



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-07721
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was born and raised in the United States. His spouse's mother, sister, and brother are resident citizens of India. The foreign influence concerns raised by his contacts and bonds with these foreign family members are mitigated by his lifelong ties to the United States. Applicant became delinquent on a secured line of credit, two credit cards, and some medical debts, but he has made progress stabilizing his finances. Clearance is granted.

Statement of the Case

On April 11, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations, and explaining why it was unable to grant him a security clearance. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (EO); 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* (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR on May 20, 2016, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 20, 2016, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant. I scheduled a hearing for August 10, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and 11 Applicant exhibits (AEs A-K) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on August 18, 2016.

At the Government's request and on expressed concerns from Applicant about the dated nature of some of the information relied on by the Government, I agreed to take administrative notice of pertinent facts related to India.¹ The Government's request for administrative notice, dated June 28, 2016, was based on excerpts of publications from the Office of the National Counterintelligence Executive, the National Counterintelligence Center, the Office of the U.S. Trade Representative, the U.S. Department of Justice, the Congressional Research Service, and the U.S. State Department. Excerpts from some of the documents were provided to me at the hearing.²

I held the record open after the hearing for Applicant to submit a response to the Government's June 28, 2016 administrative notice request and to propose some facts for administrative notice. On August 16, 2016, Applicant submitted his response, which included a DOD press release about the Secretary of Defense's visit to India in April 2016; a White House Press Office report of a Joint Statement between the U.S. President and India's Prime Minister of June 7, 2016; and a transcription of a May 4, 2016 proceeding before the Council on Foreign Relations. The Applicant's August 16, 2016 administrative notice response with source documentation was incorporated in the

¹The Government's formal request and the attached documents were not admitted into evidence but were included in the record. I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

² For some of the source information referenced by the Government in its Request for Administrative Notice-India, I was not provided the publication but was given the URL where the information could be accessed, i.e., the 2015 special report from the U.S. Trade Representative; the Department of Justice's (DOJ) *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases*, reportedly updated on January 23, 2015; and from the State Department's Bureau of Consular Affairs, *Passports & International Travel Country Information India*, updated on April 24, 2015, and a Worldwide-Caution Alert dated July 29, 2015. I accessed the DOJ and U.S. Trade Representative documents online and incorporated them in the record. The travel alert was no longer available on the Internet, so the latest update of September 9, 2016, was reviewed consistent with my obligation to consider updated information. Additionally, I note that some of the source information cited by the Government had been updated before its June 28, 2016 Administrative Notice request. For example, the State Department's *Country Report on Human Rights Practices for 2015-India* and its *Country Report on Terrorism for 2015* were released respectively on April 13, 2016, and June 3, 2016. The updated reports of the U.S. State Department are available at www.state.gov.

record without any objection from the Government. The facts administratively noticed after review of the parties' submissions are set forth in the Findings of Fact, below.

Summary of SOR Allegations

The SOR alleges under Guideline B that Applicant's mother-in-law (SOR ¶ 1.a), sister-in-law (SOR ¶ 1.b), and brother-in-law (SOR ¶ 1.c) are resident citizens of India. Applicant is alleged under Guideline F to owe a charged-off debt of \$20,981 (SOR ¶ 2.a), credit card delinquencies of \$486 (SOR ¶ 2.b) and \$1,052 (SOR ¶ 2.c), and four medical collection debts totaling \$567 (SOR ¶¶ 2.d-2.g). When he answered the SOR, Applicant admitted the foreign contact with his spouse's mother, sister, and brother, but he indicated that these foreign relatives had not held any position or affiliation with India's government. Applicant admitted the debt in SOR ¶ 2.a, which was the deficiency balance of a secured loan on a previous residence that he sold in a short sale. He explained that he understood the debt was resolved in the short sale, and that he was working with the lender to "determine the issue and resolve it." He did not recognize either of the credit card debts and indicated that he needed more information. As for the medical collection debts, Applicant admitted that he had "missed" paying the alleged medical bills before they were placed for collection, although he added that they have been paid.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 51-year-old electrical engineer, who has held his current position with a defense contractor since January 2015. He previously worked for the company from June 1996 to February 2005. He was first granted a DOD clearance in approximately July 1996, which was at the secret level. In July 2010, he was granted a top secret clearance. (GEs 1, 2; AE A.)

Foreign Influence

Applicant is the son of Indian immigrants who came to the United States before he was born in 1966. Raised and educated in the United States, Applicant earned his bachelor's degree in June 1987 and two master's degrees, which were awarded in June 1990 and June 2001. (GE 1; AE A.)

Applicant married his first wife, a native of India, in July 1991. They divorced in June 1994. (GEs 1-2; AE A.) Applicant has had no contact with his ex-wife in over 20 years. (GE 2.) Applicant and his current spouse married in January 1999 in the United States. His spouse is a native of India who became a naturalized U.S. citizen. Applicant and his spouse have three children; twin sons now age 12 and a 14-year-old daughter. (Tr. 52.) Their children are U.S. citizens from birth. (GE 1; AE A.)

Applicant's parents became naturalized citizens in 1980. They reside in the United States. Applicant has two siblings, both of whom are U.S. resident citizens. (GE 1; AE A.)

Applicant's spouse has family ties to India. Her mother, her sister, and her brother are resident citizens of the country. Her mother has never worked outside the home. Her father was a consulting engineer before his death in 2012. (Tr. 38.) Her sister is employed in the hospitality industry in India. She works for an international hotel chain. Her brother is a marketing consultant "in the Internet space." Neither of her siblings has ever worked for the government of India or its affiliates. (GE 2; Answer.) Applicant's spouse also has a niece in India, who is age 24 and employed as a journalist with a local newspaper. (GE 2.)

Applicant has ongoing monthly contact with his spouse's mother, siblings, and niece in India by telephone or electronic media. He and his spouse traveled to India on trips lasting more than 30 days from November 2004 to January 2005, December 2007 to February 2008, and in July 2012. (GEs 1, 2.)

Applicant disclosed his foreign contacts on a Questionnaire for National Security Positions (SF 86) completed on October 22, 2014. Applicant indicated that he did not know the names of the employers for his spouse's family members in India. (GE 1.) On January 29, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he had no lasting foreign contacts with anyone in India as a circumstance of his parents' birth. Applicant related that he was unaware whether his mother-in-law had ever been employed. Applicant stated that he was still unaware of his sister-in-law's position with the hotel in India. He learned after he completed his SF 86 that his brother-in-law worked as a marketing consultant and that his spouse's niece worked as a journalist. Applicant admitted that his spouse's foreign family members were aware that he was under consideration for a position that would allow him access to national security sensitive or classified information. Applicant acknowledged loyalty ties to his spouse's family members, but he denied they could be a source of blackmail or coercion. (GE 2.)

At his hearing, Applicant reiterated that he could not be coerced or influenced to act contrary to U.S. interests because of his interactions with his spouse's family members in India. (Tr. 35.) Applicant described his mother-in-law as a "happy homemaker [whose] biggest passion is talking to her daughter every day." (Tr. 38.) His spouse initiates the calls to her mother. (Tr. 61.) Applicant described his brother-in-law's occupation as a "serial entrepreneur" in marketing for small, commercial ventures. Applicant indicated that he knew little of his sister-in-law's employment other than that she was a manager in a hotel. (Tr. 38.) Applicant's spouse contacts her brother on average once a month. Applicant has contact with his brother-in-law "once every three months at best." (Tr. 62.) Applicant has not traveled to India since 2012. (Tr. 39.)

Administrative Notice

After reviewing U.S. government publications concerning India and foreign relations, I take administrative notice of the following facts:

India is the world's largest democracy and its government generally respects the rights of its citizens. India's Prime Minister, Narendra Modi, became head of the Indian government following May 2014 general elections that were considered free and fair, despite isolated instances of violence. Even with its free press and robust democratic political system, a lack of accountability for misconduct in all levels of government persists. Widespread corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children remain significant human rights problems. Separatist insurgents and terrorist groups remain active in areas of conflict, such as Jammu and Kashmir, the northeastern states, and the Maoist ("Naxalite") belt. Insurgents were responsible for numerous cases of kidnapping, torture, rape, extortion, and the use of child soldiers.

Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government's list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. In November 2008, coordinated terrorist attacks in Mumbai targeting areas frequented by Westerners killed at least 183 people, including eight Americans. Approximately 400 people were killed as a result of terrorist activities in India in 2014, although the extremist Maoists, who were responsible for about 160 of the deaths, have not specifically targeted U.S. interests. Recent incidents include an explosion in Bangalore outside of a busy restaurant on December 28, 2014, and an attack by three Lashkar-e Tayyiba (LeT) on a bus and police station in the Punjab on July 27, 2015, which killed four police officers and three civilians and injured 15.

India's size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and is a member of several international organizations, including the United Nations, G-20, Association of Southeast Asian Nations (ASEAN) Regional Forum, International Monetary Fund, World Bank, and World Trade Organization. India is a founding member of the Global Counterterrorism Forum.

The United States has had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. As of 2000, India was listed as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States. More recently, the concerns involve possible illegal exports to India by U.S. firms. In June 2008, the owner of an international electronics company was sentenced to 25 months in prison for conspiring to illegally export 500 controlled microprocessors and other electronic components to government entities in India that participate in the development of ballistic missiles, space launch vehicles, and combat fighter jets. A co-conspirator was sentenced in federal court to four years of probation and a \$5,000 fine. In September

2008, an Indian national and an Indian corporation were indicted in U.S. District Court on charges of illegally supplying the government of India with complex electronic instruments used in the research and development of launching and ballistic missile delivery systems. In November 2011, a senior scientist with a U.S.-based scientific company was arrested for stealing propriety information and providing it to a relative in India who was starting up a competing company. In October 2012, the former export control manager of a U.S.-based company involved in amplifier research pleaded guilty to exporting without required licenses microwave amplifiers with applications in military systems to China and India between 2007 and 2011. In April 2015, the former owner of two U.S.-based defense contracting businesses pleaded guilty to one count of conspiracy to violate the Arms Export Control Act by exporting to India between June 2010 and December 2012 sensitive military technical drawings without prior approval of the U.S. government. India was still on the Office of the U.S. Trade Representative's Priority Watch List in 2015 because of concerns about copyright infringement; patent and regulatory protections; and the production of counterfeit pharmaceuticals shipped to the United States.

The United States recognizes India as key to its strategic interests. Indian counterterrorism cooperation with the United States continued to increase in 2015. In September 2015, the United States and India issued a joint declaration on combatting terrorism. The two countries share common values in the rule of law, respect for diversity, and democratic government. They share security perspectives on China and Asia with regard to the balance of power, on terrorism, Afghanistan, and maritime issues. They have a common interest in the free flow of global trade and commerce, including through vital sea lanes in the Indian Ocean. India continued its engagement with the United States on intellectual property issues by establishing with the Obama Administration a high-level working group on intellectual property that operates under the auspices of the United States-India Trade Policy Forum. Through bilateral dialogue with India, the United States is committed to working with India to achieve its important domestic policy goals of increasing investment and stimulating innovation through intellectual property protection and enforcement.

Since 2002, the United States and India have held increasingly substantive combined exercises involving all military services. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2009, the Obama Administration launched a "Strategic Dialogue" calling for collaboration on energy, trade, education, and counterterrorism issues. In 2015, it expanded to become the "U.S.-India Strategic and Commercial Dialogue," to strengthen cooperation in these areas as well as on climate change. In June 2015, the United States and India signed a new Framework to deepen bilateral defense ties.

During an official visit to India in April 2016 by the then U.S. Secretary of Defense, the United States and India discussed priorities for the upcoming year, which included expanding collaboration under the Defense Technology and Trade Initiative.

They welcomed the efforts by the Indian and U.S. Armed Forces to further expand collaboration, including developing plans for more complex maritime exercises.

During a visit by India's Prime Minister to the White House in June 2016, the United States and India welcomed the significant progress made in bilateral relations and affirmed the increasing convergence in their strategic perspectives and emphasized the need to remain closely invested in each other's security and prosperity. The two countries committed to efforts to combat climate change globally and advance clean energy initiatives in India; to work together to strengthen global nuclear nonproliferation; and as "priority partners" to promote maritime security in the Asia-Pacific and Indian Ocean regions. Recognizing the increasingly strengthening cooperation in defense, the United States formally designated India as a Major Defense Partner. As such, the Modi and Obama administrations reached an understanding under which India would receive license-free access to a wide range of dual-use technologies in conjunction with steps India committed to take to advance its export control objectives. In support of India's "Make in India" initiative, the United States committed to facilitate the export of goods and technologies, consistent with U.S. law, for projects, programs, and joint ventures in support of official U.S.-India defense cooperation. Both governments committed to expand the co-production and co-development of technologies under the Defense Technology and Trade Initiative, and to deepen cooperation on cybersecurity issues and combatting terrorism. The United States and India pledged to explore opportunities to bolster bilateral trade. People-to-people linkages between India and the United States through education, private business opportunities, and tourism were applauded as the foundation for a flourishing bilateral partnership. As Travel and Tourism Partner Countries for 2017, the United States and India committed to facilitate visas for each other's nationals. The United States and India reaffirmed their support for a reformed United Nations Security Council with India as a permanent member.

Financial

In February 2005, Applicant moved his family to another state for a new job with a defense contractor. (GE 1; AE A.) He and his spouse bought a home in May 2005 for \$519,000 (AE A), obtaining a conventional 30-year mortgage for \$404,000, to be repaid at \$2,685 monthly. In October 2007, they obtained a line of credit secured by their home (SOR ¶ 2.a). (GEs 2-4.)

Applicant was laid off in April 2010. He and his family lived on their savings, his unemployment, and apparently credit cards, until November 2010. He testified that once he became unemployed, he was faced with the choice of paying the mortgage or feeding his family, and he chose to provide for his family. (Tr. 40.) Available credit records show that he stopped paying their mortgage almost immediately. (GE 3.) In June 2010, he accepted a contingent job offer that did not materialize. He was unemployed until November 2010. After a couple of months of contract work, in February 2011, he obtained a full-time job back home, which required the family to relocate. (GEs 1, 3; AE A.)

Applicant and his spouse rented a single-family home in their new locale at approximately \$2,000 a month (Tr. 58), and they listed their previous residence for sale. They were seriously delinquent on their mortgage loan and secured line of credit for the home. Their mortgage lender obtained a lien of \$299,054 against them. (AE B.) Available credit records show no activity on the secured line of credit after July 2011. (GE 3.) In April 2012, the lender holding the secured line of credit charged off their account for \$21,428 (SOR ¶ 1.a). (GE 3.) On June 30, 2012, Applicant and his spouse sold the house for \$335,000 in a short sale, which settled the mortgage and also released a \$1,714 lien obtained by the creditor holding the line of credit.³ (AE B.) Applicant was not told at settlement that he had to pay anything on the secured loan, so he assumed the debt had been resolved. (Tr. 42-44.)

Applicant earned around \$120,000 in annual salary in 2011 and in 2012. (Tr. 57.) After being placed on a performance improvement plan at work around October 2012, Applicant lost his job in January 2013. He collected unemployment compensation totaling around \$3,000 for a couple of months. (Tr. 51, 57.) In March 2013, he began working for a company at \$90,000 in annual salary. (Tr. 57.) In May 2014, he was laid off for business reasons. Applicant again accepted unemployment benefits and lived off savings. (GEs 1, 2; AE A.) He earned \$50,000 in 2014 before he was laid off and collected about \$8,000 in unemployment. (Tr. 57.) He relied on consumer credit to meet expenses when he was unemployed, which he now believes was a mistake. (Tr. 36, 54-55.)

In October 2014, Applicant was placed by a technical recruiter in a contract position at \$50 an hour with a defense contractor. (Tr. 58.) On his October 22, 2014 SF 86, Applicant responded affirmatively to an inquiry into whether he had failed to pay federal, state, or other taxes in the last seven years, and explained that he incurred a federal tax debt of \$23,000 for tax year 2011 (not alleged in SOR) because he was given erroneous information by his tax advisor. He indicated that he has been repaying the debt since 2013 under an established tax agreement. Applicant also responded “Yes” to any delinquency involving routine accounts. He listed only his and his spouse’s mortgage that was resolved by the short sale in 2012. (GE 1.) At his hearing, Applicant explained that the tax delinquency was incurred because he had withdrawn funds from his 401(k) account to pay for daily expenses, and he had relied on tax software that failed to indicate a tax liability. (Tr. 44.) He began repaying the debt in 2013 at \$280 a month. A year later, the Internal Revenue Service (IRS) raised his repayment to \$380 a month. (Tr. 53.)

As of November 19, 2014, the lender that held the line of credit was reporting an outstanding balance of \$20,981 after a charge-off of \$21,428 (SOR ¶ 2.a). Applicant was reportedly past due \$1,500 on a credit card with a balance of \$12,889 (SOR ¶ 2.c).

³ The settlement statement from the short sale shows that a \$1,714 bank lien was released. (AE B.) It is administratively noticed that the bank named in the settlement statement was acquired by the bank identified in SOR ¶ 2.a in January 2009. It is unclear whether the \$1,714 was the past-due amount or fees or another obligation. The settlement statement does not indicate that the line of credit was paid off or settled in the short sale, although the lender had apparently not contested the short sale.

Applicant was making timely payments on other credit card debts totaling \$41,546. Three medical debts of \$201, \$201, and \$147 from 2012 were in collection (SOR ¶¶ 2.d-2.f). (GE 3.)

In January 2015, Applicant began his current employment at a starting salary of \$118,000. (AE A; Tr. 58.) During his January 29, 2015 interview with the OPM investigator, Applicant indicated that he was paying the IRS \$380 a month. With his annual tax refunds being applied to his delinquency, he expected to resolve his debt by 2018. Applicant then discussed the delinquent mortgage on his former home that had been resolved in the short sale. After Applicant verified his negative responses to all other financial inquiries, he volunteered that his spouse has had medical issues for the past seven years and that there may have been an account placed in collection. When confronted about the reported outstanding delinquency on the secured line of credit, Applicant expressed his understanding that the debt had been satisfied through the short sale. He indicated that he would make payments if he owes anything on the loan, although he had not been contacted about the debt. As for the \$1,500 past due on a credit card account (SOR ¶ 2.c), Applicant expressed no knowledge of any delinquency, but he would review his credit history and pay any delinquency by late 2015. Applicant did not dispute the three medical collection debts. He attributed the delinquencies to the fact that his spouse handles their finances. Also, they receive many medical bills at once and may have overlooked them. Applicant indicated that he had not had any credit counseling, and while his financial situation could be better, he was able to pay his bills. (GE 2.)

On September 29, 2015, Applicant completed an SF 86 for security clearance eligibility with his current employer. He listed his income tax delinquency from 2011, which he indicated was now about \$18,000. In contrast to his October 2014 SF 86, he responded affirmatively to an inquiry concerning whether he was currently utilizing or seeking assistance to resolve financial difficulties. He explained that he and his spouse were working with their tax and financial planner to get their large credit card debt balance under control and consolidate repayment into one loan at a low interest rate. Concerning routine financial delinquencies, Applicant listed the mortgage settled through the short sale; the line of credit debt for \$21,000, indicating that the lender was a party to the short-sale agreement; and \$348 in medical collection bills. He gave a date of October 2014 for resolution, but also stated, "Talking to the company to settle the debt." (AE A.)

As of October 15, 2015, the line of credit debt (SOR ¶ 2.a) was on his credit record as past due for \$5,186 on a balance of \$20,981 as of August 2015. He reportedly owed outstanding balances on three closed credit card accounts with the same lender: of \$10,812 (SOR ¶ 2.b, \$486 past due), \$10,566 (SOR ¶ 2.c, \$1,052 past due),⁴ and \$6,737 (current account, not alleged). He had some open credit card accounts with

⁴ Applicant testified at his hearing that he resumed making payments on his delinquent credit card accounts (SOR ¶¶ 2.b and 2.c) around March 2015, after a collection entity contacted him (Tr. 54), but the accounts were listed on his credit record as seriously delinquent over the summer of 2015. (GE 4.)

balances totaling \$20,366. The medical debts were still on his credit record as unpaid. (GE 4.)

Applicant inquired about his and his spouse's line of credit debt (SOR ¶ 2.a) to determine whether they owed a debt after the short sale. The lender had not responded to his inquiries as of mid-August 2016. (Tr. 66-67.) As of July 2016, Applicant was making payments exceeding his monthly minimum payments on his closed credit card accounts alleged in SOR ¶ 2.b and ¶ 2.c. Creditor billing records show outstanding current balances of \$8,536 (SOR ¶ 2.b) (AE E), \$8,500 (SOR ¶ 2.c) (AE C), and \$5,819 (not alleged) (AE C).

Available medical billing statements (AE F) show that Applicant and his spouse incurred more than \$3,200 in medical copays between April 2015 and June 2016 on medical expenses totaling approximately \$18,000.⁵ (AE F.) Applicant testified that because they are dealing with several different medical providers, they may miss a bill, but they "usually catch up." (Tr. 47-48.) He presented documentation showing medical payments around \$890 since January 2015. Uncorroborated handwritten annotations on billing statements indicate another \$2,457 in payments, mostly by check. Additionally, Applicant arranged for monthly payments of \$102 per month starting in mid-March 2016 to an orthodontist. Billing records show that Applicant and his spouse's account with a hospital was past due as of September 28, 2015, and the creditor placed \$454 for collection by February 2016. As of July 20, 2016, another healthcare provider was reporting a \$126 balance as seriously delinquent. The bill is annotated as paid on July 29, 2016. (AE F.)

Applicant claimed when he answered the SOR that he had paid the medical collection debts alleged in the SOR. None of the account statements in evidence indicate that Applicant had paid the debts. Applicant testified discrepantly that he had left messages with the collection entity, and that his plan as of mid-August 2016 was to wait for a response from the collection entity to resolve the \$567 in debts. (Tr. 46.)

Applicant is currently repaying his tax debt to the IRS at \$380 per month. (Tr. 45.) His installment plan is scheduled to continue until 2021. (Tr. 45.) He continues to rely on his spouse to handle their finances because he works long hours. She manages the household and has not worked outside the home since they married in 1999. (Tr. 52, 56.) He relies on overtime income to meet the household expenses. (Tr. 59.) He pays \$160 per month for his cell phone. His spouse and children are on a separate plan that is \$150 a month. (Tr. 60.) His children's extracurricular activities cost about \$300 a month. (Tr. 61.) After paying the IRS, his credit card and other bills, and recurring living expenses, Applicant and his spouse had nothing left over at the end of the month as of mid-August 2016. (Tr. 59.)

⁵ An accurate figure is not possible in part because Applicant presented duplications of some account statements and incomplete copies of account statements.

Character References

A friend of Applicant's since college in 1984 described Applicant as principled in that he has integrity and is faithful to his values. He also found him to be honest and trustworthy. He is confident that Applicant would never allow himself to be compromised. (AE H.)

An engineer who became acquainted with Applicant in 1991 has seen no reason to question Applicant's integrity. He described Applicant as a diligent worker, and he does not believe he could be compromised in any way. (AE I.)

A former co-worker, who mentored Applicant during Applicant's first tenure with his current employer starting in 1996, indicated that Applicant was a fast learner, very adaptable, diligent, and ethical with him and their team. Applicant successfully contributed to the team while learning from others to meet project milestones. This former co-worker also had social interaction with Applicant at each other's homes for festive and religious occasions. He found Applicant to be a dedicated son, committed husband and father, and a great friend. Fully confident in Applicant's character, ethics, and capabilities, he expressed no hesitation in recommending Applicant. (AE J.)

Applicant has continued to conduct himself without reproach in his current position. A senior principal engineer on their team indicated that Applicant "continually demonstrates he is a dedicated team-oriented employee." He has been loyal and forthright in his work activities. (AE G.)

Applicant's overall performance for 2015 met his employer's requirements. He was well organized, needed minimal supervision, managed suppliers well, and demonstrated reliability, conscientiousness, and flexibility. (AE K.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 are required to 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 overall 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 to obtain a favorable security 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 that the applicant may deliberately or inadvertently fail to 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 EO 10865 provides that 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 articulated in AG ¶ 6:

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.

Applicant has foreign connections through his spouse that present a potential risk of divided loyalties or undue foreign influence. Applicant's mother-in-law, brother-in-law, and sister-in-law are resident citizens of India. Three disqualifying conditions under AG ¶ 7 are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The salient issue under AG ¶¶ 7(a), 7(b), and 7(d), is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

India and the United States have a strategic partnership of increasing importance to both countries. They have common values in the rule of law, respect for diversity, and democratic government and share interests in promoting global security, stability, and economic prosperity. India is an ally in counterterrorism efforts. The military-to-military relationship has grown in the last decade, and the United States has become one of India's largest trade and investment partners. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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. *See* ISCR Case No. 02-

11570 at 5 (App. Bd. May 19, 2004). India was among the most aggressive collectors of U.S. economic intelligence as of 2000. There is no recent report showing direct involvement by the Indian government targeting the United States. However, U.S. government contractors have been implicated in economic espionage activity in the United States to benefit India as recently as December 2012. The United States remains concerned about India's inadequate protection of U.S. intellectual property.

There is no evidence that Applicant's spouse's close family members in India have been targeted or pressured. Nothing about his spouse's family members' previous or present occupations or activities creates a heightened risk. To Applicant's knowledge, none of them had a direct affiliation with the Indian government, or any military, security, or intelligence responsibilities. Considering the democratic nature of the Indian government and society, it may be unlikely that the Indian government would resort to coercive means to obtain sensitive information. India faces threats by terrorist groups that have demonstrated a willingness and ability to strike civilian targets, including places frequented by foreign tourists. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Since the Mumbai attacks in 2008, India has taken security measures designed to combat and minimize the risk presented by terrorism.

Yet, there are several factors, which collectively if not on their own create a heightened risk of undue foreign influence. Applicant's spouse calls her mother daily. Applicant has at least monthly contact with his mother-in-law and quarterly contact with his spouse's siblings. Primarily through his spouse, Applicant has close bonds to and frequent contact with family members in India. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." See ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002). Applicant has not rebutted that presumption. AG ¶¶ 7(a), 7(b), and 7(d) apply.

Concerning potential factors in mitigation, 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 U.S.," is difficult to satisfy, given the ongoing risk of terrorist activity by rogue elements in India, although there is no evidence that Applicant's spouse's family members have been targeted or victimized.

There is nothing unusual about the nature and extent of Applicant's contacts with his spouse's family members in India. Even so, 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," cannot reasonably apply in light of the close bond his spouse has with her mother, as evidenced by their daily contact.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant has no loyalty to India, although during his OPM interview, he professed loyalty to his spouse’s family members in India. Applicant’s ties to India through his spouse cannot reasonably be characterized as “so minimal” to not pose a risk of a conflict of interest.

However, Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States. He has no ties of his own to India apart from ethnic heritage. Applicant and his three children are lifelong resident citizens of the United States. Applicant obtained his education in the United States and has pursued his career as an engineer in the United States. There is nothing about his present lifestyle that is inconsistent with his U.S. citizenship. He has no foreign assets and his travel to India has been infrequent and only to visit his spouse’s relatives.

As with many immigrants to the United States, Applicant’s spouse has ongoing ties of affection and obligation to immediate family members in India. It would be unreasonable to expect otherwise. Applicant’s ties to these foreign nationals have not been shown to be closer than one would ordinarily expect of an in-law relationship. Applicant had only limited knowledge of his brother-in-law’s work when he applied for security clearance eligibility. He knows that his sister-in-law works in hotel management, but is unaware of her specific position, so their relationship does not appear to be particularly close. Applicant has not sought to establish ties of his own to India that could cast some doubt about his commitment to the United States. The foreign influence concerns have been mitigated.

Guideline F, Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant and his spouse became seriously delinquent on the mortgage payments for the home that they purchased in May 2005 and on the secured line of credit they obtained in October 2007 as a second mortgage. Their primary mortgage was satisfied through a short sale in June 2012. The lender for the secured line of credit received only \$1,714 in the short sale after charging off their account for \$21,428. As of

August 2015, the creditor was reporting the account as \$5,186 past due on a balance of \$20,981 (SOR ¶ 1.a). It is unclear whether Applicant will be pursued for the debt, given the creditor's charge off, consent to the short sale, and no apparent recent attempts at collection. Even so, disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply because of Applicant's loan default and the delinquencies alleged in SOR ¶¶ 2.b-2.g. As of September 2015, Applicant was \$486 (SOR ¶ 2.b) and \$1,052 (SOR ¶ 2.c) past due on two credit cards with respective balances of \$10,812 and \$10,566. Four medical debts were in collection totaling \$567 (SOR ¶¶ 2.d-2.g).

The evidence also establishes that Applicant incurred a federal income tax liability of approximately \$23,000 for tax year 2011 because of his premature withdrawal of 401(k) funds to pay living expenses when he was unemployed.⁶ Applicant's income tax delinquency was not alleged, presumably because he was making payments of \$380 per month under an established installment agreement with the IRS. Debts not alleged cannot provide a basis for disqualification, but they are relevant when assessing mitigation, including whether he has taken steps to resolve debts other than those alleged in the SOR as part of a reasonable plan to address financial issues of security concern.⁷

Mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," does not fully apply. While the secured line of credit account became delinquent around 2011, the credit card accounts in SOR ¶¶ 2.b and 2.c did not become seriously past due until 2015. The medical debts in SOR ¶¶ 2.d-2.f are from 2012, but the \$18 medical collection debt (SOR ¶ 2.g) is from May 2014.

Applicant's financial struggles began after he was laid off in April 2010. He supported his family on his unemployment compensation, savings, and reliance on consumer credit cards until February 2011. Applicant's unexpected job loss is a circumstance contemplated in AG ¶ 2(b), which provides:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

⁶ Applicant still owed approximately \$54,435 in credit card debt as of November 2014. (GE 3.)

⁷ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). As to whether an applicant has demonstrated a reasonable debt resolution plan, the DOHA Appeal Board has also indicated that there is no requirement that the first debts paid in furtherance of a reasonable debt resolution plan be the debts listed in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008).

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

Applicant gained employment in February 2011 at an annual salary of approximately \$120,000. He and his spouse had high living costs in their new area while owing more on their previous residence than it was worth. Even so, unemployment appears to be less of a factor in their default on the secured line of credit than their decision to pursue a short sale to resolve their delinquent first mortgage. Applicant exacerbated his financial problems by relying heavily on credit cards when he was out of work. Nondiscretionary medical expenses can trigger AG ¶ 20(b). Applicant did not elaborate as to the extent of his medical copayments in 2012 when the medical collection debts in SOR ¶¶ 2.d-2.f were incurred, although his spouse had been having medical problems for about four years. Applicant provided evidence of his spouse's ongoing medical issues and copayment responsibility for at least \$3,200 of \$18,000 in medical expenses between April 2015 and June 2016. The medical debts at issue went to collections because they were overlooked and not because of unemployment.

Applicant's evidence falls somewhat short of demonstrating the financial responsibility required for full application of AG ¶ 20(b). Concerning the secured line of credit (second mortgage), Applicant acted reasonably to pursue a short sale, and the lender in SOR ¶ 2.a accepted \$1,714 in the short sale to release the lien against Applicant's property. Yet, the secured line of credit still appears on his credit record as a delinquent account for \$20,981 as of June 2015. Applicant provided no detail about when he inquired about the debt, which he believes was resolved in the short sale. Applicant exercised poor financial judgment when he allowed credit card accounts to go to collections in 2015, despite having a steady income amounting to \$118,000 annually. He has an obligation to his creditors to ensure that debts are paid on time, even if his spouse handles their finances. Applicant has not credibly explained his failure to pay the medical collection debts that total only \$567. Applicant was informed about the debts during his OPM interview in January 2015, notwithstanding his recollection to the contrary. His current plan for resolution is to wait for a response from the collection entity. Whether because of other financial burdens, an unwillingness to confront his spouse, or other cause, he failed to take timely action to address his delinquencies.

Concerning AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," recent billing statements from July 2016 show that Applicant was paying more than the monthly minimums on the credit card accounts in SOR ¶ 2.b and ¶ 2.c, and that the accounts had been brought up-to-date. AG ¶ 20(c) applies to the credit card debts in the SOR. However, where those payments were in response to collection efforts, AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has less applicability. AG ¶ 20(c) may apply to the secured line of credit in SOR ¶ 2.a in that the creditor wrote off his debt and then accepted \$1,714 to release its lien. Neither AG ¶ 20(c) nor ¶ 20(d) applies to the medical collection debts without some proof of payment.

In evaluating an applicant's overall financial situation, the DOHA Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.⁸ In that regard, Applicant has been repaying the IRS since 2013, initially at \$280 per month. His payments have been \$380 per month since 2014. He and his spouse may well have paid some \$4,000 toward their medical bills since January 2015. Applicant is managing to pay his current expenses on time while also reducing his overall credit card debt from \$54,435 in November 2014 to \$48,414 in October 2015. With respect to his closed credit card accounts (SOR ¶¶ 2.b and 2.c), Applicant had paid another \$2,000 toward each debt as of July 2016. He had paid \$918 toward his third account with the creditor. Applicant is not likely to engage in criminal activity to generate funds to pay \$567 in medical collection debt. Applicant's reliance on overtime income to meet his household expenses and debt payments as of mid-August 2016 engenders some concern. He is still burdened by large credit card balances, by approximately \$18,000 in outstanding federal tax debt for 2011, and by medical bills. One has to question Applicant's financial priorities, given he is paying around \$310 per month for cell phone services while some medical debts are overlooked, including an \$18 raised as an issue for his security clearance eligibility. That being said, the DOD is not in the business of debt collection, and Applicant has demonstrated a willingness to satisfy his debts within his means. Unwanted medical expenses continue to stress their finances, but Applicant and his spouse are paying their living expenses and credit card bills on time. The financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine

⁸ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

adjudicative process factors in AG ¶ 2(a).⁹ The analyses under Guideline B and Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant's finances have been negatively impacted by periods of unemployment and medical expenses for the past seven years. Applicant took an early withdrawal of 401(k) funds to cover living expenses when he was unemployed. Applicant did not elaborate about the amount of the 401(k) withdrawal, but he incurred a tax debt of approximately \$23,000 that he has paid down to \$18,000. He still owes a substantial amount of credit card debt, but it is current. The positive recommendations from character references weigh in his favor and provide confidence that he will continue to make the payments on his debts. For the reasons noted, I conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

Formal Findings

Formal finding for or against Applicant on the allegation set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, is:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraphs 2.a-2.g: For Applicant

⁹ The factors under AG ¶ 2(a) are as follows:

(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.

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.

Elizabeth M. Matchinski
Administrative Judge