



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



In the matter of: )  
)  
) ISCR Case No. 15-08322  
)  
Applicant for Security Clearance )

**Appearances**

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

09/01/2017  
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**Decision**  
\_\_\_\_\_

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from India, has mitigated the foreign influence concerns raised by his familial and social relationships with individuals who are citizens and residents of that country, as well as those concerns raised by his financial interests there. Clearance is granted.

**Statement of the Case**

On June 13, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on April 25, 2017, I admitted Government's Exhibits (GE) 1 and 2, and Applicant's Exhibit (AE) A through C, without objection. After the hearing, Applicant timely submitted AE D through H, which were also admitted without objection.<sup>2</sup> I received the transcript (Tr.) on May 4, 2017.

## **Procedural Matters**

### **Amended Adjudicative Guidelines**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about India. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.<sup>3</sup>

## **Findings of Fact**

Applicant has worked for his employer, a federal contractor, since August 2012. He worked for his employer for one year as an independent contractor before being offered full-time employment. In connection with his independent contractor work, Applicant applied for and was granted public trust eligibility in 2011. His duties now require access to classified information. He completed a security clearance application in June 2015, disclosing foreign relatives, foreign travel, foreign assets, and foreign business interests.<sup>4</sup>

Applicant, a naturalized U.S. citizen since 2009, is originally from India, a parliamentary democracy that shares significant strategic interests with the United States, including counter-terrorism cooperation. The two countries have increased trade in goods and services, cooperate on nuclear policy, and engage in mutual efforts to address pollution and climate change. Although largely positive, the relationship between the United States and India is not without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of

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<sup>2</sup> Correspondence regarding the parties' post-hearing submissions is appended to the record as HE IV.

<sup>3</sup> The Government's administrative notice summary and attached documents are admitted to the record as HE III.

<sup>4</sup> Tr. 12, 20-21, 25; GE 1-2; AE D-E.

industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's largest supplier of military systems and spare parts is Russia. Historically the relationship between the United States and India has been favorable and beneficial to both countries.<sup>5</sup>

Applicant immigrated to the United States in 1998 on a work visa. Applicant's wife of 15 years is also a naturalized U.S. citizen. They have one child, age 11, who is a U.S. citizen by birth. Between 1998 and 2004, Applicant worked in the private sector, but was not offered an employee-sponsored retirement savings plan. In 2005, Applicant started his own business, which he operated until he began his current employment in 2012. While self-employed, Applicant developed a retirement savings strategy that included investing in the emerging Indian real estate market. He bought four properties: 2 plots of undeveloped land, 1 rental home, and 1 retail space, before he became a naturalized U.S. citizen. Applicant maintains bank accounts in India. Applicant uses one account to collect rent from his two rental properties. Between 2012 and 2016, he used two accounts to provide money to his wife and daughter. Together, these assets are valued between \$500,000-\$600,000 (USD). The rental properties generate approximately \$20,000 in annual income. Applicant pays taxes to the Indian government on his rental income as required. He also pays U.S. federal taxes on his foreign earned income and discloses his foreign financial holdings annually to the U.S. Department of Treasury as required.<sup>6</sup>

In addition to his foreign assets, Applicant has family members who are citizens and residents of India. At the time he completed his security clearance application, those relatives included his father, brother, sister, and parents-in-law. Applicant's brother is an engineer with an information technology company. His sister does not work. Applicant provides some of her financial support, using money in one of his India-based bank accounts. According to Applicant's security clearance and public trust applications, between 2005 and 2010, he traveled to India twice. During these trips Applicant stayed with his sister, and visited family and old school friends. Outside of those visits, Applicant maintained weekly telephonic contact with his siblings.<sup>7</sup>

In 2011, Applicant's father was diagnosed with a rare degenerative disease. His mother-in-law and her sister were diagnosed with cancer. After Applicant's father and mother-in-law received their diagnoses, Applicant's wife moved to India, taking the couple's young daughter, in order to provide care to the couple's ill parents. From 2011 to 2015, Applicant traveled to India every year. Applicant took three extended leaves of absences from his job to spend time with his family. In 2013, Applicant took 12 weeks of

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<sup>5</sup> GE 1; HE III.

<sup>6</sup> Tr. 19-20, 22-28, 33, 42-47, 53-55; GE 2; AE F.

<sup>7</sup> Tr. 26-27, 33, 36.

leave authorized under the Family Medical Leave Act. In 2014, Applicant took one month of leave without pay. In 2015, Applicant took five months of unpaid leave, this time to help his wife wind down and sell the family entertainment business she operated during her residency. Before each leave of absence, Applicant was required to go through a lengthy approval process, which included getting permission from his government client. Applicant also consulted with his facility security officer to ensure that he was meeting all reporting and briefing requirements.<sup>8</sup>

Applicant's father succumbed to his illness in 2013. Applicant's mother-in-law is in remission and no longer requires daily assistance. As a result, Applicant's wife and daughter returned to the United States in August 2016. The couple also wanted their daughter to begin intermediate school in the United States. Applicant closed the India-based bank accounts related to his wife's business. His other accounts remain open so that he can pay his Indian income taxes and provide money to his sister and parents-in-law as needed.<sup>9</sup>

Reunited with his wife and daughter, Applicant plans to remain in the United States for the near future. Applicant and his wife are employed by U.S.-based companies and earn an annual household income of approximately \$270,000. They have also accumulated almost \$800,000 in U.S.-based assets, including real estate and savings.<sup>10</sup>

## **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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I

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<sup>8</sup> Tr35, 37-40, 43; GE 2; AE A-C.

<sup>9</sup> Tr. 32, 49.

<sup>10</sup> R. 30, 41-42.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

“[F]oreign contacts and interests, including . . . business, financial and property interests, are a national security concern if they result in a divided allegiance [or] . . . 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.” Applicant maintains close relationships with individuals who are residents and citizens of India. He also holds substantial business, financial, and property interests in India. Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S. proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial espionage against the United States. Based on these facts, Applicant’s connections to India raises a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion or personal conflict of interest.<sup>11</sup>

However, the evidence in the record mitigates these concerns. The foreign influence concern in this case was acute while Applicant’s wife and daughter lived in India. Their presence increased Applicant’s familial and financial ties to that country. Applicant’s family is reunited in the United States, his wife’s India-based business has been liquidated and the related bank accounts closed. Accordingly, the foreign influence

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<sup>11</sup> See AG ¶¶ 7(a), (b), and (f).

concerns raised by these relationships and financial interests are mitigated. The concerns involving Applicant's remaining familial ties are mitigated as well. Applicant's relationships with his siblings cannot be considered casual, but neither of his siblings hold positions or engage in activities that could place Applicant in a position of having to choose between his foreign relatives and U.S. interests. In addition to his family members, Applicant maintains social contracts with former schoolmates who are residents and citizen of India. However, these contacts, which are not alleged with any specificity, are so infrequent that these relationships could not create a risk of foreign influence or exploitation.<sup>12</sup>

The concerns raised by Applicant's substantial financial interests in India are also mitigated. Applicant acquired the properties before he became a naturalized U.S. citizen and before he required national security eligibility. The income generated by these assets are not necessary to Applicant's daily maintenance, nor does he require the Indian assets to comfortably provide financial assistance, when needed, to his Indian relatives. Given Applicant's annual household income, his total U.S.-based assets, as well as his regular and candid disclosure of them to the U.S. Government, it is unlikely that his Indian assets could be effectively used to influence, manipulate, or pressure him.<sup>13</sup>

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2(d). In mitigating the foreign influence concerns, Applicant has demonstrated that he understands the importance of disclosing foreign contacts and financial interests. In the years he has held public trust eligibility, he complied with reporting requirements established by his employer and government client. I am satisfied that he will continue to handle these reporting requirements properly as a clearance holder.

### **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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

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<sup>12</sup> AG ¶¶ 8(a) and 8(c).

<sup>13</sup> AG ¶ 8(f).

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge