



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-07904

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: Eric Eisen, Esq.

06/02/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns regarding family members in India and his Indian passport. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On February 28, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). 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) effective within the DOD on September 1, 2006.

In a letter notarized on March 12, 2016, Applicant admitted all allegations under Guideline B, denied the sole allegation under Guideline C, and requested a hearing. I was assigned the case on October 16, 2016. On March 3, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for April 3, 2017. The hearing was convened as scheduled.

The Government offered two documents, which were accepted into the record without objection as exhibits (Exs.) 1-2. The Government also submitted a request for administrative notice concerning certain facts regarding the country at issue, the

Republic of India (India). Applicant noted no objection, but stated his position that the package was inapplicable in this case. It was accepted as hearing exhibit (HE) 1.

Applicant gave testimony and offered three files of information, which were accepted into the record as Exs. A-C without objection. At the onset of the hearing, the Government moved to amend the SOR and withdraw the allegation set forth under Guideline C. With no objection, that motion was granted and the SOR was appropriately amended. The transcript (Tr.) of the proceeding was received on April 12, 2017. The record was then closed. Based on a thorough review of the case file, I find that Applicant carried his burden in mitigating security concerns arising under Guideline B.

### **Request for Administrative Notice**

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the Republic of India (India). Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (*citing* ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from Government reports. Various facts pertaining to this nation were derived from the offered request and its attachments.

India is a sovereign, secular democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.2 billion. Since gaining independence in 1947, India has had a tumultuous history, and continues to experience terrorist and insurgent activities.

The Indian government generally respects the rights of its citizens. The most significant human rights problems still existent are prison and security force abuses including extrajudicial killings, torture, and rape. Authorities infringe on citizens' privacy rights, and corruption exists at all levels of government.

India, along with other countries, has been involved in criminal espionage and cases involving violation of U.S. export controls. Cases have involved the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their delivery. Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program, and its cooperation with Iran in some policy areas, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, fighting terrorism, and creating a strategically stable Asia.

India and the United States are partners in the fight against global terrorism. A Bilateral Counterterrorism Cooperation Initiative was launched in July 2010. As of 2011, the number of terrorist-related deaths had decreased. The State Department's Anti-Terrorism Assistance program has conducted scores of training courses for Indian law enforcement officials. In 2011, a U.S.-India Homeland Security dialogue was established to foster cooperation on various law enforcement issues. As of November 2012, counter-terrorism cooperation with India was described as a pillar of the bilateral relationship between the two countries.

### **Findings of Fact**

Applicant is a 47-year-old security administrator working for a defense contractor. He has been employed by the same entity since 2015. He previously held a security clearance without adverse incident that was subsequently withdrawn due to non-use. He is married and has two children.

Applicant was born in India, where he was raised and educated, eventually earning a bachelor of science degree in 1991. That year, at age 21, he came to the United States to pursue a master's degree in the sciences. In 1997, Applicant and his present wife were brought together in an arranged marriage while Applicant visited India. Educated and holding a master's degree, she came back to the United States with her new husband after the wedding. The couple settled and had their first child in 2003. In 2007, Applicant and his wife became naturalized United States citizens, and their second child was born. Today, Applicant's wife owns her own company, the same entity for which Applicant works. Meanwhile, their children are busy with the studies and playtime activities typical for their age. At work, Applicant is highly valued. He is noted as being a family man who enjoys the benefits of this country.

At issue are six relatives who are citizens and residents of India: Applicant's father, brother, two sisters, and his parents-in-law. Applicant's father is a former farmer who later became a home builder. Now retired, he lives off the proceeds of rental properties he owns. He was never in or associated with either the government or military of India. Applicant's late mother was a homemaker. Applicant speaks with his father by telephone about every month or two. (Tr. 44) Over the years, Applicant sent approximately \$9,000 to his parents in India. This "pocket change" was sent as a contribution toward Applicant's mother medical bills as she battled cancer. Applicant has not sent his family abroad any money since he applied for a security clearance.

Applicant's brother in India, a retired private sector store owner, is disabled and requires care. (Tr. 47) He has never had an association with the Indian government or military. He was in partnership with Applicant's brother-in-law, and also helped his father with real estate issues. This brother now resides with Applicant's father. Applicant speaks to him by telephone on an irregular basis.

Both of Applicant's sisters are homemakers. One is married to a retired restaurant owner. She and her husband live off rental apartment income. Applicant's other sister is married to Applicant's brother's former business associate. They live off the proceeds from a small business. None of these individuals are or have been

associated with the government or military of India, nor are they dependent on government subsidies. None know that Applicant is applying for a security clearance. Applicant speaks with his sisters every month or two by telephone.

Applicant's parents-in-law, a retired railroad tracker and his homemaker wife, live off proceeds from rental properties. Applicant speaks with them by telephone every few months. Neither individual has been associated with the Indian government or military. Their sons, Applicant's brothers-in-law, are United States citizens working in areas related to information technology. Applicant refers to these brothers-in-law and their respective families as "my wife's family." (Tr. 21) Applicant's wife has no inheritance expectations. (Tr. 50)

Since 2008, Applicant has annually visited India, usually for about a week. Every two or three years, Applicant takes his family with him to India. His main purpose in visiting is to spend time with his father, who is in his 80s. His father visited the United States once, in 1999. Applicant's wife's parents have visited the United States "a couple of times." (Tr. 33) Other than the kin noted above, Applicant has no family or friends in India with whom he maintains regular contact. (Tr. 51)

In sum, Applicant has a net worth of a million dollars. His salary is approximately \$100,000 a year. In last year's tax return filing, he and his wife had a joint gross income of about \$160,000. Applicant recently bought his present home. Along with other United States citizens, he is a co-partner in the ownership of some investment properties. He contributed almost \$600,000 toward the acquisition of these properties, which consist of strip malls which house a major restaurant and chain retail outlets. (Tr. 52)

Applicant votes in United States elections. He considers the United States to be his home. Applicant and his wife have been active with their children's schools. He owns no property abroad, and he has no expectation of inheriting properties located in India. (Tr. 38, 46) He has no assets in India. He has never served in the military of, or worked for, a foreign nation. He has no intention of acquiring a foreign passport in the future. (Tr. 41) He does not consider himself to be a dual citizen, only a citizen of the United States. He prefers the life and education system available in the United States.

## **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 are used 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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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).

## **Analysis**

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

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

Foreign contacts and interests 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 ties of affection, independently or through his spouse, for his father, siblings, and in-laws. Given these facts, disqualifying conditions AG ¶¶ 7(a) and (b) apply:

AG ¶ 7(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, and

AG ¶ 7(b) connection 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.

In finding disqualifying conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist activities have transpired within India. This fact is sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an Applicant may be subject to coercion or undue influence when a third party pressures or threatens an Applicant's family members. Under these facts, while unlikely, third party coercion concern potentially exists in India. Therefore, there is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following apply:

AG ¶ 8(a) the nature of the relationship 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., and

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 interests in favor of the U.S. interests.

The mere possession of close family ties to a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

Applicant made the conscious decision as an adult to come to the United States. Once here, he completed his education, started work in his chosen profession, married, became a naturalized United States citizen along with his spouse, settled, and had two

children. As a family unit, they are thriving in the United States. In addition to his family, his wife's brothers' families, and his work, Applicant has considerable assets in this country and he generates a high income.

In India, Applicant has no financial interests or expectations. His father, a brother, two sisters, and parents-in-law remain as citizens and residents. He has visited them annually without incident. None of them know of his security clearance application. Applicant's main tether to India is his aged father. No foreign relative has a nexus with the government or military of India. All come from the private sector or are homemakers. Those who are retired live off the proceeds from their rental properties. There is no suggestion that Applicant's ties to these family members are as strong as those he has to his wife, children, and life in the United States.

With these factors in mind, the nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and India have a long-standing, stable relationship, and they share common strategic goals. A democracy, India is a partner in combating terrorism. There is no evidence it coerces its citizens in order to manipulate foreign kin. Given the individual involved and the nature of the country at issue, it is unlikely that India would exploit Applicant or his relatives based on their relationships. It is also unlikely that Applicant would have to choose between the interests of his foreign kin and the interests of the United States. AG ¶ 8(a) applies.

Moreover, Applicant has developed strong ties to the United States, which weighs in his favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. Now 47, he has been in this country since he was 21 years old. As previously noted, he chose to immigrate and settle in this country, and he brought his bride to this country to start their life together. Here, they have built a family and made considerable investments. Applicant has no intention of returning to India to live and he does not consider himself a dual citizen, preferring instead his life in this country. Telephone calls and trips to India to see his aged father continue, but have taken a clear second place to Applicant's day-to-day professional and family life here. There is insufficient evidence to conclude Applicant's relationship abroad with his foreign kin is so deep and longstanding as to outweigh these factors. I have no concerns that Applicant would choose his more significant U.S. ties over his foreign connections in the event a conflict of interest arose. AG ¶ 8(b) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under

the guideline at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant comment or emphasis.

Applicant is a 47-year-old man who was born in India, then came to the United States at age 21 to pursue graduate studies. He has since married, settled, become a naturalized United States citizen, and had two children. He owns his own home and has invested about \$600,000 in U.S. rental properties. He earns about \$100,000 a year. His wife is employed. Their children are busy within their community.

In contrast, Applicant's aged father, three siblings, and parents-in-law remain in India. He maintains regular telephonic contact with his father and nominal telephonic contact with the others. Applicant visits his father annually, taking his family with him every few years. None of these foreign kin have a nexus with the Indian government or military. All are from the private sector and live off investment property proceeds, not from the state. Overall, Applicant and his own family are enjoying their American dream and are settled in the United States with considerable domestic holdings. Applicant's loyalties are clearly stacked in favor of his family and life in the United States.

When disqualifying conditions are raised, the burden is placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about himself, his family, his domestic holdings, and the country at issue to mitigate foreign influence security concerns. Clearance is granted

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline C:	WITHDRAWN
Subparagraph 1.a:	Withdrawn

### **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 a security clearance. Eligibility for access to classified information is granted.

---

Arthur E. Marshall, Jr.  
Administrative Judge