



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



In the matter of: )  
)  
) ISCR Case No. 17-00947  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

05/30/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns arising from his financial and personal connections to India. National security eligibility for access to classified information is granted.

**History of Case**

On July 28, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 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 effective within the DOD after June 8, 2017.

Applicant answered the SOR in writing on August 15, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and

Appeals (DOHA) assigned the case to me on November 2, 2017. DOHA issued a Notice of Hearing on January 22, 2018, setting the hearing for February 7, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified, called one witness, and offered Exhibits (AE) A through R into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until March 1, 2018, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on February 15, 2018. Applicant timely submitted AE KK through AE HHH, which are admitted without objections.<sup>1</sup>

## **Procedural Rulings**

### Administrative Notice

I took administrative notice of facts concerning India. Those facts are set forth in the following exhibits: Government's Request for Administrative Notice for India, marked as Hearing Exhibit (HE) 1, and Applicant's Notice-India, marked as HE 2. These documents are included in the record without objections. (Tr. 12-13) The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

## **Findings of Fact**

Applicant is 68 years old. He was born in India. He earned a bachelor's and master's degree at an Indian university. In 1976, he immigrated to the United States. In 1979, he earned a master's degree at a U.S. university. He became a naturalized U.S. citizen in 1985. (AE A) He stated he has a "deep and longstanding loyalty to the US Government which is uncompromising under any circumstances." (Answer)

In 1977, Applicant married his wife, who was a citizen and resident of India at that time. In 1978, she moved to the United States and completed a medical residency program at a U.S. university hospital. She became a naturalized U.S. citizen in 1994. She practices as a physician and owns a medical corporation. Applicant and his wife have two adult children. They were born in the United States and reside here. Both graduated from U.S. universities. (GE 1, GE 2; AE A)

Applicant's elderly sister is a citizen and resident of India. (SOR ¶ 1.e) He visits her when he goes to India, about twice a year. Her two children live in the United States. He does not provide financial support to her. (Tr. 60-61, 67) Applicant's wife's two brothers and sister are citizens and residents of India. (SOR ¶¶ 1.f and 1.g) Her sister and one brother are physicians. Her other brother works in the film industry. Applicant's wife speaks to her siblings once or twice a year. He and his wife saw them two years ago at a family wedding in India. (Tr. 62-63; Answer) He does not think any of these relatives work for the Indian government. (Tr.49)

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<sup>1</sup>The record does not contain AE S through JJ.

In 1987, Applicant established Company 1 and incorporated it in the United States. Today that company is valued at over \$20 million U.S. dollars. (Tr. 18) It contracts with federal agencies and private-sector contractors Applicant has held a security clearance for over 25 years in connection with his ownership of that company. (Answer)

In 1995, Applicant formed Company 2 (SOR ¶ 1.a) and Company 3 (SOR ¶ 1.b). They were incorporated in India and are located there. Company 2 has an estimated U.S. value of \$3,000,000, which includes its real estate and contracts; Company 3 had an estimated U.S. value of \$500,000, which included its real estate and pending contracts. In March 2016, Company 2 and Company 3 merged into Company 2. At the same time, Applicant resigned from the board of directors of Company 2 and relinquished his ownership in that company to his daughter and son. His wife also transferred all of her stock shares in that company to their adult children. His daughter now manages Company 2. (Tr. 17-20, 46, 57; Answer; AE J, AE KK through AE HHH) Applicant maintains his ownership and operating interests in Company 1. (AE H)

Employees of Company 2 (and including those previously in Company 3) are citizens and residents of India (SOR ¶¶ 1.h and 1.i). Applicant no longer has control or influence over them. They are managed by his daughter. (Tr. 52-53)

Applicant and his wife own an apartment in India. (SOR ¶ 1.c). He has stayed there during business trips, which usually lasted two to four weeks, about three times a year. (Answer). He and his wife have owned it for a long time, but placed the property on the market in 2017. They intend to sell it. He estimates its value at \$300,000. (Tr. 46-47, 51; AE L) The last time he was in India was in September 2017. (Tr. 59) He does not have plans to visit India in 2018. (Tr. 67)

Applicant and his wife had maintained two bank accounts in India at the time the SOR was issued (SOR ¶ 1.d). They held those accounts for about ten years. They closed them in October 2017. (Tr. 47; AE K)

Applicant's net worth in the United States is about \$23,850,000. His only asset in India is the apartment he is trying to sell. He does not have dual citizenship with India, nor an Indian passport. (Tr. 51-2; AE G, AE H)

Applicant submitted letters of recommendation from employees who have worked for him for many years. The authors attest to Applicant's loyalty to the United States and his honesty. (AE D)

## **India**

I take administrative notice of the following facts as noted in HE 1 and HE 2: According to its constitution, India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion. The Indian government generally respects the rights of its citizens, but numerous serious problems remain. Police and security forces

have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. A lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, terrorists coordinated an attack at a hotel in Mumbai frequented by westerners.

The United States recognizes India as key to its strategic interests and has sought to strengthen diplomatic and economic relationships. The two countries are the world's largest democracies. Both are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including its increasing cooperation with the Iranian military.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally export technology to entities in India.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The U.S. and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 national security eligibility 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **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

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 includes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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;<sup>2</sup>

(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 heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's sister and three in-laws are citizens and residents of India. Until recently, Applicant had substantial financial interests in that country including two companies he owned, bank accounts, and an apartment. 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. However, it also continues to have 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 a potential conflict of interest for Applicant. Concerns under AG ¶¶ 7(a), (b), and (f) have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts of this case:

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<sup>2</sup>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. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that 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).

(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 or 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing whether there is a likelihood that Applicant's family members residing in India are vulnerable to government 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's close, friendly relationship to the United States; its democratic government; its adherence to human rights standards and rule of law; its leading role in the suppression of terrorists; and the lack of evidence that India uses coercive tactics in its espionage targeting of the United States, tend to negate concerns that Applicant's relationships with his sister, sister-in-law, and two brothers-in-law pose a security risk. AG ¶ 8(a) applies.

AG ¶ 8(b) has application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established deep connections to the United States. He has lived in the United States since 1976. He earned a graduate degree from a U.S. university in 1979. He became a naturalized citizen in 1985. His wife is a naturalized U.S. citizen. She attended medical school here and has practiced as a physician for many years in a medical practice she owns. His two children were born in the United States and graduated from U.S. universities. He established a U.S. company in 1987 and continues to operate it. His U.S. assets total over \$23,000,000. His employees attest to his loyalty to the United States and his honesty. He considers himself a citizen of the United States and is no longer a citizen of India. Based on these significant connections to the United States, there is a strong indication that Applicant could be expected to resolve any conflict of interest in favor of the U.S. interests.

AG ¶ 8(c) does not have full application to the security concerns raised because Applicant has ongoing, albeit limited, contacts with his sister, sister-in-law, and brothers-in-law.

The evidence establishes full mitigation under AG ¶ 8(f). Applicant's \$23,000,000 in U.S. assets is significantly more substantial than his ownership of a \$300,000 apartment in India that he is trying to sell. It is unlikely that his current ownership of that apartment could create a conflict of interest for him.

### **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 applicable guidelines and the whole-person concept.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant met his burden to mitigate the foreign influence security concerns raised by the facts of this case. His familial and financial circumstances create no significant potential for pressure, coercion, exploitation, or duress. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

### **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 B:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant

## **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 access to classified information. National security eligibility is granted.

Shari Dam  
Administrative Judge