



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



In the matter of: )  
)  
) ISCR Case No. 16-03270  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

09/18/2017  
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**Decision**  
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DAM, Shari, Administrative Judge:

Applicant mitigated the alleged financial considerations, personal conduct, and foreign influence security concerns. National security eligibility for access to classified information is granted.

**Statement of the Case**

On December 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD 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 for SORs issued after September 1, 2006; and the AG effective within the DOD for SORs issued after June 8, 2017.<sup>1</sup>

<sup>1</sup>I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in reaching this Decision. My decision would be the same under either set of guidelines.

On January 27, 2017, Applicant answered the SOR (Answer), and requested a hearing. On April 24, 2017, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On May 3, 2017, DOHA issued a Notice of Hearing, scheduling the hearing for May 31, 2017. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6. Applicant testified and offered Applicant Exhibits (AE) A through V. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on June 8, 2017. The record remained open until June 23, 2017, to give Applicant an opportunity to submit additional information. He timely submitted documents, marked as AE W, which is admitted into evidence without an objection from Department Counsel.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. The request and the attached documents pertinent to India are included in the record as Hearing Exhibit (HE) 1. Applicant did not object to my consideration of those administrative notice documents. (Tr. 14). The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is 46 years old and married for 22 years. He was born in India and came to the United States in 1997. He earned a bachelor's degree here. In 2009, Applicant obtained a position with a U.S. agency and was granted a public trust determination. He has worked for his current employer, a defense contractor, since 2015. (Tr. 18-19, 39; GE 1; AE J.)

Applicant submitted numerous letters from colleagues and friends, who attest to his honesty and loyalty to the United States. They recommend him for a security clearance. (AE F.) He submitted a copy of an award he received from his employer in 2005, and certificates of completion of work-related courses. (AE I, AE K.)

### **Guideline F**

Based on credit bureau reports (CBR) from September 2015, September 2016, and May 2017, the SOR alleged one delinquent debt from 2014, and two judgments from 2010 and 2012. The allegations totaled \$23,659. (GE4, GE 5, GE 6.)

1. The \$16,950 debt alleged in SOR ¶ 1.a was a line-of-credit Applicant took out in 2009 for home improvements. He made monthly payments of \$700 on it until 2013 or 2014 when he defaulted. He stopped making them because the interest rate increased, and he could no longer afford the payments. He said he tried to

negotiate the rate beginning in 2014, but the creditor was unwilling. In February 2017, he settled and paid the debt for \$6,000. (Tr. 22-23, 42-43; AE B, AE N.)

2. The August 2012 judgment alleged in SOR ¶ 1.b for \$4,905 was paid and released in December 2012. It involved a dispute with a car dealership about a repair bill. He continues to use the dealership for repairs. (Tr. 23-26; AE C.)
3. The July 2010 judgment alleged in SOR ¶ 1.c for \$1,804 was paid and released in September 2010. It involved a dispute with a homeowner's association. (Tr. 26-29; GE 4; AE L.)

Applicant and his wife have a combined annual income of about \$175,000. They also have about \$90,000 in retirement accounts held in the United States. They are financially stable. They have no outstanding debts. (Tr. 29-30.) He completed financial and credit counseling courses in March 2017. (AE P.) He now monitors his credit through a reporting agency. (Tr. 33.)

### Personal Conduct

When Applicant completed his August 2015 security clearance application (SCA), he did not disclose the 2010 and 2012 judgments mentioned above. He said that he did not obtain a credit report before he filled out the SCA. He also said he had paid those judgments by the time he submitted the SCA so he did not think they would be on his credit report and information he was required to report. (Tr. 31-32.) When asked during a background interview in May 2016 if he had any judgments, Applicant volunteered that he had two judgments, one from 2012 and 2010. (Tr. 45-56; GE 3.)

Applicant also did not disclose in his August 2015 SCA the delinquent line of credit loan. He said he did not intentionally attempt to hide the debt. (Tr. 32.) He explained that he used his 2009 SCA as a template for completing the 2015 SCA, and in 2009 he did not have any delinquent loans. During the May 2016 interview, when asked whether he ever defaulted on a loan, Applicant volunteered information about the line-of-credit problem. He told the investigator that he did not list it on his August 2015 SCA because when he submitted the SCA, he was attempting to resolve it and did not consider it to be in default. (GE 3.) He said he should have read the questions on the SCA more carefully. (Tr. 45.)

## Foreign Influence

India:<sup>1</sup>

India is the most populous democracy in the world. There have been incidents in the past when parties in the United States attempted to export military or dual-use technologies to India. There have been numerous and recent cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving the government of India, private companies, and individuals in India. In addition, there is a history of political differences between the United States and India. Finally, there are concerns with widespread human rights problems and terrorist activity, particularly in northwest India. (HE I.)

The President of the United States and the Prime Minister of India signed the “Delhi Declaration of Friendship.” The Office of the Press Secretary at the White House issued a press release about the Declaration. India has emerged as a growing partner and “we see India’s emergence as good for the United States and good for the world.” The United States and India collaborate on economic growth, advancements in energy and climate change, defense, and homeland security. Both countries renewed the “2005 Framework for the U.S.-India Defense Relationship” in 2011. India’s tremendous economic growth offers a key market for U.S. exports, and India is among the “fastest growing investors in the United States.” Trade between the two nations is strong. (HE A.)

Applicant was born in India. He graduated from high school in 1989. He entered the United States in 1997 and became a U.S. citizen in 2001. His parents were born in India. His mother is a naturalized U.S. citizen and his father has applied for U.S. citizenship. They have resided with Applicant since late 2014. His father is retired. He worked for an Indian tax department and receives about \$250 a month as a pension. Applicant has three siblings, all of whom were born in India and reside there. He calls them once or twice every couple months. Applicant does not have communication with other relatives in India. (Tr. 19, 49, 53; GE 3.)

Applicant and his wife married in 1995. She was born in India. She is a naturalized U.S. citizen. She earned a bachelor’s degree from a U.S. university. All three of their children were born in the United States. (Tr. 52: GE 1.) His wife’s entire family has been living in the United States for 30 years. (Tr. 49.) The last time Applicant visited India and his family was in 2012. He stayed for two weeks. (Tr. 48, 54.)

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<sup>1</sup>All of the following statements are supported by documents submitted by the Department Counsel in HE I, which is a request for administrative notice.

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing 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 applicable guidelines in the context 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 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of EO 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination 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 F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated one large delinquent debt and two judgments between 2010 and 2014 that he had been unable or unwilling to resolve. They totaled \$23,659. The evidence raised the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate security concerns arising from financial problems:

- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

In March 2017, Applicant completed financial and credit counseling. There are clear indications that the SOR allegations are resolved and his finances are under control. The evidence establishes full mitigation under AG ¶ 20(c). Applicant paid the three alleged debts, which showed some good-faith effort to resolve his debts. He now monitors his credit report to avoid similar problems. AG ¶ 20(d) applies.

### **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he intentionally omitted information about delinquent accounts in his 2015 SCA. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant explained that he did not disclose two judgments because he had resolved them prior to submitting the SCA and did not think he was required to disclose them. He acknowledged that he did not disclose a delinquent line-of-credit because he used his 2009 SCA as a template when he completed his 2015 SCA, at which time he did not have delinquent accounts. He admitted that he made a mistake and did not carefully read the questions.

After listening to Applicant's testimony, observing his demeanor, and reviewing his interview with a government investigator to whom he volunteered information about the judgments and delinquent account, I find his explanation for the omissions sufficiently

credible. He did not intentionally falsify the 2015 SCA, but instead made a negligent mistake. Hence, the evidence does not establish deliberate falsification and this guideline and is found in his favor. A discussion of mitigating conditions is not required.

### **Guideline B: Foreign Influence**

The security concerns relating to the guideline for foreign influence are 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 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.

AG ¶ 7 lists two conditions that could raise security concerns and maybe disqualifying in this case:

(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; and

(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.

Applicant's three sisters are citizens and residents of India. India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and has a history of seeking restricted dual-use technology, which has been illegally exported to India from the United States. Those facts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion and also creates a potential conflict of interest for Applicant. AG ¶¶ 7(a) and (b) have been raised by the evidence.

AG ¶ 8 provides three conditions that could mitigate security concerns raised under this guideline:



(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; and

(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.

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 Applicant and his three sisters are vulnerable to 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 upon that government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. India has a close, friendly relationship with the United States, but there is evidence that India illegally targets U.S. technology, which raises a security concern about Applicant's relationship with sisters. Given the familial nature of these relationships, there is a possibility that Applicant could be placed in a position of having to choose between the interests of India and the United States, in the event he had access to classified information. Hence, AG ¶ 8(a) has limited application.

Applicant produced evidence to establish mitigation under AG ¶ 8(b). He has lived in the United States since 1997. He became a naturalized U.S. citizen in 2001. His children were born in the United States. His wife and mother are U.S. citizens and residents. His father resides with him, and has applied for U.S. citizenship. His financial accounts are in the United States. He received support from colleagues for his work performance, who also attest to his honesty. He has worked for a defense contractor since 2015, and previously a U.S. agency. Based on these deep connections to the United States, there is sufficient indication that he can be expected to resolve any conflict of interest in favor of the U.S. interests. AG ¶ 8(b) applies.

Applicant communicates with his three sisters every couple months. While these contacts demonstrate a familial attachment and are to be admired, they cannot be construed as infrequent or casual under this guideline. The evidence does not establish mitigation under AG ¶ 8(c).

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is a 46-year-old man, who was born in India and has been in the United States since 1997. He became a U.S. citizen in 2001. His wife, children, and mother are citizen residents of the United States. His father is a U.S. resident and has applied for citizenship. Applicant's colleagues recommend him for a security clearance. When Applicant completed a SCA in 2015, he did not disclose some financial delinquencies but volunteered information about them during an interview. He resolved the three financial obligations that totaled \$23,659. Overall, the record evidence leaves me without doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He met his burden to mitigate the security concerns raised under the guidelines for financial considerations and foreign influence. Personal conduct concerns were not established.

## Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs: 1.a – 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

Paragraph 3, Foreign Influence:

FOR APPLICANT

Subparagraph 3.a:

For Applicant

**Conclusion**

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

SHARI DAM  
Administrative Judge