



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



In the matter of:)
)
-----) ISCR Case No. 14-05251
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

07/27/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant and his spouse are close to their parents, who are residents and citizens of India. He has frequent contact with his parents and usually visits them every other year or so. He provides financial support to his parents, and his father is a retired Indian central Government employee. His father receives an Indian Government pension. Applicant's property in India has an estimated fair market value of \$150,000, and his property in the United States is valued at about \$175,000. Foreign influence security concerns are not fully mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On January 27, 2014, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On January 14, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and they recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On February 11, 2015, Applicant responded to the SOR. (HE 3) On June 1, 2015, Department Counsel was prepared to proceed. On June 8, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 9, 2015, Applicant's counsel indicated Applicant was willing to waive his right to 15 days of notice of the date, time, and location for his hearing. (HE 1) On June 12, 2015, DOHA issued notice of the hearing, setting the hearing for June 24, 2015. The hearing was held as scheduled, using video teleconference to facilitate Department Counsel's participation in the proceeding. On July 2, 2015, I received the transcript of the hearing. Department Counsel offered two exhibits, and Applicant offered nine exhibits. (Tr. 13-14, 16; GE 1-2; AE A-I) There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 14, 16; GE 1-2; AE A-I)

Procedural Rulings

On June 24, 2015, I provided a proposed statement about India to Applicant and Department Counsel. (HE 4) The parties had until July 14, 2015, to submit objections to my proposed administrative notice statement on India. (Tr. 14-16, 124; HE 4) No objections were received. (HE 4) There were no objections, and I have included the statement about India in the section labeled "India" of this decision based on my discretion to take administrative notice of generally accepted facts from reputable U.S. Government sources. Except for the first two paragraphs, the remainder of the India section is taken from Department Counsel's administrative notice request with some punctuation and internal footnotes omitted, and minor grammatical errors corrected.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a through 1.d, and he provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is an information technology specialist who has been employed by a defense contractor for 18 months. (Tr. 46-48; GE 1) He believed he had an interim clearance from March or April 2014 to the present to facilitate his work on a DOD project for his employer; however, the Joint Personnel Adjudication System (JPAS) does not reflect a clearance for Applicant. (Tr. 48, 67)

In 1971, Applicant was born in India, and he is now 44 years old. (Tr. 44; GE 1) He attended school in India through the bachelor's degree level, which he received in 1994. (Tr. 69; GE 1; AE D) He did not serve in the Indian military. (Tr. 70)

In 1997, Applicant immigrated to the United States on an H-1B work visa; in 2004, he became a permanent U.S. resident; and in 2010, Applicant and his spouse became U.S. citizens. (Tr. 44-46; GE 1, 2)

In 2000, Applicant married his spouse in India. (Tr. 44, 90; GE 1) His spouse was born in India; she is a naturalized U.S. citizen; and both of their children are U.S. citizens who live in the United States. (Tr. 44, 45) His children are 7 and 11 years old. (Tr. 45; GE 1) In 2002, he earned a master's degree in business administration, and he earned several information technology and business-related certifications. (AE B, D)

Applicant's mother, father, his older brother, and his parents-in-law are citizens and residents of India. (Tr. 49; SOR ¶ 1.a; GE 1 and 2) He communicates with his father and mother on a weekly basis, his in-laws once or twice a month, and his brother in India once or twice a year. (Tr. 50-51, 54, 92) His spouse communicates with her parents about twice a month. (AE C) His conversations with his father are casual and focus on health and family concerns. (Tr. 52; AE C) His father is retired from his central government employment where he was connected with pipelines, and his mother and mother-in-law are homemakers. (Tr. 53-54) His father receives a retirement pension from the Indian Government. (Tr. 93) His parents, brother, and parents-in-law are aware Applicant is being considered for a security clearance. (Tr. 94-96) His father-in-law retired from his employment at a university. (Tr. 54, 95)

Applicant has two friends who are citizens of India. (Tr. 56; SOR ¶ 1.b) They have lived in the United States 10 or 15 years, and they are residents of the United States. (Tr. 56, 100) They intend to apply for U.S. citizenship. (Tr. 56) He also has friends living in India with whom he communicates every six months or so. (Tr. 101)

¹To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

In May 2015, Applicant, his spouse, and children visited his family in India for three weeks, returning to the United States about three weeks before his hearing. (Tr. 102) He travels to India about every two years, and he stays for three to four weeks. (Tr. 103-104)

In 1990, Applicant's younger brother moved to the United States, and he currently resides in the United States. (Tr. 49-50, 99) His younger brother is an information technology specialist, who works for an insurance company. (Tr. 99) One of Applicant's siblings-in-law lives in the United States and the other lives in Australia. (Tr. 92; AE C)

Applicant said he would resolve any conflict of interest in favor of the United States. (Tr. 64) He loves the United States. (Tr. 65) He is loyal the United States, and he is living the American dream. (Tr. 66, 116) He pays his taxes and stays out of trouble. (Tr. 116) He believes life in the United States is best for himself and his family. (Tr. 116)

Property in India

Applicant invested in Indian properties because they would be good investments. (Tr. 110-111) Applicant has three properties in India: a lot he purchased for \$5,000; a \$25,000 contribution into an investment with friends on a building; and an apartment purchased in 2009 for \$25,000. (Tr. 59-61, 72-73, 88-89) The apartment is currently unoccupied; however, when rented, the rent is about \$150 monthly. (Tr. 74) His father collects the rent and retains it as financial support. (Tr. 74-75) Applicant has a mortgage on his apartment, and he pays about \$400 a month. (Tr. 76) A property his father provided in 2009 is valued at \$36,000. (Tr. 71; AE C) Applicant's father wanted the land to go to Applicant's children. (Tr. 61) Applicant planned to retain the land from his father until his children were ready to go to college and then sell it to fund their college educations. (Tr. 62, 111)

Applicant opened a bank account in India in 1995, and about two months ago, he deactivated or closed the account. (Tr. 62-64, 78) The account had \$500 in it when it was closed. (Tr. 78) In 2015, he gave \$30,314 to his father from the account. (Tr. 115; AE I) Typically, Applicant provides about \$1,500 annually to his father for support. (Tr. 114)

Applicant's spouse purchased a certificate of deposit in India valued at \$18,000; and in 2007, Applicant invested \$7,000 with friends in a property in India. (Tr. 80-81) Applicant's spouse also received land in India from her father valued at about \$22,000. (Tr. 60; AE C) Applicant's father-in-law gave eight lots to Applicant's spouse from 2001 to 2006. (Tr. 87)

Applicant estimates the total value of all the properties and accounts he and his spouse own in India is about \$150,000. (Tr. 89, 113) Applicant's spouse does not work outside their home. (Tr. 113)

Property in the United States

Applicant's annual income is about \$150,000. (Tr. 123) He does not own a residence in the United States. (Tr. 106) His net worth in the United States including all U.S. accounts is about \$175,000. (Tr. 115; AE G, H)

Character Evidence

Two co-workers, who have worked closely with Applicant for about two years, described Applicant as professional, diligent, intelligent, honest, loyal to the United States, highly ethical, and trustworthy. (Tr. 22-29, 32-42; AE A) They recommended approval of Applicant's access to classified information. (Tr. 25, 37)

Two friends and co-workers who have both known Applicant for more than 15 years and a friend who has known Applicant for over 32 years described Applicant as helpful, positive, honest, diligent, observant, a problem solver, thoughtful, law abiding, and exceptionally productive. (AE A) Applicant's security manager and project executive detailed Applicant's importance to his employer, excellent work product, high integrity, and moral values. (AE A)

Applicant received awards and commendations from his employers. (AE B) There is no evidence that Applicant has abused alcohol, used or possessed illegal drugs, violated security or his employer's rules, or engaged in criminal offenses. (GE 1; AE A)

India

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

On January 25, 2015, President Obama and Indian Prime Minister Modi held a joint press conference in India. They lauded the close and growing ties between the United States and India. President Obama emphasized the following elements of the United States—India relationship: (1) the natural partnership between two great democracies; (2) the new Declaration of Friendship formalizing that partnership; (3) increasing bilateral trade in goods and services between the two countries approaching \$100 billion; (4) breakthroughs in nuclear cooperation; (5) additional export reforms; (6)

pursuit of investment treaties; (7) launching joint projects to reduce pollution and slow climate change; (8) partnerships in security matters in Afghanistan and in preventing Iran from obtaining nuclear weapons; and (9) most importantly in the context of this case, deepening defense and security cooperation.²

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage identifies India, along with seven other countries, as being involved in criminal espionage and U.S. export controls enforcement cases in 2008. An earlier version of that report specifically lists India as being among the most active collectors of U.S. economic and proprietary information and highlights specific incidents wherein India engaged in attempts to acquire export-restricted products.

In its 2009-2011 Report to Congress, the Office of the National Counterintelligence Executive noted that sensitive U.S. economic information and technology are targeted not only by Chinese and Russian intelligence services, but also by dozens of other countries. The Report states that some U.S. allies and partners use their broad access to U.S. institutions to acquire sensitive U.S. economic and technology information, primarily through aggressive elicitation and other human intelligence (HUMINT) tactics. Some of these states have advanced cyber capabilities.

According to the U.S. Department of Justice, there have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India.³ In January 2013, the former export control manager of a Pennsylvania-based company pleaded guilty to the illegal, unlicensed export to India and China of over 57 microwave amplifiers, products that have military applications. In November 2011, an employee of a Utah-based scientific company was charged with stealing company proprietary information for use in India. In March 2008, a Minnesota-based company pleaded guilty to submitting false export licenses to the Commerce Department in connection with the shipment of nuclear testing equipment to an entity in India. In 2008, the Department of Justice brought two separate cases against defendants charged with illegally exporting controlled products to Indian government entities involved in the development of ballistic missiles, as well as space launch vehicles and combat fighter jets.

Other such cases concerning the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India have included: (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

² See The White House, Office of the Press Secretary, January 25, 2015, "U.S.-India Joint Statement—'Shared Effort; Progress for All,'" <https://www.whitehouse.gov/the-press-office/2015/01/25/us-india-joint-statement-shared-effort-progress-all>. (HE 4) See also The White House, Office of the Press Secretary, November 08, 2010, "Joint Statement by President Obama and Prime Minister Singh of India," <https://www.whitehouse.gov/the-press-office/2010/11/08/joint-statement-president-obama-and-prime-minister-singh-india>. (HE 4)

³There is no evidence that Applicant or any of his family members are or were involved in any criminal activity. As such this paragraph and the next paragraph have limited relevance.

strategic ballistic missiles with nuclear capabilities; and, 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.

India and Pakistan have been locked in a tense rivalry since the partition of the subcontinent following independence from Great Britain in 1947. The principal source of contention has been Kashmir, whose Hindu leadership chose to join India at the time, despite a Muslim majority population. India and Pakistan have engaged in three full-scale wars between 1947 and 1971, and as recently as 1999, a Pakistani military intrusion into Indian-held territory nearly led to another full-scale war. The Indian states of Jammu and Kashmir remain unstable, and a number of terrorist groups operate there, particularly along the Line of Control separating Indian and Pakistani-controlled Kashmir. The State Department strongly recommends avoiding travel to the states of Jammu and Kashmir.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the U.S. Government’s list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India remains subject to violent terrorist attacks and continues to be one of the most persistently targeted countries by transnational and domestic terrorist groups. Most notably, in late November 2008, terrorists coordinated attacks on multiple locations in Mumbai, targeting areas frequented by Westerners and killing at least 183 people, 165 of whom were civilians, including 6 Americans. Subsequent terrorist attacks in 2012 and 2013 underscore that India remains targeted.

According to the U.S. Department of State’s 2013 Human Rights Report, the most significant human rights problems in India were police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption at all levels of government, leading to denial of justice; and separatist, insurgent, and societal violence. Other human rights problems included disappearances, poor prison conditions that were frequently life threatening, arbitrary arrest and detention, and lengthy delays or the denial of justice. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remained serious problems. Widespread impunity at all levels of government remained a serious problem. Investigations into individual cases and legal punishment for perpetrators occurred, but in many cases a lack of accountability due to weak law enforcement, a lack of trained police, and an overburdened, under-resourced court system created an atmosphere of impunity.

The United States and India share a number of security perspectives, including those on China and Asian balance of power calculations, terrorism, Afghanistan, maritime issues, and weapons of mass destruction. However, on a practical rather than strategic level, considerable differences remain, particularly as to Pakistan and Iran.

India's relations with Iran have traditionally been positive. While India has reluctantly supported some measures against Tehran, it has been careful not to break ties, since to do so would increase India's energy dependence on the Arab Persian Gulf states. Since 2008, imports into India from Iran have dropped from 16% to 10% of India's total import volume, and pressure from the United States has spurred India to plan an additional 11% reduction in 2013. India remains firm in protecting its diplomatic and trade ties with Iran not only to demonstrate its strategic autonomy, but also to ensure diversity in its energy resource providers. India emphatically supports Tehran's right to the peaceful use of nuclear energy, though they are keen to prevent the emergence of another nuclear power in the region. India's traditionally lenient stance on Iran has been a perennial source of friction with the United States.

Concerning Pakistan, U.S. policy and India policy have often been at odds. Although the current Indian government has actively engaged in a peace process with Pakistan's government, Indian officials have long maintained that Pakistan's security services, in particular its Inter Services Intelligence agency, are at the heart of the region's and perhaps the world's problems with Islamic extremism—a perspective that places India at odds with the United States, whose policy has conceived of Pakistan's security institutions as key players in resolving such problems, even as U.S. doubts persist.

India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India has remained reticent to discuss its nuclear security measures or allow inspections. India has also refused to accede to the nuclear Non-Proliferation Treaty despite U.S. policy supporting its universality.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 this Guideline can and should consider 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.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(b) connections 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;

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant was born and educated through his bachelor's degree in India. His parents, one brother, and parents-in-law are citizens and residents of India. He has frequent⁴ contacts with his parents and his spouse has frequent contacts with her parents living in India.

Applicant and his spouse's properties in India have a fair market value of \$150,000. Applicant has "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the [Applicant] to heightened risk of foreign influence or exploitation." See *generally* ISCR Case No. 12-00120 (App. Bd. Feb. 10, 2014) (affirming denial of security clearance because of applicant's connections to India and noting administrative judge's findings of heightened risk in relation to family relationships and property interests of \$340,000 in India). See *also* ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his wife) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

⁴See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month or more often is considered to be "frequent" under AG ¶¶ 7 and 8).

None of the disqualifying conditions apply to SOR ¶¶ 1.b (stating “you have two friends who are citizens and residents of India”) and 1.d (stating “you maintain a checking account in a bank in India”). Applicant has friends who are citizens and residents of India; however, his contact with them is infrequent and his connection with them is too attenuated to raise a security concern. He closed his checking account in India. SOR ¶¶ 1.b and 1.d are mitigated. Applicant’s contacts with his brother who is a resident of India are infrequent, and that portion of SOR ¶ 1.a referring to his brother are mitigated.

Applicant lives with his spouse in the United States. His spouse is close to her parents, who are residents and citizens of India. She frequently communicates with her parents. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). “[A]s a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Thus, an indirect, but important tie remains between Applicant and his in-laws living in India. Indirect influence from Applicant’s in-laws living in India, through Applicant’s spouse to Applicant, could result in a security concern.

Applicant’s relationships with residents of India create a concern about Applicant’s “obligation to protect sensitive information or technology” and his desire to help his spouse and her parents, or his own parents, who are in India. For example, if terrorists or government officials in India wanted to expose Applicant to coercion, they could exert pressure on his in-laws or parents in India. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

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

The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his and his spouse’s relationships with family members living in India do not pose a security risk.

Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives in India.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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

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

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

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

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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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

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

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

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his parents and his spouse has frequent contracts with her parents, who are citizens and residents of India. His loyalty and connections to family living in India is a positive character trait. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Indian citizens living in India] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. In 1997, he immigrated to the United States, and in 2010, he and his spouse became naturalized U.S. citizens. His spouse and two children are U.S. citizens, and live in the United States. When he took an oath and swore allegiance to the United States in 2010, as part of his naturalization as a U.S. citizen, and when he volunteered to assist the U.S. Government as a contractor, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. His investments in the United States total \$175,000; his annual salary is \$150,000; he earned a master's degree in business administration and several certifications in the United States; and he has close friends and supportive co-workers in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India. There is no evidence, however, that terrorists, criminals, the Indian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.⁵ As such, there is a reduced possibility that Applicant or his family living in India would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in India is from terrorists and other lawless elements and not the Indian Government.

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

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

AG ¶ 8(f) does not fully apply to mitigate security concerns arising from Applicant's property located in India. Applicant has a substantial investment in India with property with a fair market value of \$150,000. Applicant's net worth in the United States of \$175,000, and his U.S. salary are important components of his economic connections to the United States; however, his U.S. economic connections are not sufficient in magnitude to fully negate his India financial connections as a security concern.

In sum, Applicant and his spouse's connections to family living in India are significant. Applicant frequently communicates with his parents in India, and his spouse frequently communicates with her parents in India. He travels to India about every other year, and when he visits India he stays for several weeks. His father is a retired Indian Government employee, who is living on an Indian Government pension. Applicant and his spouse have a substantial financial connection to their parents. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. The primary impediment to Applicant's access to classified information is his interest in his properties in India, which amounts to about \$150,000. Should Applicant divest himself of these properties, this impediment to his access to classified information could be mitigated. Foreign influence security concerns under Guideline B are not mitigated at this time.

⁵There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The factors weighing towards approval of Applicant's security clearance are noteworthy; however, they are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. When he and his spouse were naturalized as U.S. citizens in 2010, they swore allegiance to the United States. His spouse and two children are U.S. citizens and reside in the United States. He volunteered to serve as a contractor supporting the DOD. Applicant's net worth in the United States of \$175,000, and his U.S. salary are important components of his economic connections to the United States. Six character witnesses have known Applicant from about two years to 32 years, and describe him as helpful, positive, honest, diligent, observant, a problem solver, thoughtful, law abiding, exceptionally productive, professional, intelligent, loyal to the United States, highly ethical, and trustworthy. Their statements support approval of Applicant's access to classified information. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant.

A Guideline B decision concerning India must take into consideration the geopolitical situation and dangers there.⁶ India is a dangerous place because of violence from terrorists and other lawless elements, but not as dangerous as many other countries. Terrorists continue to threaten the Indian Government, the interests of the United States, and those who cooperate and assist the United States. The Indian Government does not fully comply with the rule of law or protect civil liberties in some

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

instances. The United States and Indian Governments are allies in the war on terrorism. India and the United States have close relationships in diplomacy and trade. India and the United States have sometimes had profound policy disputes.

There are foreign influence security concerns arising from Applicant's parents and his spouse's parents living in India, and his, his spouse and his spouse's financial interest in property in India that warrant greater weight than his connections to the United States. Applicant and his spouse's parents are Indian citizens, who live in India. Applicant's father is a retired Indian Government employee, who receives an Indian Government pension. Applicant frequently communicates with his parents and his spouse frequently communicates with her parents. Applicant travels to India every other year or so. His financial interests in India are valued at about \$150,000. His close connections to family in India and substantial Indian property interests make Applicant more vulnerable as a target of coercion by lawless elements in India. His family and financial interests in India will be at a greater risk if his clearance is granted.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden and foreign influence concerns are not mitigated at this time. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge