



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



In the matter of: )  
)  
) ISCR Case No. 15-07564  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

06/15/2017

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his ties to the country of India during the security clearance process. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 16, 2015. This document is commonly known as a security clearance application. On July 8, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>1</sup> The SOR is similar to a complaint

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense*

in a civil court action. It detailed the factual reasons for the action under the security guideline known as Guideline, B, Foreign Influence. Applicant answered the SOR on August 24, 2016, and requested a hearing before an administrative judge. The case was assigned to me December 2, 2016. A notice of hearing was issued on March 21, 2017, scheduling the hearing for May 9, 2017. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified and submitted two exhibits, which were marked as Applicant's Exhibits (AX) A-B, and admitted into the record without objection. The transcript was received on May 17, 2017. Based on a review of the pleadings, testimony and exhibits, eligibility for access to classified information is granted.

### **Procedural Matters**

Department Counsel requested that I take administrative notice of certain facts regarding the Republic of India. Applicant did not object and the memorandum of administrative notice and source documents were entered into the record as Government Exhibit 3.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted SOR ¶¶ 2.b-h. Those admissions are incorporated in my findings of fact. Applicant denied SOR allegation ¶ 1.a, as discussed below.

Applicant is 45 years old and has an undergraduate degree in engineering. He was born in India, came to the United States in 1999, and was naturalized in 2009. His spouse was a citizen of India, until her naturalization in 2016. (AX B) They have two daughters who are United States citizens. Applicant has renounced his Indian citizenship. (AX A) He does not possess an Overseas Identification Card (OIC) card from India. (Tr. 46) Since March 2015, he has been employed by a defense contractor. However, he has been working as a consultant in the field for many years. (Tr. 26)

Applicant has a son (20 years of age) from a previous marriage who is a citizen and resident of India. He has no contact with the son. Applicant left the first marriage when his son was two years old. (GX 2) His last face-to-face contact with his estranged son was in 1999. Applicant spoke to his son on the phone in 2012 to congratulate him on his graduation. The divorce was acrimonious and his son does not wish to have a relationship with him. Applicant understands that this is very sad, but the situation will not change. Applicant believes his first wife has remarried and he does not have any contact with her. (GX 1) She had sole custody of Applicant's son. Applicant paid a one-time sum of support for his son.

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*Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). In addition, DOD CAF adjudicators reviewed the case using the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on September 1, 2006. I decided the case using new AGs effective June 8, 2017, as well as the former guidelines, and my conclusions would be the same under either guideline.*

In 2011, Applicant purchased property in India, with an estimated total value of approximately \$60,000. (Tr. 30) He bought the house as an investment. Applicant can sell the house after he has owned it for three years. (Tr. 68 ) Applicant fully disclosed all possible financial interests in India on his security clearance. He currently owns a house in the United States that is worth about \$425,000. His current salary is about \$120,000 and his wife has recently started to work. He and his wife want to settle in his current state as they want their two daughters to receive a fine education. He was emphatic that the United States is home now and forever. Applicant testified credibly that some people come to India to find peace and he left India at the age of 27 because he wanted to live in the United States and become a U.S. citizen. He is proud to be a citizen of the United States.

In 2007, Applicant bought stock (\$1,000) in some Indian companies when the global market was booming. The stocks are not worth as much as before and he can sell the stocks. His U.S. portfolio is about \$30,000, and he has retirement accounts that are worth about \$42,000. As to the four bank accounts in India, the total value is about \$1,500. Two accounts are inactive and dormant. He will be closing the accounts. (Tr. 72) Applicant also disclosed that he lived in Canada and has some Canadian investments. (GX 2) Applicant stated that he would not have purchased a property in India if he knew it could be an issue for a security clearance. (Tr. 26)

Applicant's mother-in-law is a citizen and resident of India. His mother-in-law is a retired teacher. She has never had any connection with the Indian Government. His mother-in-law visited Applicant and his wife when lived in Canada and the first daughter was born. (Tr. 34) His father-in-law is deceased. Applicant's wife speaks to her mother regularly and Applicant occasionally speaks to her on the phone. He also sends her some money. He communicates randomly with his wife's sisters, and his two brothers-in-law. They work in private business and have no connections to the Indian government. None of his wife's family know about his work. Applicant's expertise is critical to the development of technologies that will protect certain important Department of Defense assets. His employer is aware of Applicant's need for a security clearance to work on projects and nevertheless urges that Applicant continue to have a security clearance.

The SOR alleges that Applicant's parents and siblings, as well as his extended family are citizens and residents of India. (1.a-d) The SOR also alleges that Applicant has financial interests in India, to include stocks, four bank accounts and a property in India. (1.f-1.h)

Applicant admitted the Guideline B allegations with explanations. Applicant's parents, brother and sister are citizens and resident of India. The last time he saw his family was in 2014 in a local attorney's office. A major dispute occurred over property that his father purchased for the family in 2005 when Applicant married his second wife. Applicant referred to a Memorandum of Understanding that was issued previously that the property was for he and his siblings. The property is now worth over \$1 million, but his father told Applicant that he has no rights to the property. Applicant is now not

included in the record as an owner. At this time he is not speaking to his family. Applicant's father wants his son to return to India and Applicant has no desire to do so. (Tr. 32) His wife does not wish to return to India either. She wants to live in the United States with her two daughters. Applicant stated that there is no hope of reconciliation with his family. Applicant received a birthday call from his parents in 2016. He does not call them, and stated that when he sees the area code, he does not answer the phone. (Tr. 58)

Applicant's father had a family business when Applicant was growing up. (Tr. 45) The business has been closed for many years. His father was also a teacher. Applicant sent his parents some money when he first came to the United States, but when he remarried in 2005, he stopped helping them financially. (Tr. 57) Applicant's brother and his father have another business at this time. Applicant does not speak to his siblings. The last time he saw them was in 2014 in the local attorney's office. His brother works in the family business.

The Government acknowledged that Applicant was credible about his estrangement from his family in India. He is closer to his wife's family. Applicant made one trip to India to wed his second wife in 2005. His other trip was in 2014 when he met with his family in the lawyer's office and learned that he was no longer a joint owner of the Indian property. (Tr. 67) He and his wife stayed with his mother-in-law.

Applicant stated that his wife did not even know about the security clearance process until recently when Applicant spoke to his FSO and discussed the hearing. Applicant clarified that he was never a citizen of Canada but lived there and worked there. He and his wife owned a home in Canada, but they sold it when they moved to the United States. (Tr. 69) He is proud to be a first generation U.S. citizen from India and that future generations will be in the United States. He repeatedly stated that his oath of allegiance to the United States is one that he does not take lightly. Nothing could compel him to do something against the United States.

### **Administrative Notice (Republic of India)**

In response to the Government's request, to which Applicant did not object, I have taken administrative notice of the following relevant facts about the Republic of India:

- The 2000 and 2008 Annual Reports to Congress on Foreign Economic Collection and Industrial Espionage identified India as being involved in economic collection and industrial espionage.
- In June 2013, a member of parliament in India and a close advisor to a now-deceased chief minister was among those indicted by the U.S. Department of Justice for allegedly soliciting bribes for himself and other government officials in India in return for approving licenses to mine titanium minerals.

- As of March 2016, India continued to experience terrorist and insurgent activities. Anti-Western terrorist groups active in India, some of which are on the U.S. government's list of foreign terrorist organizations, include Islamist extremist groups Harkat-ul-Jihad, Harakat ul-Mujahidin, Indian Myjahideen, Jaish-e-Mohammed, and Lashker-e Tayyiba.
- As of 2015, the most significant human rights problems involved police and security force abuses, including extrajudicial killings, torture, and rape: corruption remained widespread and contributed to ineffective responses to crimes, including those against women, children, 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. A lack of accountability for misconduct at all levels of government persisted, contributing to widespread impunity.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>2</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>3</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>4</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>5</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>6</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that

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<sup>2</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> Directive, ¶ 3.2.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>10</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>11</sup>

## **Discussion**

### **Guideline B (Foreign Influence)**

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

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, such considerations as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Four disqualifying conditions under this Guideline are relevant:

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;

AG ¶ 7(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 or technology;

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<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 531.

<sup>11</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

AG ¶ 7(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; and

AG ¶ 7(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 close family ties to his mother-in-law who is a citizen and resident of India, and his financial interest in India establish AG ¶¶ 7(a), 7(b), 7(e), and 7(f). A "heightened risk" is associated with India, given the significant human rights and terrorism problems existent there, and its history of economic collection and industrial espionage.

Application of Guideline B is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.<sup>12</sup> Family relationships can involve matters of influence or obligation.<sup>13</sup> Therefore, Applicant's family ties with his wife's family, property ownership, and other financial interests in India raise concerns for which he has the burden of persuasion to mitigate.<sup>14</sup>

The following mitigating conditions under this Guideline are potentially relevant:

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 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;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or allegiance to the foreign person, 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;

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<sup>12</sup> ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

<sup>13</sup> ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).

<sup>14</sup> ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000) (When an applicant's ties in a foreign country raise a *prima facie* security concern, the applicant is required to present evidence of rebuttal, extenuation, or mitigation sufficient to carry his burden of persuasion that it is "clearly consistent with the national interest" to grant or continue a security clearance on his behalf).

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; and

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 the individual.

For the reasons set out in the discussion of AG ¶¶ 7(a), 7(b), 7(e) and 7(f), above, AG ¶ 8(a) is not established.

Applicant has lived in the United States since 1999. He was naturalized in 2009. His marriage is to a naturalized U.S. citizen. He has two children who are U.S. citizens. Applicant has been estranged from his 20- year-old son since 1999. There is no hope for a future relationship. He is now estranged from his parents and siblings due to a property dispute. He does not communicate with them or care to see them. The last time he saw them was in 2014 for a legal reason. None of his family or in-laws have connections to the Indian government.

Applicant has such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in favor of the U.S. interest. There is little likelihood that Applicant's communications with his Mother-in-law could create a risk for foreign influence or exploitation. Applicant's Indian bank accounts are dormant for the most part. He will sell the Indian property that he and his wife own as soon as he is able. His financial status in the United States far outweighs the financial interests in India. His stocks are not worth as much as his liquid assets in the United States. Neither the bank accounts or Applicant's stocks are of any financial significance to Applicant, in light of his substantial retirement and savings accounts and his home in the United State. Applicant's property interest in India are such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual. I find that mitigating conditions AG ¶¶ 8(b), (c), and (f) apply.

### **Conclusion**

The record does not create doubt about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>15</sup> Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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<sup>15</sup> AG ¶ 2(d)(1)-(9). In that consideration, I gave positive weight to the Applicant's credibility, demeanor and maturity.



### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a-1.h: For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Noreen A. Lynch  
Administrative Judge