



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



In the matter of:

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) ISCR Case No. 15-06351  
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Applicant for Security Clearance

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel

For Applicant: *Pro se*

02/14/2017  
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**Decision**  
\_\_\_\_\_

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concerns raised by relatives who are Indian citizens and residents and her property interests in India. Clearance is granted.

**Statement of the Case**

On March 28, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on April 26, 2016, admitting all of the allegations, and requesting a hearing. The case was assigned to me on August 11, 2016. On August 24, 2016, a notice of hearing was issued scheduling the case for October 5,

2016. The hearing was conducted as scheduled. I admitted two Government exhibits marked as Government Exhibits (GE) 1 and 2, and considered Applicant's testimony. Also, I took administrative notice, at Department Counsel's request, of facts regarding the security profile of India vis-a-vis the United States, encapsulated within 13 documents, identified as Hearing Exhibits (HE) I through HE XIII. At the end of the hearing, I left the record open, at Applicant's request, to allow her to submit additional exhibits. Within the time allotted, she submitted nine additional exhibits that I marked and received as AE A through I. DOHA received the transcript (Tr.) on October 12, 2016.

### **Findings of Fact**

Applicant is a 49-year-old married woman with one child, age 15. She was born, raised, and educated in India, earning a bachelor's degree in law and a master's degree in accounting. Applicant helps her husband, a defense subcontractor, manage his software development company. She handles the accounting. (Tr. 18) She has officially been working in this capacity since 2013. (Tr. 19) Before then, she was primarily a homemaker, spending time with their son and volunteering at his school. Between 2004 and 2006, Applicant and her husband owned and managed a fast-food franchise. (Tr. 19)

Applicant's spouse is a naturalized U.S. citizen who was born and raised in India. (GE 1 at 17) Applicant and her husband have been living in the United States since 1994. She became a naturalized citizen in 2001. (GE 1 at 7)

Applicant's parents and two of her sisters (S1 and S2) are citizens and residents of India. Her father is retired. He worked for the Indian government as an airport customs agent. (Tr. 24) He receives a pension of approximately \$10,000 rupees (\$200 USD) per month. Applicant's mother is a homemaker. Applicant talks to her parents approximately once per week. (Tr. 21)

S1 is a yoga and fitness instructor. S2 is a homemaker. Applicant communicates with them via text messages every other day. (GE 2 at 2)

Both of Applicant's parents-in-law are citizens and residents of India. Her father-in-law is a retired surgeon. (GE 2 at 3) He receives a pension of approximately \$10,000 rupees per month. (Tr. 28) He was in private practice. Her mother-in-law is a homemaker. Applicant speaks with them every other month. (Tr. 28) Applicant and her husband occasionally help them pay their medical bills. (Tr. 38)

Applicant has several extended family members who are citizens and residents of India. (Tr. 45) Other than her niece and nephew, the two adult children of S1, Applicant is not close to any of them. Applicant traveled to India to visit her family members approximately once per year between 2007 and 2015. (Tr. 30)

Applicant and her husband have approximately \$350,000 invested in Indian real estate. They decided to invest in Indian real estate because of its tremendous growth potential. (Tr. 22) The first investment is a condominium that they purchased in 2007 for \$110,000. Its current value is \$350,000. The second investment is a parcel of undeveloped land, purchased in May 2010 for \$125,000. Its current value is \$190,000. The third real estate investment is a condominium purchased in May 2011 for \$115,000. Its current value is \$140,000. (Tr. 33) Applicant has approximately \$40,000 invested in an Indian mutual fund. Its current value is \$30,000. (AE A) In sum, Applicant's Indian investments total \$390,000, and the approximate current value of her Indian investments totals \$680,000.

In 2015, Applicant and her husband made a \$50,000 down payment towards the purchase an Indian beach property. (Tr. 33) The sale was not consummated and the seller refunded their down payment. (Tr. 34) Applicant has three bank accounts in India. She uses them to manage the investment properties. She has between \$12,000 and \$20,000 deposited in each of two accounts, and a nominal amount invested in the third bank account. (Tr. 34-35) Applicant is willing to liquidate her Indian financial investments if they generate any security risks. (Tr. 47)

The fair market value of Applicant's home is \$1.3 million. She has approximately \$400,000 of equity in the home. Their stock portfolio includes two joint accounts with investments worth \$615,470 and \$368,080, respectively; a retirement account with approximately \$1 million; an individual investment account worth \$25,516; and two prepaid college savings accounts with a combined balance of approximately \$41,000. (AE C, AE I) Also, Applicant has \$35,852 deposited in a checking account, an account used to manage their company that has a balance of \$483,370; and approximately \$15,000 of miscellaneous assets, including gold and jewelry. In sum, the net percentage of her investments in India total approximately 19.6 percent of her entire investment portfolio.

In 2015, the gross revenue of Applicant and her husband's company was \$2.5 million. (Tr. 41) Currently, their company has four to five employees. (Tr. 41) This is her first application for a security clearance. (GE 1 at 52) Her husband holds a security clearance. (Tr. 39)

India is a multi-party, federal, parliamentary democracy. (HE IX at 1) India is an ally of the United States with substantial common interests. (HE III) U.S. stakeholders are eager to increase investments in India's information technology sector because of its tremendous investment potential. (HE III at 4) The United States' commercial relationship with India is not without friction. India's legal system lacks effective safeguards to counter online piracy or government corruption. (HE IX at 1) In June 2013, six defendants, including an Indian national with permanent residence status in the United States, and a member of the Indian parliament were indicted for allegedly conspiring to bribe government officials to obtain licenses to mine titanium minerals in India. (HE VI at 1-2)

India is one of the most terror-afflicted countries in the world. (HE VIII at 2) Many of the terrorist groups are virulently anti-Western. (HE VII at 2)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, 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 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 classified information will be resolved in favor of national security."

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 applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

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

The security concern under this guideline is set forth, as follows:

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 ¶ 6)

Many of the administrative notice facts such as India's insufficient intellectual property safeguards and copyright protection laws indicate areas of friction between the United States and India, but are innocuous with respect to the heightened risk analysis. Conversely, the risk of terrorism, the sometimes inadequate due process, and the culture of government corruption are troubling enough to generate "a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion" vis-a-vis Applicant's family members who are Indian citizens and relatives. (AG ¶ 7(a)) Also, Applicant's significant financial interests in India trigger the application of "AG ¶ 7(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's relationship with her extended family is casual and infrequent. AG ¶ 8(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," applies. I resolve SOR subparagraph 1.d in Applicant's favor.

Applicant has been living in the United States for more than 20 years, and she has been a naturalized U.S. citizen for 16 years. Since then, she has thoroughly immersed herself into the cultural and commercial fabric of the United States, raising her child, volunteering at his school, operating a fast-food franchise, and helping her husband manage their information technology business, a successful company that employs four to five people and generates approximately \$2.5 million of gross revenue annually. Under these circumstances, I conclude there is no conflict of interest with respect to her relationship with her remaining Indian relatives "either because [her] 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 in favor of the U.S. interest." (AG ¶ 8(b))

Applicant's financial interests in India are significant. However, they are minimal in comparison to her U.S. property interests. Under these circumstances, AG ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure an individual," applies. In reaching this conclusion, I considered Applicant's longstanding ties to the United States as discussed in the previous paragraph.

### **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.

Applicant's longstanding personal, professional, and financial contacts in the United States compel me to conclude that she would resolve in the U.S. interest any conflict of interest posed by her family and property connections to India.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.g:	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 security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge