



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



In the matter of:

)

)

)

ISCR Case No. 17-01504

)

Applicant for Security Clearance

)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/27/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and her spouse have close relationships and regular, ongoing contact with family members in their native India. None of their relatives are employees of India's government. Applicant, her spouse, and their children are all U.S. citizens who intend to reside in the United States permanently. Applicant's ties to the United States are substantial and make her likely to resolve any conflict in favor of the United States. Clearance is granted.

Statement of the Case

On June 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to grant her security clearance eligibility. The DOD CAF acted under Executive Order 10865 (EO), *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 for Determining Eligibility for access to Classified Information (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on June 21, 2017, and she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 22, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 30, 2017, I scheduled a hearing for December 5, 2017. In prehearing guidance, Applicant was informed that the Director of National Intelligence (DNI) had issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG) effective June 8, 2017, for all adjudications for national security eligibility or eligibility to hold a sensitive position.¹

I convened the hearing as scheduled. The Government withdrew SOR allegations ¶¶ 1.g and 1.h. Two Government exhibits (GEs 1-2) were admitted into evidence without objection. A July 14, 2017 letter forwarding discovery of the Government's exhibits to Applicant was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. A list of the Government's exhibits was marked as HE 2. Twenty-two Applicant exhibits (AEs A-V) were admitted without objection. Applicant and two witnesses testified, as reflected in a hearing transcript (Tr.) received on December 11, 2017.

At the hearing, Department Counsel submitted a July 13, 2017 Request for Administrative Notice concerning the Republic of India (hereafter India).² Applicant had no objections. Required under Appeal Board precedent to take administrative notice of the most current political conditions in evaluating Guideline B concerns, see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007), I accepted the Government's Request for Administrative Notice and informed the parties of my intention to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed.

Summary of SOR Allegations

The SOR as amended alleges under Guideline B that Applicant's parents (SOR ¶ 1.a), sister (SOR ¶ 1.b), and parents-in-law (SOR ¶ 1.d), are citizens and residents of India; that Applicant's brother is a citizen of India who resides in the United Kingdom (SOR ¶ 1.c); that Applicant has a bank account in India, and she provides her immediate family approximately \$500 a month in financial support (SOR ¶ 1.e); and that Applicant owns an investment property in India valued at approximately \$9,000 (SOR ¶ 1.f). When she responded to the SOR, Applicant admitted the allegations and provided details about her relatives' circumstances. She explained that the financial support is to cover the costs of medical expenses for her parents and parents-in-law. Appellant expressed her

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

² The Government's Request for Administrative Notice-Republic of India, dated July 13, 2017, is based on U.S. government publications (pre-marked as I-X) from the Office of National Counterintelligence Executive, the U.S. State Department, and the U.S. Justice Department. I was provided extracts of the source materials but was given the URLs where the full documents could be retrieved and reviewed online.

willingness to close her non-resident bank account in India if necessary and her plan to sell her investment property in India around 2021 to cover some of the costs of her oldest son's college tuition at that time. (Answer.)

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 43-year-old computer software engineer with a U.S. defense contractor. She began working for the company in April 2016 as a contractor. Because of the excellent quality of her work, she was converted to a full-time permanent staff engineer position in March 2017. (GEs 1-2; Tr. 46-47, 57- 59.) She applied in February 2016 for a DOD security clearance. (GE 1.)

Applicant was born and raised in India with her two siblings, a sister now age 36 and a brother now age 42. Their mother retired in 2003 from a career as an elementary school teacher. Their father continues to work full time at age 73. He owns a manufacturing and fabrication business in India. (GE 1; Tr. 60-61.)

Applicant earned her bachelor's degree in computer science in India in 1996. In late May 2000, Applicant came to the United States for the opportunities afforded women in technology. In October 2001, Applicant and her spouse married in the United States. They had met as co-workers in India. (GE 1; AEs C, U; Tr. 57.) Applicant and her spouse have two sons, who were born in the United States in December 2003 and July 2010. (GE 1; AEs A-B.)

Applicant began working as a software consultant in May 2001 with an H1-B visa. Her spouse was pursuing a master's degree in the United States when Applicant purchased a townhouse property near her parents in India in April 2003. Her and her spouse's futures in the United States were uncertain, and she had not yet established a credit history in the United States. (GEs 1-2; Answer; Tr. 71.) However, Applicant's employment in the United States proved to be stable, and her spouse obtained his master's and doctorate degrees in the United States with considerable success. (GE 1; AE D.)

In 2001, Applicant and her spouse began providing financial support totaling \$500 monthly to their parents in India for their medical costs. Applicant transferred \$1,000 every other month into a non-resident bank account that she has in India. As of December 2017, Applicant had given her parents and parents-in-law a total of \$96,000 since 2001. Her mother and her father-in-law have access to her bank account in India. (GEs 1-2; Tr. 69-71.)

Applicant and her spouse traveled with their children to India to see their family members. As a citizen of India, Applicant held an Indian passport valid from November 2004 to November 2014 that she used to travel to India in November 2005, May 2007,

June 2007, May 2011, May 2013, and December 2013. (GE 1.) In November 2014, Applicant renewed her passport with India. (GE 2.)

After Applicant's spouse earned his doctorate degree in computer science, he held a one-year appointment as a research scientist at the university from September 2012 through August 2013. He then received a prestigious one-year appointment, renewable up to three years, to a postdoctoral research program at a U.S. military research laboratory. His position was renewed through January 2016. It meant a relocation for their family, and in August 2013, he and Applicant sold their first home in the United States, which they had bought in March 2005. Applicant teleworked from home for her longtime employer from her new locale. (GEs 1-2; AEs D, G, H, U.) The elder of her two sons was an excellent student in his new school. In January 2014, the countywide selection committee determined that he was eligible for full-time advanced academic programs in the county's public school system. (AE R.)

In April 2015, Applicant's spouse became a naturalized U.S. citizen. Applicant obtained her U.S. citizenship in June 2015 on her own application.³ (GE 1; AE U; Tr. 57-58.) Applicant obtained her U.S. passport in July 2015. She did not use her Indian passport after becoming a U.S. citizen and had her Indian passport formally cancelled in early November 2015. (GEs 1-2.)

In October 2015, Applicant's spouse was offered a technical staff position at a monthly salary of \$12,350 by a university-affiliated laboratory with DOD contracts. His employment was contingent in part on him obtaining and maintaining a DOD security clearance within a reasonable period of time. He accepted the position and was granted a DOD security clearance. (AEs E, U.) It meant another move for the family, and Applicant was unemployed in her new locale from January 2016 to April 2016, when she began working as a contractor for her current employer. (GE 2.)

On February 19, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86.) She disclosed the residency and citizenship in India of her parents, sister, and parents-in-law. She indicated that she had daily contact with her mother, and weekly contact with her in-laws and her sister. Among her foreign contacts, Applicant listed her brother, who is a citizen of India residing in the United Kingdom. As for her foreign activities, Applicant disclosed her bank account in India with \$6,000 in current deposits that she opened in approximately June 2010, and her ownership of real estate in India acquired in April 2003 for \$6,000. She estimated its current value at \$9,000. Applicant also reported her foreign travel, mostly to India, but also to the United Kingdom in May 2012. (GE 1.) Applicant has traveled to India with her spouse and children since completing her SF 86. They went to India for one month in July 2016 and stayed at both her parents' and her in-laws' homes. (Tr. 63.) Applicant traveled on her U.S. passport. (GE 2.)

³ India does not recognize dual citizenship. See <http://newdelhi.usembassy.gov>.

On November 14, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that her Indian passport, which was renewed in November 2014 when she was not yet a U.S. citizen, was cancelled in November 2015. She denied ever experiencing any conflict of loyalty between India and the United States and professed her loyalty to the United States. Applicant indicated that she provides financial support to her parents and in-laws in India freely and without any obligation. She expressed an intention to continue this voluntary support for the foreseeable future. Concerning her townhouse in India, which was then valued at approximately \$9,000 (Tr. 71), Applicant explained that she had purchased the property as an investment but that it was not important to her overall finances because most of her assets are in the United States. Applicant reported that she had traveled to India in July 2016 for pleasure, and that she did not have any unexpected or inappropriate contacts with law enforcement, foreign intelligence, terrorist, security, or military organizations. (GE 2.)

Applicant's mother receives no benefit from India's government. Applicant calls her mother daily or every other day. She talks to her father weekly. Applicant stayed with her parents during her trips to India. Applicant's father still owns his business and works full time at age 73. He receives no benefits from India's government. (Tr. 60-62.)

Applicant's sister is 36 years old and is a resident citizen of India. She works as a psychiatrist and has no affiliation with India's government or military. Presently going through a divorce, Applicant's sister was staying with her parents in December 2017. She had been living in Applicant's townhouse in India. Applicant has contact with her sister once a week. Applicant's sister visited Applicant in the United States in 2015. Applicant sees her sister when she is in India. (GEs 1-2; Tr. 63-64, 72.)

Applicant's brother is 42 years old and a citizen of India with permanent residency in the United Kingdom. He owns a software development business with his spouse. Their company has an operating office in the United Kingdom and a development center in India. Their business provides Internet and supply solutions to the hospitality industry in India. Applicant communicates with her brother about once a month. She visited him in the United Kingdom in November 2005 and May 2012, while her brother and his family visited her in the United States three times, all before she began her defense contractor employment. (GE 1; Tr. 65-66.)

Applicant's mother-in-law is a 65-year-old homemaker and her father-in-law is a 71-year-old retiree. He previously held a management position with a company that makes earth-moving equipment. Applicant's in-laws are resident citizens of India, and Applicant speaks with them by telephone once a week. Her in-laws receive no benefits from India's government. (GE 1; Tr. 66-67.)

Applicant is planning to rent out her townhouse in India for \$230 a month. (Tr. 72.) She intends to continue to provide financial support of \$500 a month for her parents' and in-laws' medical care in India. Her Indian bank account has no more than \$1,000 on

deposit at any one time. She is willing to close the account if necessary and instead wire funds to her parents and parents-in-law. (Tr. 70.)

Applicant attests that she would comply with all reporting requirements regarding her contacts with her and her spouse's relatives in India. (Tr. 60.) She does not intend to return permanently to India, in part because of India's pollution and healthcare problems and access to better education for her children in the United States. (AEs U, V; Tr. 76.) Applicant and her spouse purchased their current home in the United States in June 2016. They have about \$100,000 in equity in their home. (AEs Q, U; Tr. 73.) Applicant's current annual salary is \$131,019. (AE I; Tr. 59.) Applicant has retirement (401(k) and IRA) accounts and savings assets exceeding \$400,000 in the United States. (AEs J-O, U.) Her spouse has his own 401(k) and IRA accounts with about \$110,000 in combined assets. (AE U; Tr. 74.) Applicant has college savings accounts in the United States for her sons. (AE P.)

Applicant was a repeated blood donor in her previous locales in the United States. (AE S.) She currently volunteers her time maintaining the website for a charitable organization that provides services locally as well as in India to persons with low vision. She also volunteers with a local organization that provides afterschool care and a learning platform for visually-impaired children in her area. (Tr. 74.)

Work References

Applicant's current manager has been with their employer since March 2012. (AE T.) He holds a top secret clearance and access eligibility to sensitive compartmented information. He has worked for other defense contractors and has held a DOD security clearance for approximately 25 years. He testified that Applicant's work as a contractor was of such benefit to the company that they converted her to an employee in March 2017. She has continued to be an "exemplary employee." He trusts her explicitly and has no doubt about her ability to properly safeguard classified information or her willingness to report any suspicious activity. (Tr. 46-49.)

Applicant and her spouse serve as a "surrogate family in the area" for someone whom her spouse mentored in graduate school in the United States. This family friend works for an information technology company. He is a frequent visitor to Applicant's home. He socializes with Applicant and her spouse and their friends once a month at their house and considers them to be "sort of the model American household." This family friend trusts Applicant implicitly. (Tr. 53-55.)

Administrative Notice

India is the world's largest democracy and its government generally respects the rights of its citizens. India's Prime Minister, Narendra Modi, became head of the Indian government following May 2014 general elections that were considered free and fair, despite isolated instances of violence. Even with its free press and robust democratic political system, a lack of accountability for misconduct in all levels of government

persists. Widespread corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children remain significant human rights problems. Separatist insurgents and terrorist groups remain active in areas of conflict, such as Jammu and Kashmir, the northeastern states, and the Maoist (“Naxalite”) belt. Insurgents were responsible for numerous cases of kidnapping, torture, rape, extortion, and the use of child soldiers.

Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government’s list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Throughout 2015, India continued to experience terrorist attacks, including operations launched by Maoist insurgents and transnational groups based in Pakistan. An attack by three Lashkar-e Tayyiba (LeT) on a bus and police station in the Punjab on July 27, 2015, killed four police officers and three civilians and injured 15 others. In December 2015, news 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). The South Asian Terrorism Portal, operated by the nonprofit Institute for Conflict Management, reports that in 2016, 145 civilians, 114 security force members, and 324 terrorists or insurgents were killed in attacks perpetrated by non-Maoists. The U.S. State Department continues to warn against travel to the Indian states of Jammu and Kashmir (except the eastern Ladakh region and its capital) due to terrorism and civil unrest, and to the area within 10 kilometers of the India-Pakistan border due to the potential for armed conflict. U.S. citizens are advised that terrorist or armed groups remain active in East Central India, primarily in rural areas. Terrorists may attack with little to no warning and may target tourist locations, transportation hubs, markets and shopping malls, and local government facilities.⁴

India’s size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and is a member of several international organizations, including the United Nations, G-20, Association of Southeast Asian Nations (ASEAN) Regional Forum, International Monetary Fund, World Bank, and World Trade Organization. India is a founding member of the Global Counterterrorism Forum. The United States has had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. In 2000, India was named in a survey of nearly a dozen Fortune 500 companies as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States. More recently, the concerns involve possible illegal exports to India by U.S. firms. In September 2008, an Indian national and an Indian corporation were indicted in U.S. District Court on charges of illegally supplying the government of India with complex electronic instruments used in the research and development of launching and ballistic missile delivery systems. In January 2013, the former export control manager of a U.S. company was sentenced to 42 months in prison

⁴ On January 10, 2018, the State Department issued a Level 2 travel advisory for India, advising travelers to India to exercise increase caution due to crime and terrorism. The India travel advisory may be accessed on the State Department’s website: <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/India.html>.

after illegally exporting microwave amplifiers, products with military applications, to customers in India and China. In June 2013, an Indian citizen with a work visa and an alien registration card, was sentenced to time served, to 30 days supervised release, and restitution after he pleaded guilty to unlawful access to a protected computer. He had been charged with stealing proprietary information from his employer, a U.S.-based scientific company, and providing it to a relative in India who was starting up a competing company. In April 2015, the former owner of two U.S.-based defense-contracting businesses pleaded guilty to one count of conspiracy to violate the Arms Export Control Act by exporting to India between June 2010 and December 2012 sensitive military technical drawings without prior approval of the U.S. government. She was given a sentence of 57 months in prison in April 2016.

The United States recognizes India as key to its strategic interests. The two countries share common values in the rule of law, respect for diversity, and democratic government. They share security perspectives on China and Asia with regard to the balance of power, on terrorism, Afghanistan, and maritime issues. They have a common interest in the free flow of global trade and commerce, including through vital sea lanes in the Indian Ocean. The United States supports India's critical role as a leader in maintaining regional stability. Security ties are reflected in growing bilateral defense and counterterrorism cooperation. In September 2015, the United States and India issued a joint declaration on combatting terrorism, which reaffirmed the countries' commitments to combat terrorism in all its forms and to uphold shared values of democracy, justice, and rule of law. The United States is one of India's largest trade and investment partners.⁵

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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

⁵ See the U.S. State Department's Fact Sheet, *U.S. Relations with India*, issued October 9, 2015, which may be accessed at www.state.gov.

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. 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 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 that 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. Section 7 of EO 10865 provides that 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

Guideline B: Foreign Influence

The security concern about foreign influence is articulated 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 that is 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.

Applicant and her spouse were born in India. They met as co-workers in India before coming to the United States for employment and academic opportunities in 2000. They married in the United States, had two children born in the United States, and became naturalized U.S. citizens. They continued to maintain close relationships and regular contact with their respective parents⁶ and with Applicant’s sister, who are all

⁶ There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See ISCR Case No. 07-17673 at 3 (App. Bd. April 2, 2008) (citing

resident citizens of India. They traveled to India to visit these relatives annually and more recently every other year, including in July 2016. Applicant has provided monthly support of \$500 to her parents and parents-in-law since 2001 to help pay for their medical needs. Applicant's brother is a citizen of India who lives in the United Kingdom. Applicant has contact with her brother approximately monthly. She has visited him in the United Kingdom in 2005 and 2012, and he and his family have visited Applicant in the United States three times.

Review of Applicant's contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶¶ 7(a), 7(b), and 7(e) provide:

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

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

(e) sharing 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.

Not every foreign contact or tie presents a heightened risk. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

India and the United States have a strategic partnership of increasing importance to both countries. They have common values in the rule of law, respect for diversity, and democratic government and share interests in promoting global security, stability, and

ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

economic prosperity. India is an ally in counterterrorism efforts. The military-to-military relationship has grown in the last decade, and the United States has become one of India's largest trade and investment partners. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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." See ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). India was among the most aggressive collectors of U.S. economic intelligence as of 2000. There is no recent report showing direct involvement by the Indian government targeting the United States. However, U.S. government contractors have been implicated in economic espionage activity in the United States to benefit India as recently as December 2012.

There is no evidence that Applicant's or her spouse's close family members in India have been targeted or pressured. Nothing about her or her spouse's family members' previous or present occupations or activities creates a heightened risk. To Applicant's knowledge, none of them had a direct affiliation with the Indian government, or any military, security, or intelligence responsibilities. Her mother worked as an elementary school teacher while her father continues to own and operate a manufacturing and fabrication business. Her father-in-law retired from a management position with a company that makes earth-moving equipment. Her mother-in-law did not work outside the home. Applicant's sister is a psychiatrist. Applicant's brother in the United Kingdom has a development facility in India, but its work is focused on the hospitality industry.

Considering the democratic nature of the Indian government and society, it may be unlikely that the Indian government would resort to coercive means to obtain sensitive information. India faces threats by terrorist groups that have demonstrated a willingness and ability to strike civilian targets, including places frequented by foreign tourists. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. In the last decade, India has taken security measures designed to combat and minimize the risk presented by terrorism.

Yet, there are several factors, which collectively if not on their own create a heightened risk of undue foreign influence, most notably the close relationships and frequent contact with her parents, her spouse's parents, and her sister. The bonds of affection and obligation are clearly evidenced by her financial support for both sets of parents. Applicant estimated at her hearing that she has given these Indian relatives \$96,000 since 2001. Applicant's sister lived in Applicant's townhouse in India before she moved back home while going through a divorce. Applicant's contact with her brother is less frequent than with her parents and sister. His residency in the United Kingdom minimizes the risk somewhat, but where he has a substantial business interest in India, the risk of undue foreign influence cannot be completely ruled out. Applicant AG ¶¶ 7(a), 7(b), and 7(d) apply.

Regarding Applicant's bank account in India and her ownership of a townhouse, security concerns are raised in that the bank account facilitates the transfer of financial support to her parents and parents-in-law. It is the familial bond that heightens the concern rather than the bank account or the foreign real estate. Applicant maintains no more than \$1,000 in her bank account in India, and the townhouse is valued at approximately \$9,000. Applicant credibly expressed a willingness to close the foreign bank account if necessary, and while she plans to rent out the townhouse in the near future, she intends to sell it when the older of her sons comes of college age to help pay for his tuition. Neither foreign interest is sufficiently substantial to heighten the risk of undue foreign interest under AG ¶ 7(f), which provides:

(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.

While there is no evidence that intelligence operatives, terrorists, criminals in India, or India's government have targeted Applicant, her spouse, or their relatives living in India, 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 as state intelligence services. Terrorists and insurgent groups have carried out attacks in India. The risk of terrorism in India, India's human rights issues, and the close relationships that Applicant and her spouse have to their family members in India preclude full mitigation under AG ¶ 8(a), which states:

(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.

However, Applicant and her spouse have established very significant ties to the United States that could trigger the second component of AG ¶ 8(b), which states:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant came to the United States in May 2000 because of the opportunities afforded women in information technology. Her spouse attended graduate school in the United States while she worked full time as a software consultant for a company from May 2001 to January 2016. She started with her current employer as a contractor in April 2016, and one year later, she was converted to a direct hire because of her excellent performance. After her spouse earned his doctorate degree, he held an appointment in a

postdoctoral program at a U.S. military research laboratory from September 2013 to January 2016. Since completing that program, he has been employed by a defense contractor, and he holds a DOD security clearance. It is not clear whether the financial support that he and Applicant provide for his parents was raised as an issue for his security clearance eligibility, but it may reasonably be inferred that the DOD considered him to be an acceptable security risk, his and Applicant's family ties in India notwithstanding.

Applicant and her spouse purchased their first home in the United States in 2005 and their current home in 2016. Their two sons were born in the United States. Although Applicant and her spouse did not become U.S. citizens until 2015, when they were naturalized, they took an oath and swore allegiance to the United States, knowing when they did so that they lost their citizenship to India because India does not recognize dual citizenship. Applicant's professional career and her financial assets are overwhelmingly in the United States. It is important to be mindful that Applicant, and her spouse for that matter, could become targets because of their support for the United States and because of their potential access to classified information. Applicant's and her spouse's ties to their relatives with Indian citizenship and residency are security significant. At the same time, Applicant's "deep and longstanding relationships in the United States" weigh in her favor in granting her security clearance eligibility.

AG ¶ 8(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," does not apply. Concerning AG ¶ 8(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," it is noted that Applicant opened the Indian bank account in 2000 and bought the townhouse in 2003 when she was on a work visa and her spouse was a student in the United States. Applicant had no guarantee at that time that she and her spouse would someday be granted U.S. permanent residency and become U.S. citizens. Applicant's foreign assets are so minimal in terms of financial value and importance to her that they are not likely to be a source of improper influence or pressure.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).⁷ The analysis under Guideline B is incorporated in my whole-person analysis. Some

⁷ The factors under AG ¶ 2(a) are as follows:

(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

of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant demonstrated personal integrity by candidly detailing to the DOD her foreign ties, including admitting to providing some \$96,000 in support to her parents and in-laws in India since 2001. Her manager attested to her excellent work performance, reliability, and trustworthiness as a contractor and now as an employee. He endorses her for security clearance eligibility without any reservations. The Appeal Board held in ISCR Case No. 01-26893, decided on October 12, 2002, that character is relevant and material under the whole-person concept with the following caveat:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.

Acknowledging that even persons with unimpeachable character could be faced with a circumstance that could tempt them to place the safety of relatives ahead of competing interests, the risk of undue foreign influence cannot be completely ruled out because of Applicant's ties to her Indian relatives as detailed above. Even so, none of Applicant's or her spouse's family members has worked for India's government or military. Those family members with whom Applicant has the closest bonds, her spouse and her children, are U.S. citizens living in the United States. Applicant can control her response to the security risk. Applicant has credibly indicated that she would report any suspicious contacts or activity, even if it involves family members. Her manager, who has had an opportunity to assess her judgment, reliability, and trustworthiness on a daily basis for over two years, is convinced that she would report any suspicious activity. Applicant is likely to resolve any conflict in favor of the United States. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

Formal Findings

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

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a-1.f:

For Applicant

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Subparagraphs 1.g-1.h:

Withdrawn

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge