



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02199

Appearances

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

11/21/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant has greater connections to the United States than to India. Applicant, his spouse, and his two children are citizens and residents of the United States. They are not citizens or residents of India. His financial connections to the United States, not including his U.S. employment, are about five times greater than his financial connection to India. In 2000, his father retired from his Indian Government employment in tax collection. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 24, 2015, Applicant signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On August 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). Hearing Exhibit (HE) 2. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006 (Sept. 1, 2006 AGs).

On September 15, 2016, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On October 18, 2016, Department Counsel was ready to proceed. On April 7, 2017, the case was assigned to me. On July 3, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 19, 2017. HE 1. Applicant's hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. Tr. 14.

During the hearing, Department Counsel offered one exhibit; Applicant offered 12 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 17-24; GE 1; Applicant Exhibits (AE) A-L. On July 27, 2017, DOHA received a copy of the transcript of the hearing.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning India. HE 4. The request listed supporting documents to show detail and context for those facts. Department Counsel's AN request is quoted at pages 4-6 *infra*, with footnotes in the original omitted and minor grammatical changes. The first two paragraphs were based on State Department documents and one White House document.² AG ¶ 6, Foreign Influence, provides, "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." A risk assessment in this case necessitates administrative notice of facts concerning 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.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

² U.S. Department of State, *U.S. Relations With India*, Bureau of South and Central Asian Affairs, Fact Sheet (Oct. 9, 2015), <http://www.state.gov/r/pa/ei/bgn/3454.htm>; U.S. Department of State, *Background Note, India* (Apr. 17, 2012), <http://www.state.gov/outofdate/bgn/india/200052.htm>; The White House website, Office of the Press Secretary, *U.S.-India Joint Statement, "Shared Effort; Progress for All,"* (Jan. 25, 2015), <https://www.whitehouse.gov/the-press-office/2015/01/25/us-india-joint-statement-shared-effort-progress-all>.

02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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).

Findings of Fact³

The SOR alleges in ¶ 1.a that Applicant's father is a citizen and resident of India, and he is employed by the Indian Government as a tax collector; in ¶¶ 1.b and 1.c that his mother, three sisters, brother, father-in-law, and mother-in-law are citizens and residents of India; and in ¶ 1.d that he owns real estate in India valued at about \$120,000. Applicant admitted all of the SOR allegations, and he provided extenuating and mitigating information. He explained his father retired from his Indian Government position, and he has substantially more property in the United States than in India. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 41-year-old senior software engineer employed by a defense contractor. Tr. 6, 9. In 1994, he graduated from high school, and in 1999, he received a bachelor's degree in computer science and engineering. Tr. 7. He earned his bachelor's degree in India. Tr. 28. He has never served in the military of India or the United States. Tr. 7, 30. In 2004, he married, and his children are ages seven and nine. Tr. 7-8. His two children were born in the United States. Tr. 8.

Applicant emigrated from India to the United States in 2005 when he was 28 years old. Tr. 25-26. In 2012, Applicant and his spouse were naturalized as U.S. citizens. Tr. 27, 30. He was employed as a software engineer in India before emigrating from India to the United States. Tr. 29. The Indian Government did not employ him. Tr. 29. He has never seen information classified by the Indian Government. Tr. 30. His spouse is an engineer employed by an agency closely associated with the U.S. Government. Tr. 30.

Applicant's father is a citizen and resident of India. In 2000, he retired from his Indian Government employment where he worked in tax collection, and he is not employed. Tr. 15, 31. He receives an Indian Government pension. Tr. 42. His mother does not work outside her home. Tr. 31. None of Applicant's family served in the Indian military. Tr. 31. When Applicant was 10 years old, his father purchased some real estate in India, and his parents and brother live on the property. Tr. 16, 32. The property is in Applicant's name; however, he does not believe he owns it as it is more of a family property. Tr. 36-37. He does not have control over the real estate in India as it is jointly held with his father. Tr. 43-44. He is willing to formally relinquish any right or interest he might have in the property. Tr. 36-37. He does not have an Indian bank account. Tr. 42. Applicant does not receive any benefits from India. Tr. 43.

³ To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

Applicant's brother is a corporate lawyer. Tr. 32. His brother's spouse has passed away. Tr. 32. Applicant has not purchased any property in India. Tr. 16. He communicates with his mother, who is a citizen and resident of India, about twice a month. Tr. 17, 31. He communicates with his brother every few months. Tr. 32-33.

None of Applicant's three sisters, who are citizens and residents of India, work outside their homes. Tr. 33. The Indian Government does not employ any of their husbands. Tr. 33-35. He communicates with his parents-in-law about twice a year. Tr. 35. His spouse communicates with her parents about twice a month. Tr. 45. All of his spouse's siblings live in the United States. Tr. 35. He does not send any funds to his family or his spouse's family living in India. Tr. 32-35. He visited India in 2008, 2011, 2014, 2015, and 2016. Tr. 39-40; GE 1. He plans to retire in the United States. Tr. 40-41.

Applicant owns a home in the United States that has an estimated value of \$800,000 to \$850,000. Tr. 16, 42. He has about \$350,000 equity in his home in the United States. Tr. 16, 27; AE L. He has \$300,000 in the bank and \$150,000 in a 401(k) account. Tr. 16-17, 41; AE C-AE K.

Under Indian law, dual citizenship is not permitted.⁴ Applicant is a U.S. citizen, and he is not a citizen of India. Applicant, his spouse, and his children are exclusively U.S. citizens.

Character Evidence

Applicant's supervisor for the previous two years described him as highly professional, intelligent, careful to safeguard sensitive information, law abiding, and trustworthy. AE A. Applicant's friend for 13 years described him as honest, helpful, and active in the community and especially at his children's school. AE B.

India

India is a multiparty, parliamentary democracy with a population of approximately 1.2 billion people. The U.S. and India share common values including the rule of law, respect for diversity, and democratic government. The U.S. Department of State reported in 2012 that bilateral defense and counterterrorism cooperation between the U.S. and India had grown to reach unprecedented levels. In 2009, the United States and India launched the U.S.-India Strategic Dialogue, which is a bilateral forum focused on strengthening cooperation between the two countries in several areas, including energy, climate change, trade, education, and counterterrorism. The United States supports a reformed United Nations Security Council that includes India as a permanent member. The United States is one of India's largest trade and investment partners. The United States supports India's emergence as a rising world power. Recently, India has taken actions to ease travel between the United States and India.

⁴ See Embassy of the United States, New Delhi, India, *Dual Nationality: India and the United States*, <http://newdelhi.usembassy.gov/acsdualnation.html>.

On January 25, 2015, President Obama and Indian Prime Minister Modi held a joint press conference in India. They lauded the close and growing ties between the United States and India. President Obama emphasized the following elements of the United States—India relationship: (1) the natural partnership between two great democracies; (2) the new Declaration of Friendship formalizing that partnership; (3) increasing bilateral trade in goods and services between the two countries approaching \$100 billion; (4) breakthroughs in nuclear cooperation; (5) additional export reforms; (6) pursuit of investment treaties; (7) launching joint projects to reduce pollution and slow climate change; (8) partnerships in security matters in Afghanistan and in preventing Iran from obtaining nuclear weapons; and (9) most importantly in the context of this case, deepening defense and security cooperation. On January 11, 2015, Secretary of State John Kerry underscored the positive aspects of the United States—India association, including the growing investments of Indian citizens in the United States (now 9 billion dollars), and U.S. citizens' investments in India (now 28 billion dollars).

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage identifies India, along with seven other countries, as being involved in economic and industrial espionage. An earlier version of that report included the results of a private industry survey in which the National Counterintelligence Center surveyed nearly a dozen Fortune 500 companies. The companies specifically named India as being among the most active collectors of U.S. economic and proprietary information. India remained on the Office of the U.S. Trade Representative's Priority Watch List in 2015, based on its history of trademark counterfeiting and copyright piracy—including one of the highest rates of video piracy in the world—and concerns regarding patents and regulatory data protection. Of particular concern is counterfeit pharmaceuticals produced in India and shipped to the United States, posing serious risk to American consumers.

In its 2009-2011 Report to Congress, the Office of the National Counterintelligence Executive reported that sensitive U.S. economic information and technology are targeted by the intelligence services, private sector, and citizens of dozens of other countries. "Some U.S. allies and partners use their broad access to U.S. institutions to acquire sensitive U.S. economic and technology information, primarily through aggressive elicitation and other human intelligence (HUMINT) tactics. Some of these states have advanced cyber capabilities."

According to the U.S. Department of Justice, there have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India.⁵ In November 2011, an employee of a Utah-based scientific company, who is an Indian citizen with a work visa and alien registration card, was charged with stealing company proprietary information for use by a relative in India. He subsequently pleaded guilty on May 11, 2012, to a single count of unlawful access to a protected computer. In January 2013, the former export control manager of a Pennsylvania-based company pleaded guilty to the illegal, unlicensed

⁵ There is no evidence that Applicant or any of his family members are or were involved in any criminal activity. As such this paragraph has limited relevance.

export to India and China of over 57 microwave amplifiers, products that have military applications, and was sentenced to 42 months in prison, three years of supervised release, and a fine. In April 2014, six foreign nationals were indicted in federal court in Illinois for an alleged conspiracy to bribe Indian Government officials to allow the mining of titanium materials under the Foreign Corrupt Practices Act. In April 2015, the former owner of a New Jersey-based defense contracting business pleaded guilty to illegally exporting military blueprints to India without a license or prior State Department approval. In April 2016, she was sentenced to 57 months in prison.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. The Indian states of Jammu and Kashmir remain unstable, and a number of terrorist groups operate there, particularly along the Line of Control separating India and Pakistani-controlled Kashmir. The State Department strongly recommends avoiding travel to the states of Jammu and Kashmir.

Anti-Western terrorist groups, including some on the U.S. Government's list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India continued to experience terrorist attacks, including operations launched by Maoist insurgents and transnational groups based in Pakistan. In September 2015, police in Assam killed two Dima Haram Daogah (DHD-A) militant leaders. In December 2015, media reported that Indian officials identified former Uttar Pradesh resident Sanaul Haq (aka Maulana Asim Umar) as the head of al-Qa'ida in the Indian Subcontinent (AQIS). Since September 2015, Bangladesh has experienced a series of increasingly sophisticated violent attacks. These include the murders of two foreign nationals, as well as bombs and other attacks against gatherings of religious groups and security forces. ISIL publicly claimed credit for many of these attacks. Additionally, groups claiming to represent AQIS asserted responsibility for a series of threats and terrorist attacks targeting writers, publishers, and others in the media, including the murder of a U.S. citizen blogger.

According to the State Department, the most significant human rights problems in India as of 2014 were "police and security force abuses, including extrajudicial killings, torture, and rape; corruption remained widespread and contributed to ineffective responses to crime, including those against women, children, 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 took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under resourced court system contribute to infrequent convictions.

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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about foreign influence as follows:

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 indicates four conditions that could raise a security concern and may be 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;
- (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;
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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 was born and educated through his bachelor's degree in India. His spouse was born in India. His mother, father, three sisters, brother, father-in-law, and mother-in-law are citizens and residents of India. He has frequent⁶ contact with his father, and his spouse has frequent contact with her parents residing in India. The Indian Government employed his father as a tax collector until 2000. Applicant traveled to India five times in the past 10 years.

Applicant owns real estate in India valued at about \$120,000. Applicant has "a substantial . . . property interest in a foreign country . . . which could subject the [Applicant] to heightened risk of foreign influence or exploitation." See *generally* ISCR Case No. 12-00120 (App. Bd. Feb. 10, 2014) (affirming denial of security clearance in FORM case because of applicant's connections to India and noting administrative judge's findings of heightened risk in relation to family relationships and property interests of \$345,000 in India without any information about assets in the United States).

Applicant lives with and is close to his spouse. His spouse has relatives living in India. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse's relatives living in India could result in a security concern. In addition, Applicant has ties of affection to some relatives in India even through his communications with them are infrequent. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

Applicant's relationships with residents of India create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help relatives living in India. For example, if terrorists, government officials, or other entities in India wanted to expose Applicant to coercion, they could exert pressure on his relatives living in India. Applicant would then be subject to coercion through his connections to India and classified information could potentially be compromised.

Applicant and his spouse's close family ties with their families living in India, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

⁶ See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

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 or inducement. 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 the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States, places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in India do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives in India.

Guideline B is not limited to countries hostile to the United States. "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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from India seek or have sought classified or economic information from or through Applicant, his spouse, or their relatives living in India, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and India has a problem with terrorism. Applicant and his spouse's relationships with family members living in India create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in India by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant and his spouse's relationships with their families living in India. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) has some applicability. Applicant and his spouse have frequent contacts with relatives living in India. Loyalty to, support for, and connections to family are positive character traits. However, for security clearance purposes, those same relationships negate the possibility of full mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is little likelihood that his relationships with relatives in India could create a risk for foreign influence or exploitation.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant, his spouse, and his two children are

citizens and residents of the United States. When Applicant and his spouse took an oath and swore allegiance to the United States, as part of their naturalization as U.S. citizens, and when he volunteered to assist the U.S. Government as a contractor, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. When he and his spouse became U.S. citizens, they lost their Indian citizenship because India does not recognize dual citizenship.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India. There is no evidence, however, that terrorists, criminals, the Indian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their relatives living in India to coerce Applicant for classified or sensitive information.⁷ As such, there is a reduced possibility that Applicant, his spouse, or their relatives living in India would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to their relatives living in India is from terrorists and other lawless elements and not the Indian Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in India. Applicant and his spouse's relatives living in India could become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to them from lawless elements in India.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with anyone living in India. Applicant is not required to report his contacts with citizens or residents of India.

AG ¶ 8(f) applies and mitigates security concerns arising from Applicant's property located in India. Applicant has a substantial investment in India with property interests in India having a fair market value of about \$120,000. Applicant's net worth in the United States is about \$800,000 without including the value of his vehicle(s) or Applicant's U.S. salary, which are also important economic components of his connections to the United States. There is no evidence of his spouse's economic connections to the United States; however, it is reasonable to infer she has some. His and his spouse's U.S. economic connections are sufficient in magnitude to fully negate his India financial connections as a security concern.

In sum, Applicant and his spouse's connections to their relatives living in India are significant. They are sufficiently close to family in India to raise a security concern. He traveled to India five times in the last ten years. His property interests in India are valued at about \$120,000. His father receives a pension from the Indian Government. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall

⁷ There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

situation must be considered. Applicant's spouse and two children are citizens and residents of the United States. Applicant and his spouse have parents and siblings who are living in India, and Applicant's father was employed by the Indian Government until he retired in 2000. Applicant and his spouse and children are U.S. citizens. His financial connections to the United States are about five times greater than his connections to India without including the value of Applicant and his spouse's salaries. Foreign influence security concerns under Guideline B are mitigated. Even if foreign influence security concerns were not mitigated under AG ¶ 8(b), security concerns would be mitigated under the whole-person concept, *infra*.

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 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.

Under AG ¶ 2(c), "[t]he 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. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 41-year-old senior software engineer employed by a defense contractor. In 2004, he married, and his children are ages seven and nine. His children were born in the United States. His supervisor for the previous two years described him as highly professional, intelligent, careful to safeguard sensitive information, law abiding, and trustworthy. His friend for 13 years described him as honest, helpful, and active in the community and especially at his children's school. There is no evidence of violations of his employer's rules, abuse of alcohol, or use of illegal drugs.

Applicant has significant connections to India. Applicant and his spouse were born in India. He was educated through the bachelor's degree level in India. His mother, father, three sisters, brother, father-in-law, and mother-in-law are citizens and residents of India. He has frequent contact with his father, and his spouse has frequent contact with her parents residing in India. His father was employed by the Indian Government as a tax collector until 2000, and his father receives a pension from the Indian Government. The Indian Government does not employ any of his relatives. He and his

spouse frequently communicate with several relatives living in India, and they have bonds of affection and loyalty to them. His property in India is valued at \$120,000. He traveled to India five times in the past 10 years.

Applicant emigrated from India to the United States in 2005. In 2012, Applicant and his spouse were naturalized as U.S. citizens, and they automatically lost their Indian citizenship. Their children were born in the United States. Applicant is willing to divest himself of his property in India. His net worth in the United States is about \$800,000. His and his spouse's U.S. salaries are important components of his economic connections to the United States. He intends to retire in the United States.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that foreign influence security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

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
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Subparagraphs 1.a to 1.d:	For Applicant
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Conclusion

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

Mark Harvey
Administrative Judge