



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



In the matter of:)
)
 ---) ISCR Case No. 15-07307
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

08/31/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On May 7, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On April 6, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.² The SOR alleged

¹ GE 1 (e-QIP, dated May 7, 2015).

² Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for

security concerns under Guideline B (Foreign Influence) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR, as there is no receipt in the case file. In a sworn statement, dated April 22, 2016, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 3, 2016. The case was assigned to me on September 19, 2016. A Notice of Hearing was issued on February 23, 2017. I convened the hearing as scheduled on March 15, 2017.

During the hearing, two Government exhibits (GE) 1 and GE 2, one Administrative exhibit, and 13 Applicant exhibits (AE) A through AE M were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on March 24, 2017. The record closed on March 24, 2017.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of India (India) appearing in 13 U.S. Government publications which were identified, but only fragments of extracts of those publications were attached to the request. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding India in publications of the U.S. Department of State,³ U.S. Department of Justice,⁴ the Executive Office of the President of the United States, Office of the United States Trade

access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

³ U.S. Department of State, Bureau of Consular Affairs, *Passports & International Travel, Alerts & Warnings: Worldwide Caution*, updated July 29, 2015; U.S. Department of State, *Quick Facts: India*, dated April 24, 2015; U.S. Department of State, Bureau of Counterterrorism, Ch. 2, Country Reports: South and Central Asia Overview, *Country Reports on Terrorism 2014*, undated; U.S. Department of State, Office of the Coordinator for Counterterrorism, Country Reports: South and Central Asia Overview, *Country Reports on Terrorism 2008*, dated April 30, 2009; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Executive Summary, Country Reports on *Human Rights Practices for 2014: India*, undated.

⁴ U.S. Department of Justice, Press Release, *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases*, updated January 23, 2015; U.S. Department of Justice, Press Release, *Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals*, dated April 2, 2014; U.S. Department of Justice, Press Release, *Former Owner of Defense Contracting Business Pleads Guilty to Illegally Exporting Military Blueprints to India Without a License*, dated April 1, 2015.

Representative,⁵ the Congressional Research Service,⁶ the Office of the National Counterintelligence Executive,⁷ and the Office of National Counterintelligence Center.⁸

The press releases and the summary of cases from the U.S. Department of Justice were presented apparently to substantiate that India actively pursues collection of U.S. economic and propriety information, and, therefore, Applicant's relationships with his various family members and extended family members in India raise suspicion of him. None of the cases cited involves Applicant personally or involved espionage through any familial relationship. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family or extended family, was ever involved in any aspect of the cited cases or ever targeted by any Indian intelligence official. Furthermore, these press releases are little more than self-congratulatory public relations products issued by public relations offices, with the collateral effect of deterring other criminals contemplating possible attacks on our national security.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁹ as set forth below under the India subsection. However, while I do not reject the facts set forth in the various press releases, the inference that somehow Applicant or his family, or his extended family participated in criminal activity was not argued during the hearing and is specifically rejected.

⁵ Executive Office of the President of the United States, Office of the United States Trade Representative, *2015 Special 301 Report*, undated.

⁶ Congressional Research Service, Library of Congress, *U.S.- India Security Relations: Strategic Issues*, dated January 24, 2013.

⁷ Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2008, dated July 23, 2009; Office of the National Counterintelligence Executive, *Foreign Spies Stealing US Economic Secrets in Cyberspace (Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011)*, dated October 2011.

⁸ Office of National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000*, undated.

⁹ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

Findings of Fact

In his Answer to the SOR, Applicant admitted five of the factual allegations pertaining to foreign influence (¶¶ 1.a. through 1.e.) of the SOR. He denied, with brief comments, the remaining allegation. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a defense contractor. He has been serving as a service oriented architecture (SOA) engineer in computer technology since May 2015, and previously held a similar position with another employer from 2008 until 2015. He has never served with the U.S. military or any other military. He is a 1983 high school graduate with a 1990 bachelor's degree. Applicant has never held a security clearance.

Foreign Influence¹⁰

Applicant was born in 1966 in India to Indian citizen-residents. He completed his education in India and worked there as a systems engineer in the private sector for several years. He married an Indian citizen-resident in 1993, and they have a son, born in 1995. Applicant worked for a company with an office in the United States, and when he was given the opportunity to transfer to the United States, he did so. He immigrated to the United States in June 1998, and he has resided in the United States since that time. His wife joined him in 1999, and their son came the following year. Applicant, his wife, and their son were naturalized as U.S. citizens in October 2009. When they became naturalized U.S. citizens, they took an oath of allegiance to the United States. That oath included the words: "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen."¹¹ Applicant renounced his Indian citizenship and surrendered his Indian passport upon becoming naturalized, and he obtained a U.S. passport. Applicant currently possesses an Overseas Citizen of India (OCI) card which is issued to both former and current Indian citizens.¹²

¹⁰ General source information pertaining to Applicant and his family members discussed below can be found in the following exhibits: GE 1, *supra* note 1; and GE 2 (Personal Subject Interview, dated July 8, 2015).

¹¹ 8 C.F.R. § 337.1(a) (1995).

¹² GE 1, *supra* note 1, at 8; Tr. at 51-53. An OCI card holder is entitled to the following benefits: a multiple entry, multi-purpose life-long visa for visiting India; exemption from registration with local police authority for any length of stay in India; parity with non-resident Indians in respect of economic, financial and educational fields, except in relation to acquisition of agricultural or plantation properties; OCI can be used as identity proof for application of PAN Card and driving license as well as for opening a bank account if the OCI card holder is residing in India. An OCI card holder is not entitled to: vote; to be a member of a legislative assembly or of a legislative council or of the Parliament of India; to hold Indian constitutional posts such as that of the President, Vice President, Judge of the Supreme Court or High Court, etc. He/she cannot normally hold employment in the Indian Government. The OCI is similar to the "green card" in the United States. See <https://www.indian.embassy.org>.

Since he emigrated from India in 1998, Applicant has visited India on five occasions, two of which occurred before he became a U.S. citizen: 2003, 2009, 2011, 2014, and 2016. He has no plans to return to India at any time in the near future.

As noted above, Applicant's wife and son are naturalized U.S. citizens residing in the United States, and there appear to be no security clearance issues pertaining to them. His wife served as an agricultural officer with a private company in India, and it is unclear if she has any other current positions other than as a homemaker. Applicant's son – a former Eagle Scout, as well as a member of Phi Beta Kappa – is currently attending medical school in the United States.

There are five other members of Applicant's family who remain citizen-residents of India, in areas relatively distant from publicized terrorist activities. His father, a former civil engineer employed by the local department of public works, retired nearly two decades ago, and he is in his 70s. His mother passed away when Applicant was a child, and his father remarried. Applicant's stepmother is a homemaker, and she is in her 60s. Applicant's nearly 50-year old sister, an insurance company employee, is married to an accountant for a private company, and they have a son who is a physician. Applicant's father-in-law, a retired bank manager, is 70-years old. His mother-in-law is a homemaker in her 60's. Applicant's parents, sister, and in-laws have never had any affiliation with the Indian government or intelligence service. The frequency of Applicant's on-going contacts with the members of his family is varied. He speaks with some members twice a month, and other members every three months.

Applicant contends that he has strong connections to the United States, and he considers them to be stronger than his connections to India. He has made his home here and is raising his family here. He greatly values his country, the U.S., and he will always be loyal to the U.S. He also noted that the value of his assets in India are negligible when compared with his more substantial assets in the U.S.

Applicant's wife purchased an apartment in India in 2009 for \$50,000, and that apartment made it possible for her parents to relocate from a very old house to the apartment. She still holds title to the apartment. While Applicant's father and stepmother receive his father's pension of about \$750 per month, Applicant sends his father \$500 per month for maintenance and medical expenses. Applicant and his wife opened a non-resident India (NRI) account in India, and they normally maintain a balance of \$2,000 in the account to enable them to have access to local funds when they visit India. Neither Applicant nor his wife have any other financial interests, to include real estate and bank accounts, in India. Applicant does not expect to receive an inheritance from his parents.

Applicant's financial interests and investments in the United States generally dwarf his Indian financial interests. He has approximately \$439,025 in real estate (with a \$214,304 mortgage); \$277,023 in retirement accounts; \$14,051 in securities; \$14,318 in certificates of deposit; \$65,028 in savings accounts; \$20,577 in checking accounts; and \$7,000 in personal property.¹³

¹³ AE A (Personal Financial Statement, dated March 12, 2017); AE B (Zillow Home Details, dated March 14, 2017); AE C (Mortgage Statement, dated March 1, 2017); AE D (Account Statement, dated February 28, 2017); AE E

India

In 1947, the United Kingdom partitioned the Indian subcontinent into the largely Hindu India and the Muslim Pakistan, and granted them independence. The relationship between India and Pakistan has been strained, if not actually hostile, ever since, essentially over a dispute about Kashmir. During the Cold War, India's foreign policy was one of nonalignment with either of the two major power blocs. Nevertheless, while the United States generally aligned itself with Pakistan, India moved closer to the Soviet Union and received significant military support from the relationship. However, since the collapse of the Soviet Union in 1991, India has moved closer to the United States. The United States and India are the world's largest democracies, and the United States is India's largest trade and investment partner. They have common principles and shared national interests, including defeating terrorism, preventing weapons proliferation, and maintaining regional stability. They are also both committed to political freedom protected by representative government.

In the course of its history since independence, two Indian prime ministers were assassinated, and there have been continuing hostilities between India and Pakistan. Anti-western Islamist extremist/terrorist groups, including some on the U.S. Government's list of foreign terrorist organizations, are active in India, and there have been Islamic terrorist attacks in India, most notably the coordinated terrorist attacks on multiple locations in Mumbai in November 2008. After the Al-Qaeda attacks on the United States on September 11, 2001, Indian intelligence agencies provided the United States with substantial information on that terrorist organization's activities in Pakistan and Afghanistan. Since that time, the U.S.-India security cooperation has flourished, with greatly increased counterterrorism cooperation. U.S. diplomats rate military cooperation among the most important aspects of the transformed bilateral relations. The two countries have held a series of unprecedented and increasingly substantive combined military exercises.

In 2008, Secretary of State Clinton acknowledged the new administration's desire to "further strengthen the excellent bilateral relationship" between the two countries. There is considerable support for a deepened U.S. partnership with India, and congressional advocacy of closer relations with India is generally bipartisan and widespread. However, disagreements exist. Some Indian officials express concern that the United States is a "fickle" partner that may not always be relied upon to provide the reciprocity, sensitivity, and high-technology transfers sought by India. Some U.S. government officials have criticized India's extensive trade and investment barriers, its nuclear weapons programs, the pace of India's economic reforms, its human rights practices, and its inadequate laws and ineffective enforcement of intellectual property rights protection.

In 2010, addressing a joint session of the Indian Parliament, President Obama noted some fundamental common interests held by India and the U.S. when he said:

(Account Statement, dated February 28, 2017); AE F (Retirement Savings Statement, dated February 28, 2017); AE G (Savings Account Statement, dated February 28, 2017); AE H (Retirement Account, dated December 30, 2016); AE M (Checking Account Statement, dated February 10, 2017).

We are two great republics dedicated to the liberty and justice and equality of all people. And we are two free market economies where people have the freedom to pursue ideas and innovation that can change the world. And that's why I believe that India and America are indispensable partners in meeting the challenges of our time.¹⁴

Under its constitution, India is a “sovereign, socialist, secular, democratic republic.” It is a multiparty, federal, parliamentary democracy, with a bicameral parliament, including the Council of States and the House of the People. While the central government has greater power in relation to its states, the position of president is largely ceremonial. The real national executive power is centered in the Cabinet (senior members of the Council of Ministers), led by the prime minister. India’s independent judicial system began under the British, and its concepts and procedures resemble those of Anglo-Saxon countries. Nevertheless, there are significant human rights issues in India. As of 2014, the most significant human rights problems in India were police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption that contributed to ineffective responses to crime, including those against women 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. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remain serious problems. A lack of accountability for misconduct at all levels of government persists. Investigations and prosecutions of individual cases takes place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contribute to infrequent convictions.

India is reticent to discuss its nuclear security measures or allow inspections. India has also refused to accede to the nuclear Non-Proliferation Treaty, despite U.S. policy supporting its universality.

There is evidence that India and some Indian nationals are active participants in economic espionage, industrial espionage or trade secret theft, and violations of export-control regulations.

Character References

Applicant’s facility security officer supports Applicant’s application and referred to Applicant’s hard work and focused thinking as well as his “deliberate harnessed intelligence.”¹⁵ Two former coworkers, one of whom has known him for 15 years and the other for 12 years, are effusive in their praise of him. One colleague noted that Applicant was focused on volunteering and service, and he was active in the Boy Scouts. Applicant

¹⁴ Congressional Research Service, Library of Congress, *U.S.- India Security Relations: Strategic Issues*, dated January 24, 2013, at 39, citing White House transcript for Nov. 8, 2010, at <http://www.whitehouse.gov/the-press-office/2010/11/08/remarks-president-joint-session-indian-parliament-new-delhi-india>.

¹⁵ AE J (Character Reference, dated January 19, 2017).

is reliable, respectful, encouraging, calm, patient, and positive. He never gossips, teases or is silly, insincere or gushy. He listens when someone speaks, appreciates different views and ways of doing things, and follows through on commitments. He knows how much Applicant “appreciates the opportunities he and his family have been afforded in this open and unstratified society and how precious its security and safety are to him.” Applicant “would not do anything to imperil his family’s future here, no matter what the incentive.”¹⁶

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”¹⁷ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁸

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of

¹⁶ AE K (Character Reference, dated January 29, 2017); AE L (Character Reference, dated July 24, 2016).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²¹

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline B, Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest

²⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²¹ *Egan*, 484 U.S. at 531.

²² See Exec. Or. 10865 § 7.

is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(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 father, stepmother, sister, father-in-law, and mother-in-law are Indian citizens who reside in India. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family member must be analyzed.²³ If only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²⁴ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Moreover, Guideline B is not limited to countries hostile to the United States.²⁵ Furthermore, "even friendly countries can have profound disagreements with the United States over matters they view as important to their vital interests or national security."²⁶ Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is

²³ ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

²⁴ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

²⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) ("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.").

²⁶ ISCR Case No. 00-00317 at 6 (App. Bd. Mar. 29, 2002).

significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.²⁷

As noted above, there is substantial evidence to reflect that India engages in economic espionage, industrial espionage, trade secret theft, violations of export-control regulations, and military intelligence activity directed toward the United States, and that there is evidence of terrorist activities within areas of the country. The activities of Indian authorities as well as those insurgent and terrorist groups, the risks of kidnappings by gangs, and the danger of radicalized ISIL sympathizers in India are sufficient to establish a “heightened risk” – a risk that is greater than the normal risk inherent in having a family member living under a foreign government. In this instance, Applicant’s relationships with his father, stepmother, sister, father-in-law, and mother-in-law, are slightly varied, but they are essentially close, rather than casual. AG ¶¶ 7(a), 7(b), and 7(f) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under 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;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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 of exploitation; and

(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.

AG ¶¶ 8(a), 8(b), and 8(f) apply. AG ¶ 8(c) does not apply. Applicant’s ties to the United States run deep. While he was born in India of Indian citizen-residents, and he attended school in India, his arrival in the United States opened his eyes to the beauty

²⁷ See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

and nature of the United States. He, his wife, and son are naturalized U.S. citizens. His wife and son have also embraced the United States as their home, and it is where they have dedicated their respective lives. His son is an Eagle Scout. The estimated value of Applicant's (and his wife's) foreign financial interests is insubstantial, especially when compared with his financial interests in the United States. Applicant's father, stepmother, sister, father-in-law, and mother-in-law have had no relationship with the Indian government or its military or intelligence services. There is no evidence that they have ever been approached or threatened by a terrorist or anyone affiliated with the Indian government, its military, or intelligence services. They reside in areas relatively distant from publicized terrorist activities.

As one of Applicant's good friends said, Applicant "appreciates the opportunities he and his family have been afforded in this open and unstratified society and how precious its security and safety are to him. . . [and Applicant] "would not do anything to imperil his family's future here, no matter what the incentive." I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the United States, that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest."

The Government has submitted facts to reflect that India engages in economic espionage and military intelligence activity directed toward the United States, as well as the presence of insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of India that might heighten the risk for Applicant's father, stepmother, sister, father-in-law, and mother-in-law residing in India. In such a situation, India and all its citizens become potential victims of terrorism. The terrorism situation is not unlike the situations in other countries that have seen acts of terrorism – France, United Kingdom, Germany, and Belgium – and yet, the "heightened risk" in those countries is considered reduced. In fact, just as U.S. law enforcement and the DOD strive to protect U.S. citizens from terrorists, incidents such as those in Fort Hood, Texas; San Bernardino, California; New York City, New York; and Dallas, Texas, have not raised the banner of "heightened risk" over the United States to suggest that it is unsafe to have family members reside here. With relatively low-profile family members (a retired father and father-in-law, a stepmother and mother-in-law who are homemakers, and a sister who works for an insurance company), there is a very low potential of forcing Applicant to choose between the interests of the United States and those of India, a terrorist organization, or those family members.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁸

There is some evidence against mitigating Applicant's situation. Applicant's father, stepmother, sister, father-in-law, and mother-in-law are Indian citizens residing in India. India engages in economic espionage and military intelligence activity directed toward the United States. There are insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of India that might heighten the risk for Applicant's father, stepmother, sister, father-in-law, and mother-in-law residing in India.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems, or mishandling protected information. As noted above, Applicant's entire life is now centered in the United States. This is where his son grew up and where Applicant, his wife, and son have friends and involvement in community and school affairs. Applicant is well respected by his friends and colleagues. That he and his father, stepmother, sister, father-in-law, and mother-in-law keep in relatively close contact should not be considered a negative factor. (See AG ¶¶ 2(a)(1) through 2(a)(9).)

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign influence concerns. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

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. through 1.f:	For Applicant

²⁸ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge