



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04230
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his alcohol consumption. Security concerns over foreign influence were mitigated. Eligibility for access to classified information is denied.

History of the Case

On October 8, 2014, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 23, 2014, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on August 31, 2015, and responded to the FORM within the time permitted with a cover letter and submissions confirming his wife becoming a naturalized citizen in 2015 with a U.S. issued passport; a record of his attendance at Alcoholic Anonymous (AA) meetings since 2013; and recent awards from his employer.

Applicant's post-FORM submissions were admitted as Items 5 through 7. The case was assigned to me on November 18, 2015.

Besides the exhibits offered by the parties, I took administrative notice of 14 documents cited in the Government's Administrative Notice. Covered documents included *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2008*, Office of the National Counterintelligence Executive (July 2009); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000*, Office of the National Counterintelligence Executive (undated); *Foreign Spies Stealing U.S. Economic Secrets in Cyberspace, Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, Office of the National Counterintelligence Executive (October 2011); *Summary of Major U.S. Espionage, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases, January 2008 to the Present* (October 2014); *Press releases, Former Owner of Defense Contracting Business Pleads Guilty to Illegally Exporting Military Blue Prints to India Without a License*, U.S. Department of Justice (April 2015); *Six Defendants Indicted in Alleged conspiracy to Bribe Government Officials in India to Mine Titanium Minerals*, U.S. Department of Justice (April 2014); *Press Releases, HSBC India Client Indicted for Tax Evasion and Failing to Report Foreign Bank Accounts*, U.S. Department of Justice (November 2011); *Reno Man Charged with Conspiring to Provide Material Support to Terrorism groups in India and Pakistan*, U.S. Department of Justice (December 2013);

Additional documents covered by the Administrative Notice included the following: *Fact Sheet-India*, U.S. Department of State (August 2014); *Quick Facts, India*, U.S. Department of State (January 2015); *Country Reports on Terrorism 2013, Chapter 2-Country Reports*, U.S. Department of State (2014); *2008 Country Reports on Terrorism, Chapter 2-Country Reports*, U.S. Department of State (April 2009); *Country Reports on Human Rights Practices for 2013: India*, U.S. Department of State (2013); and *CRS Report for Congress: India-U.S. Relations: Strategic Issues*, Congressional Research Service (January 2013).

In addition to the documents requested by Department Counsel for official notice, I also took official notice of *Background Note: India*, U.S. Department of State (April 2012) This document contains important background information covering India. See *Administrative Notice, infra*, at 3.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Section 25.01

(Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in India and India's relationship with the United States, consistent with the provisions of Rule 201 of Fed. R. Evid.

Summary of Pleadings

Under Guidelines G and J, Applicant allegedly was arrested and charged on three occasions with alcohol-related offenses between September 2010 and June 2013. Specifically, he was arrested in June 2013 for driving under the influence (DUI) and indecent exposure/disorderly conduct (not covered in the record); January 2013 for DUI; and in September 2010 for DUI.

Under Guideline B, Applicant allegedly has (a) a wife who is a citizen of India; (b) a sister who is a citizen and resident of India; (c) a father-in-law and mother-in-law who are citizens and residents of India; (d) ownership in three properties (or land) in India with an estimated value of approximately \$22,500; and (e) past payments from an Indian company in exchange for his services.

In his response to the SOR, Applicant admitted each of the alcohol-related incidents, as well as most of the foreign influence allegations. He denied only the allegation contained in subparagraph 3.e, claiming he was not paid by the Indian company in issue and accepted only travel expenses from the Indian company, and only on one occasion, inadvertently over four years ago. Addressing the alcohol-related incidents in the SOR, he claimed he has attended AA for the past year and has maintained his sobriety for the past one and a half years without any incident. And he claimed he has since shed all of his properties in India.

Findings of Fact

Applicant is a 50-year senior systems engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant immigrated to the United States in June 1981 and became a U.S. citizen in August 1987. (Item 2) He received a U.S. passport an August 1987 after being certified as U.S. citizen. In becoming a U.S. citizen, he gave up his Indian citizenship, a requirement he understood to exist in Indian law. (Item 4)

Applicant married his wife (a citizen of India) in March 1999. She has since become a naturalized U.S. citizen with a U.S. passport she obtained in March 2015. As with Applicant, she gave up her Indian citizenship when she became a naturalized U.S. citizen. Applicant has two children from this marriage, both of whom are U.S. citizens by birth. (Items 2 and 4)

Applicant earned a bachelor's degree from a recognized university in May 1985 and claimed no military service or training in either India or the United States. (Item 2)

Alcohol-related incidents

Applicant was arrested and charged with alcohol-related offenses on three occasions between September 2010 and June 2013. (Items 1-4) In September 2010, he was arrested for DUI and refusal of a chemical test. He had attended a Labor Day party at the home of a friend. He consumed three to four martinis at the party and drove home by himself. When stopped by police, he was asked to take a full sobriety test, which he took and failed. (Item 4) He was then taken to a local police station, where he was administered a breathalyzer. (Item 4)

After failing the breathalyzer test, Applicant was charged with DUI and failing to take the breathalyzer test properly. When he appeared in court to answer the charges, he pleaded guilty to the refusal, and the DUI charge was dropped. The court fined him and suspended his license. The alleged charge of indecent exposure and disorderly conduct in the SOR is not referenced in Applicant's April 2014 interview with an agent of the Office of Personnel Management (OPM) and is not sustained by the evidence.

In January 2013, Applicant was arrested and charged with DUI, reckless driving, and refusal to take a chemical test. (Items 2 and 4) He pleaded guilty to the refusal, and the DUI charge was dropped. The court fined him and suspended his license. (Item 4)

In June 2013, Applicant was again arrested and charged with alcohol-related offenses. The night before his arrest, Applicant had a friend over to his house, where they consumed five to six drinks over a period of several hours before retiring. (Item 6) The following morning, Applicant drove his friend to a meeting. While his car was still running, police arrived, and noticed a bottle of scotch in the back seat of Applicant's vehicle. (Item 4) When asked to take a field sobriety by police, Applicant refused, claiming he hurt his back, and was arrested and taken to the local police station. (Item 6)

Once at the police station, arresting police asked Applicant to take a breathalyzer test. Applicant complied, but when the breathalyzer did not register a reading, Applicant was charged with DUI, reckless driving, driving without a license registration, failure to wear a seat-belt, and having an open container. (Item 4) In court, he pleaded guilty to reckless driving and refusal. He was fined and had his license suspended for three months. Additionally, the court ordered him to get alcohol counseling. Applicant completed his mandatory counseling between August 2013 and December 2013. (Item 4) The remaining charges were dropped.

In Applicant's interview with an OPM agent in April 2014, he assured the agent that he has continued with his counseling since January 2014. (Item 6) He told the agent that between 1987 and 1995 he consumed two beers a night on weekends, in social settings, and at home. Occasionally during this time frame, he drank to intoxication. (Item 6)

Between 1995 and March 1999, Applicant consumed two beers or scotches every night, either at home or in social settings. And from March 1999 through August 2013, he consumed six to eight drinks at home, or in social settings, two to three times a month. (Item 6) Drinking at this level would intoxicate Applicant. He assured the OPM agent that he does not plan to drink in the future and ceased drinking altogether after beginning his alcohol counseling in August 2013. (Item 6) Believing that his drinking hurt his relationships with his wife and children, he takes medications in concert with his counseling.

Applicant has not provided any counseling documentation or inclusive dates of counseling and diagnosis and prognosis, if any. At this time, nothing is known about his drinking condition, other than the background information he provided the OPM investigator in April 2014 and what can be gleaned from his AA attendance and sobriety assurances he provided in his post-FORM submission. (Items 7 and 8)

Applicant has since accepted his alcohol dependence and attended AA meetings on a regular basis. He documented his bi-weekly meetings between May 2013 and September 2015. (Item 6) A fellow AA attendee credited Applicant with being her cornerstone of recovery and with playing a major role in her maintaining her sobriety for the past two years. (Item 6)

What Applicant learned from his AA attendance is not clear. Applicant has had no reported alcohol-related incidents since his last incident in June 2013. Whether or not he considers himself a recovering alcoholic is not clear. Nor can any inferences be drawn as to what risks (if any) of recurrence Applicant is currently exposed to.

Applicant's India connections and interests

Applicant has family members and in-laws who are citizens and residents of India. (Items 2 and 4) He has a sister who is a citizen of India and resides in the Bhubaneswar state of India. (Item 2) She is a retired homemaker with no reported affiliation with the Indian government, military, or intelligence services. (Item 4) Applicant maintains contact with his sister when he visits India. Besides his sister, Applicant has five brothers, all of whom are naturalized U.S. citizens who reside in the United States. (Items 2 and 4)

Both of Applicant's in-laws are citizens and residents of India. (Items 2 and 4) His father-in-law is a retired Indian air force civilian, and his mother-in-law is a homemaker. Neither in-law has any currently reported ties to the Indian government, military, or intelligence services.

Applicant currently owns three properties in India. One property is a 4,000 square foot building lot that he purchased for \$2,500 in April 2003 for investment purposes. (Item 4) He bought 1,500 square feet of farm land in August 1998 for investment purposes. And he owns a plot of family farmland that he purchased with his brother and sister. (Item 4) His share in this property is worth approximately \$9,000 in U.S. dollars. He continues to explore options for addressing these properties, but to

date has not provided any documentation of the sale or transfer of any of his properties in India or provided concrete plans for doing so. (Items 6-7) Their collective value appears to be relatively small when comparing Indian real estate values with property values in the United States. And the potential market for these properties is not known.

In June 1997, Applicant invested approximately \$45,000 in an Indian company owned by a high-school friend. He provided unpaid engineering advice to this company, which specialized in fire protection systems. On two occasions in 2012, the company paid for a portion of Applicant's travel expenses (around \$2,000) to India on trips primarily devoted to Applicant's personal interests. (Item 4) Applicant sold his stock in this Indian company in 2011.

Applicant has made frequent trips to India since becoming a U.S. citizen in August 1987. (Item 4) Since 2005, he has traveled to India three to four times a year to address family situations. (Item 4) In his most recent trip to India in March 2014 to see family members and dispose of family assets and property, he encountered no incidents with local Indian police. In his trips to India, he has never been threatened, coerced, or pressured by Indian government officials because of family members, friends, or other contacts residing in India. (Item 4)

Country information on India

Considered the world's largest democratic republic, India is also a very diverse country, in population, geography, and climate. (*Background Note, India, supra*, at 2-4) India is the world's second most populous country and the world's seventh largest country in area. (*Id.*)

India is a constitutional democracy, whose Constitution defines it as a "sovereign, socialist, secular democratic republic." (*Background Note: India, supra*) It is a "multiparty, federal, parliamentary democracy with a bicameral parliament" and it has an historical reputation for respecting the rights of its citizens. *See id.* However, there have been reports of extrajudicial killings of persons in custody, disappearances, torture and rape by police and security forces, who generally enjoy de facto impunity. (*2012 Human Rights Reports, India, supra*, at 2-12) The basic problem stems from the lack of clear accountability, which too often has resulted in cited human rights violations going unpunished. (*Id.*, at 1) Police and security officials reportedly use torture and threaten violence during interrogations to extort money and summarily punish prisoners. (*Id.* at 6-8)

Since gaining its independence from Great Britain in 1947, India has been involved in wars with Pakistan in 1947, 1965, and 1971, and has had to defend itself against a 1999 intrusion of Pakistani-backed forces into Indian-held territory that nearly turned into full-scale war. (*CRS Report for Congress: India-U.S. Relations, supra*, at 7; *Background Note: India, supra*, at 3-4) India survived a 1975 declaration of a state of emergency that carried a suspension of many civil liberties. (*Id.* at 3) The country has experienced two assassinations of its leaders: Prime Minister Indira Gandhi in October 1984 and Prime Minister Rajiv Gandhi in May 1991. (*Id.*)

In recent years, India has been confronted with sporadic outbreaks of religious riots that resulted in numerous deaths and casualties, and violent attacks by separatist groups in various parts of the country. See *id.* The Indian state of Jammu and Kashmir remains unstable, and a number of terrorist groups operate there, particularly along the Line of Control that separates Indian and Pakistani-controlled Kashmir. See *Quick facts, India, supra, at 8* and *Country Reports on Human Rights Practices for 2013: India, supra at 2*

Before its demise in the early 1990s, the Soviet Union was India's principal and most reliable trading partner, and an important source of economic and military assistance. (*Background Note: India, supra, at 8-9*) U.S. efforts to strengthen its ties with India have been hampered some by U.S. differences over India's nuclear weapons programs, its cooperation with the Iranian military, its lack of a negotiated resolution of the Kashmir dispute with Pakistan, and the pace of India's efforts to achieve long-planned economic reforms. (*CRS Report for Congress: India-U.S. Relations, supra, at 11, 22-23, and 45*)

Important U.S. concerns have been raised, too, over reported cases involving government-sponsored entities and their illegal export, or attempted illegal export, of U.S. restricted dual use technology to India, including: (1) military night vision components; (2) vibration amplifiers and cable assemblies for use in both military and civilian aircraft; (3) manufacturing equipment related to improving the accuracy of strategic ballistic missiles with nuclear capabilities; and (4) multiple cases involving illegal export of products presenting what the U.S. Government deemed to be an unacceptable risk of diversion to programs for the development of weapons of mass destruction: or related delivery systems. See Administrative Notice, *supra, at 3*, and the specific cases referenced, *supra*.

Recommended travel restrictions do exist for U.S. citizens visiting India. The State Department cautions U.S. citizens to avoid travel in general (with several noted exceptions) to the state of Jammu and Kashmir. (Administrative Notice, *supra, at 3*; *Background Note: India, supra; and Quick Facts, India, supra, at 6-7*)

Endorsements and awards

In his post-FORM submissions, Applicant documented a number of awards and certificates of achievement. (Item 7) His awards include individual and team achievement awards recognizing his ongoing commitment to outstanding job performance in 2015 and 2014, respectively. (Items 7)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern

and may be disqualifying” (disqualifying conditions), if any, and many of the “[c]onditions that could mitigate security concerns.”

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Alcohol Consumption

The concern: Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. See AG ¶ 21.

Criminal Conduct

The concern: Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. See AG ¶ 30.

Foreign Influence

The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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. Adjudication under the this Guideline can and should considered the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. See AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant presents with a considerable history of recent alcohol-related arrests (three in all). Since May 2013, he has attended regular AA meetings but provided no evidence of counseling, diagnosis and prognosis, or proof of sustained abstinence. Additional security concerns are raised over Applicant's (a) ties with relatives who are citizens and residents of India, (b) identified property interests in India, and (c) and reimbursed business expenses from a high-school friend in India.

Alcohol and criminal conduct concerns

Principal security issues raised in this case center on Applicant's history of alcohol-related offenses. Applicant has provided little detail about his drinking patterns since June 2013. He has provided little proof of counseling and no proof of treatment or diagnosis and prognosis. While his documented commitment to AA is commendable and supportive of his commitment to managing his claimed sobriety, it does not explain the seriousness of his past drinking problems, professional recommendations (if any) for managing his alcohol issues in the future, or proof of his establishing and sustaining his sobriety since his last DUI arrest in June 2013.

Without a documented clinical evaluation by a licensed substance abuse counselor and a detailed historical summary of his drinking history (especially after June 2013), safe assessments cannot be made of his drinking consumption practices and his ability to avert abusive drinking in the future. Applicant's recent history of alcohol-related incidents and associated court-ordered counseling makes any predictions about risks of recurrent drinking hazardous without a detailed summary of his drinking history (past and present) and professional evaluations.

Applicant's recurrent problems with alcohol-related arrests (three in all) over a compressed four-year period of time and implicit acknowledgment of possible dependency issues associated with his AA attendance raise concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;" and DC ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

While Applicant's commitment to AA meetings is indicative of his concerns about his drinking abuses, his choice to attend AA meetings on a regular basis does not answer the important questions of just how serious was his drinking problem and what did professional evaluators recommend he do about it. More information is needed to make a complete and accurate assessment.

Applicable disqualifying conditions under the AGs for criminal conduct AG ¶ 30 are as follows: DC ¶ 31(a), "a single serious crime or multiple lesser offenses," and DC ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." Even though none of Applicant's alcohol-related offenses resulted in DUI convictions they involve underlying alcohol-related offenses that are cross-covered by the disqualifying conditions of Guideline J.

Applicant's demonstrated sensitivity to abstinence implicit in his AA attendance between 2013 and 2015 entitle him to partial application of MC ¶ 23(a) of Guideline G, "so much time has passed, or the behavior was so infrequent, or it happened under

such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Applicant's lack of any documented diagnosis and evidence of sustained abstinence since his last alcohol-related offense in June 2013 makes assessments of his current alcohol status too uncertain to warrant any more than partial application of MC ¶ 23(a)

Some mitigating conditions invite consideration. Potentially applicable mitigating conditions for alcohol consumption are comprised of the following: MC ¶ 23(b), "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," and MC ¶ 23(d), "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program."

Considering Applicant's number of alcohol-related incidents over the past four years (three in all) and the absence of any documented drinking history since June 2013 and confirming professional diagnosis and prognosis by a licensed substance abuse counselor, application of MC ¶ 23(b) and MC ¶ 23(d) is very limited. Too much uncertainty exists about the quality and pace of Applicant's recovery efforts to extend any more than partial mitigation credit to Applicant using these mitigating conditions

In the same vein, potential mitigating conditions under the criminal conduct guideline are not available to Applicant. Applicant's alcohol-related offenses are still relatively recent and lack sufficient proof of post-rehabilitation counseling and sustained sobriety to free Applicant of any reasonable risks of recurrence.

From a whole-person perspective, Applicant's three alcohol-related offenses and still unproven drinking history make predictable assessments about his recurrence risks too uncertain at this time. To his credit, he has made AA participation a priority for him and is considered a highly regarded mentor to a co-participant of his AA chapter. More information is needed, though, about his drinking history (especially after June 2013) and professional evaluations before he can be deemed free of recurrence risks.

Taking into account both Applicant's history of alcohol abuse and incidents away from work and corresponding lack of convincing probative evidence of his drinking history (especially after June 2013) and a professional evaluation (inclusive of a diagnosis and prognosis), the applicable guidelines, and a whole-person assessment, it is still too early to make safe predictions about his drinking status and recurrence risks without a documented summary of his drinking history and professional evaluation. While his documented AA participation over the past two years is certainly encouraging, it is not enough without corroborative evidence of his post-June 2013 drinking practices and professional assessments. Unfavorable conclusions are warranted with respect to the allegations covered by Guidelines G and J.

Foreign influence concerns

Both Applicant and his wife, and their families, have deep roots in India, a country rich in history and socio/political traditions, constitutional government, and institutional respect for human rights, intermixed with periodic reports of abuses by police and government authorities. Despite encouraging efforts in the development of strategic partnerships between India and the United States in recent years, there have been cited instances of illegal and damaging export practices by Indian firms and individuals to create dual use diversion risks.

The Government urges security concerns over risks that Applicant's wife, a U.S. resident and naturalized citizen of the United States. It urges security concerns as well over Applicant's sister and in-laws residing in India, who might be subject to undue foreign influence by Indian government authorities to access classified information in Applicant's possession or control.

Because Applicant's sister and in-laws have Indian citizenship and residency in India, they present potential heightened security risks covered by disqualifying condition (DC) ¶ 7(a), "contact 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," of the AGs for foreign influence. The citizenship/residence status of these family members in India pose some potential concerns for Applicant because of the risks of undue foreign influence that could potentially impact the privacy interests subject to Applicant's control.

Neither Applicant's wife (a U.S. Naturalized citizen who resides with Applicant in the United States) nor sister and in-laws who reside in India have any identified Indian government or military service affiliation. As a result, less consideration of DC ¶ 7(b), "connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," and DC ¶ 7(d), "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," are warranted. To be sure, there is no evidence in the record that Applicant's wife, or sister and in-laws residing in India, have any history of being subjected to any coercion or influence, or appear to be vulnerable to the same.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. See ISCR Case No. 00-0317 at 6 (App. Bd. March 29, 2002) The AGs take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

While the reports of human rights abuses and terrorist activities in certain sectors of India, along with identified illegal exporting of potential dual-use technology to India, are matters of continuing security concern to the United States, India's emergent status as a strategic partner of the United States in controlling the proliferation of nuclear weapons is an important political development that serves to promote political solidarity, and reduce security risks and concerns between the two nuclear powers.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the United States," has partial application to Applicant. Neither Applicant's wife nor sister and in-laws residing in India pose any heightened security risks that could subject them to potential pressures and influence from Indian government and military officials.

Applicant's property interests in India consist of three unvalued parcels that cannot be accurately valued using current market data. Based on the information provided by Applicant these properties appear to be relatively low valued parcels relative to priced real estate in the United States where Applicant resides, not enough to warrant any serious concerns about potential conflicts of interest. His only other identified financial interest in India involved his stock ownership interest in an Indian company founded by a high school friend. After selling his stock shares in this company in 2011, he provided unpaid engineering advice to his high-school friend on two occasions in 2012 and was reimbursed for a portion of his travel expenses. Applicant has no current business interests with this company or any other company in India.

Another mitigating condition available to Applicant is MC ¶ 8(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's demonstrated loyalty and professional commitments to the United States are well demonstrated and sufficient under these circumstances to neutralize any potential conflicts that are related to his relationships with his sister and in-laws. MC ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has some applicability, too, based on Applicant's relatively infrequent contacts with his sister and in-laws residing in India.

Whole-person assessment is available also to minimize Applicant's exposure to potential conflicts of interests with his sister and in-laws. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that his sister or in-laws residing in India might be exposed to. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, his sister, or his in-laws is minimal and mitigated. Applicant has lived in the United States since 1981 and been a naturalized U.S. citizen since 1987. He has enjoyed success in his U.S. employment relationships and has five siblings who are naturalized U.S. citizens residing in the United States.

Overall, potential security concerns over Applicant's wife's having family members in India are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his wife's familial relationships in India. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a through 1.c: Against Applicant

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Subparagraphs 1.a through 1.c: Against Applicant

GUIDELINE B (FOREIGN INFLUENCE): FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

