the evidence.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 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; and

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<sup>2</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).

(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 and his family members are vulnerable to coercion. The risk of coercion, pressure, 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. In this case, there is evidence that India illegally targets U.S. technology, which raises a security concern about Applicant's relationship with his mother, sister, and brother in-law. Hence, AG ¶ 8(a) has limited application.

Applicant produced some evidence to establish AG ¶ 8(b). He has lived in the United States since 1997. He has worked for U.S. companies since at least 1998. He became a naturalized citizen in 2008. His wife and daughter are naturalized U.S. citizens. Based on those connections to the United States, there is some indication that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not have application to the security concerns raised as a result of Applicant's contacts with his mother, sister, and brother-in-law in India because those contacts are frequent and not casual. His communications have been consistent over the years, including multiple trips to India to visit family and friends there.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.

According to 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 applicable guidelines and the whole-person concept.

Applicant is a 57-year-old man, who was born in India and has lived in the United States for about 20 years. He has been a naturalized U.S. citizen since 2008. His spouse is a naturalized U.S. citizen. Those are facts that weigh in favor of granting Applicant a security clearance. However, Applicant's ties to India outweigh those factors. Over the past 20 years, Applicant has maintained strong connections to India through his family there. He has communicated regularly with family members over the years and visited them in India. While his ongoing contacts with other family members commendably demonstrate devotion and affection for his family, those actions raise security concerns and potential conflicts of interest that are not easily mitigated. Applicant failed to meet his burden to present sufficient evidence of deep and longstanding relationships in the United States to show that he would resolve any conflict of interest in favor of the U.S. interest.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

### **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 C:	WITHDRAWN
Subparagraphs 1.a through 1.b:	Withdrawn
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility is denied.

Jennifer I. Goldstein  
Administrative Judge