



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



In the matter of: )  
)  
) ISCR Case No. 14-03500  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen from India who has held a security clearance since 1991. He has mitigated the foreign influence concerns raised by his relationships with his wife’s parents and siblings who are citizens and residents of India. Clearance is granted.

**Statement of the Case**

On February 27, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. On July 22, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>2</sup> The parties complied with the terms of the order.<sup>3</sup> At the hearing convened on August 11, 2015, I admitted Government's Exhibits (GE) 1 and 2, without objection. After the hearing, Applicant timely submitted AE A and B, which were also admitted without objection.<sup>4</sup> I received the transcript (Tr.) on August 20, 2015.

## **Procedural Matters**

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about India. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below. On November 20, 2015, in response to a DOHA Appeal Board decision in another case, Department Counsel submitted a supplement to the initial administrative notice request, providing the specific pages from the documents supporting the facts offered for administrative notice.<sup>5</sup>

### **Findings of Fact**

Applicant, 58, has worked for the same federal contracting company since 1989 and has held a security clearance since 1991 without incident. Applicant, who was born in India, became a naturalized citizen of the United States in 1986. The SOR alleges that Applicant's relationships with his wife's parents and two siblings who are residents and citizens of India raise a foreign influence security concern.<sup>6</sup>

India is a parliamentary democracy that shares significant strategic interests with the United States, including counter-terrorism cooperation. The two countries have increased trade in goods and services, cooperate on nuclear policy, and engage in mutual efforts to address pollution and climate change. Although largely positive, the relationship between the United States and India is not without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's

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<sup>2</sup> The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The discovery letter, dated June 30, 2015 is appended to the record as HE II.

<sup>4</sup> Correspondence regarding the parties' post-hearing submissions is appended to the record as HE IV.

<sup>5</sup> The Government's initial request for administrative notice and the supplement are admitted to the record as HE III and HE III-A respectively.

<sup>6</sup> Tr. 18-20.

largest supplier of military systems and spare parts is Russia. Despite this, President Obama has called the United States' relationship with India one of the defining partnerships of the 21<sup>st</sup> century.<sup>7</sup>

Applicant immigrated to the United States in 1981 after marrying his first wife. They divorced in 1991. Applicant met his second wife, who is also originally from India, through an arranged marriage. Applicant traveled to India, met and married his wife over a one-week period in April 1992. Within a month of the wedding, Applicant returned to the United States. His wife's parents and two siblings remain citizens and residents of India. Applicant's father-in-law is a retired border patrol agent for the Indian government. His retirement predated Applicant's marriage. Applicant's mother-in-law and sister-in-law do not work outside their homes. Applicant's brother-in-law is a lieutenant colonel in the Indian Army. Applicant is aware that his brother-in-law is an infantry officer, but does not know the specifics of his military service. Both his brother-in-law and sister-in-law were teenagers when Applicant and his wife married.<sup>8</sup>

Applicant's wife maintains regular contact with her family in India through phone calls. She speaks to her parents bi-weekly and to her siblings less frequently. Applicant's wife also visits India with the couple's children approximately every three years. Applicant's contact with his in-law is less frequent. He greets his in-laws on the phone if he is at home when they are talking with his wife. He will also speak to them on birthdays or holidays. Applicant's parents-in-law visited the United States in 2011, staying with Applicant and his family. Neither Applicant's brother-in-law nor sister-in-law has been to the United States. Applicant's in-laws know that he works for a defense contractor, but they do not know the specifics of his work.<sup>9</sup>

Applicant has traveled to India three times since his last periodic reinvestigation in 2004. Each trip lasted approximately two weeks. On two occasions, in 2005 and 2012, respectively, he traveled to India to perform funeral rites for his parents who were residents and citizens of the United States. His most recent trip was in 2015 with his family. Before each trip, Applicant reported his travel to his facility security officer (FSO). He entered India using his U.S. passport and registered with the U.S. embassy upon arrival. When Applicant returned to work after each trip, he completed the required security de-briefings.<sup>10</sup>

Applicant and his wife, who is now a naturalized U.S. citizen, live in the home Applicant has owned since 1986. She works as an elementary school teacher. They have two children who are U.S. citizens by birth. The eldest is a college student and the younger is in high school. Applicant's only other family member, his brother, is also a U.S. citizen. Applicant believes he has a net worth of \$2 million comprised of U.S.-

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<sup>7</sup> AE C; HE III, HE III-A.

<sup>8</sup> Tr. 20-23, 25-26, 35-36, 40-42; GE 2.

<sup>9</sup> Tr. 27-31; GE 2.

<sup>10</sup> Tr. 32, 34-35, 38-40, 43-44; GE 2.

based assets. He does not have any financial interests in India. Applicant is a highly-rated employee at his job. According to his FSO, Applicant has completed all required security training and receives continuing security training annually.<sup>11</sup>

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

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<sup>11</sup> Tr. 22-24, 36-38; AE A-B.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Foreign Influence

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.”<sup>12</sup> The record shows that Applicant has familial ties to individuals who are citizens and resident of India. Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial espionage against the United States. Furthermore, Applicant’s brother-in-law is an officer in the Indian Army. Based on these facts, Applicant’s relationship with individuals in India raises a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.<sup>13</sup>

However, the evidence in the record mitigates these concerns. While it is possible that Applicant’s brother-in-law could use his position to influence Applicant to act against U.S. interest, this is unlikely. Their relationship is casual and infrequent. Twenty years his junior, Applicant’s brother-in-law was a teenager when Applicant and his wife married. Before their marriage, Applicant’s and his wife’s family had no prior connection. Since the marriage, Applicant has not spent much time around his brother-in-law. Applicant has visited India for no more than six weeks during the last 10 years. Applicant maintains infrequent contact with his brother-in-law outside these visits. While Applicant’s brother-in-law’s military career has advanced over the years, there is not a corresponding change in the nature of their relationship. The record does not show progressively deepening ties of obligation or affection between the two men. Applicant’s relationship with his sister-in-law is similarly casual and infrequent.<sup>14</sup>

Applicant’s relationship with his parents-in-law cannot be dismissed as casual. His wife maintains close relationships with her parents and they spent a lengthy period of time in Applicant’s home during their U.S. visit. However, these relationships do not present a conflict of interest for Applicant given his ties to the United States. Applicant’s closest familial ties and significant financial interests are in the United States. He has no such ties to India. Accordingly, he can be expected to resolve any conflict of interest in favor of the United States.<sup>15</sup>

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<sup>12</sup> AG ¶ 6.

<sup>13</sup> See AG ¶ 7(a).

<sup>14</sup> AG ¶ 8(c).

<sup>15</sup> AG ¶ 8(b).

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2. Applicant has held a security clearance for over two decades. He does not have divided loyalties between India and the United States. Since gaining access to classified information, Applicant has appropriately reported his foreign contacts and travel as required. Applicant has presented sufficient evidence to mitigate the foreign influence concerns.

### **Formal Findings**

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

Paragraph 1, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

### **Conclusion**

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

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Nichole L. Noel  
Administrative Judge