



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-01200

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

06/20/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On July 29 and August 11, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP)<sup>1</sup>. On August 22, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

<sup>1</sup> Both dates were entered in the signature block on the e-QIP.

Applicant answered the SOR in writing on September 17, 2015. Applicant admitted the allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 23, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to the Applicant on December 28, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on December 30, 2015.

Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on January 29, 2016. His Response is dated January 27, 2016. On February 3, 2016, Department Counsel indicated that she had no objection to the inclusion of Applicant's Response in the record. The record closed on that date.

Department Counsel submitted four Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on August 28, 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on March 29, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted the four allegations in Paragraph 1 of the SOR. All the allegations alleged family connections to India, Applicant's country of birth. (Items 1-3, 5)

Applicant emigrated from India to the United States in February 1998 when he was 24 years old. He became a naturalized U.S. citizen in May 2010. He has had a U.S. passport since June 2010. His Indian passport was cancelled in June 2010 after he became a U.S. citizen. He works for a defense contractor. (Items 1-3, 5)

Applicant is married and has two children. They all live in the United States. His wife and first child were born in India. His wife is a registered alien and is a citizen of India. They have been married since 2009. The second child was born in the United States. (Items 1-3, 5)

Applicant's two brothers, one sister, father-in-law, and brother-in-law all live in India and are citizens of that country. Applicant's e-QIP states he does not know the employer of his oldest brother. His younger brother works for a technology company in India. Applicant's brother-in-law works as a maintenance manager at an Indian government research center. Applicant denies having frequent contact with him. Applicant's father-in-law does not work for the Indian government and is retired. He visits Applicant for several weeks each year. Applicant has monthly telephone or internet contact with his other relatives listed in the SOR. His e-QIP shows trips to India every year from 2008 to 2010 for a month at a time. (Items 1-3, 5; Response)

Applicant's parents are deceased. His mother-in-law is also deceased. His youngest brother is a banker in and a citizen of Australia. (Item 3)

Applicant owns his home in the United States. He also owns property in India that is worth about \$80,000 U.S. dollars. He paid about \$20,000 for it in 2002. He is willing to sell that property that he describes as an apartment. He does not earn any money from it. His sister receives the rental income to help support her. She has Applicant's power of attorney for the property. She is a housewife in India. (Items 1-3, 5; Response)

Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Administrative Notice**

Applicant has contacts with India. Accordingly, it is appropriate to discuss the current situation concerning India and the United States. India is the most populous democracy in the world. There have been incidences in the past when parties in the United States attempted to illegally export military or dual-use technologies to India, such as night vision equipment and missile components. There have been numerous and recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving the government of India, private companies, and individuals. Finally there are concerns with widespread human rights problems, and terrorist activity, particularly in northwest India.

India and Pakistan have been locked in a tense rivalry since the partition of the subcontinent after the end of British rule in 1947. These two countries have engaged in three wars since 1947 over Kashmir and Jammu, both Indian states. The U.S. State

Department strongly recommends avoiding travel in these areas by U.S. citizens.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. Six Americans were killed in the November 2008 attack in Mumbai. Attacks in 2012 and 2013 show India remains a target for these groups.

The U.S. State Department in a 2013 report stated there are significant human rights problems in India with police and security force abuses, corruption in all levels of the government, and various types of violence. Discrimination and violence against women remain a serious problem.

India's relations with Iran have been positive in years past. It has a lenient stance on Iran which has caused friction between India and the United States. India has long been a military customer of the Soviet Union in the past and of Russia currently.

In 2015 the United States and India signed a "Declaration of Friendship" because India is growing as a trade partner with the U.S. The two countries are to cooperate on energy, defense, and homeland security. (Item 4)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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 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 describes nine conditions that could raise a security concern and may be disqualifying. Four conditions may be applicable:

(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 has contact with his oldest and younger brothers, father-in-law, and sister on a frequent basis. His brother-in-law has infrequent contact with Applicant. However, there is family contact. Therefore, AG ¶ 7 (a) applies.

Applicant has familial connections to his siblings and his wife's family in India. His brother-in-law works as a maintenance manager at an Indian government research facility. These situations create the potential for a conflict of interest between Applicant's obligation to protect sensitive information or technology and his possible desire to assist his Indian relatives by providing that information. AG ¶ 7 (b) is established.

Applicant lives with his family in the United States, including his wife and first-born child who were born in India and are citizens of that country. Therefore, he shares living quarters with persons who might create a heightened risk of foreign inducement, manipulation, or coercion. AG ¶ 7 (d) is established.

Finally, Applicant owns property in India currently worth about \$80,000 that he bought in 2002 for \$20,000. This property he owns, and that is managed by his sister for her economic benefit, places Applicant at a heightened risk of foreign influence or exploitation. AG ¶ 7 (e) is established.

AG ¶ 8 provides six conditions that could mitigate security concerns. Three conditions may apply:

(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; 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.

Applicant has lived in the United States since immigrating in 1998. He became a U.S. citizen in May 2010. He owns a home in the United States. His contact with his siblings and in-laws is monthly. They have positions in India that will not raise a possibility that he would be placed in the position of having to choose between his relatives' interests and those of the United States. Applicant's connections to the United States after 18 years are stronger than his familial ties to India. Applicant can be expected to resolve any conflict of interest in favor of the United States based on his work history as shown in the e-QIP during the past 18 years. AG ¶ 8 (a) and (b) are established.

Applicant owns property in India. His only sister manages the property for him and uses the income to support herself and her family. The value of the property has increased from \$20,000 in 2002 to about \$80,000 in 2016. Applicant does not benefit financially from this investment. His Response declared his willingness to sell this property on his next visit to India if that would be the "right" course of action regarding his security clearance. The value of this apartment is such that it is routine and not actively controlled or managed by him. His sister has effective control of the property to manage it and receive any income from it. This apartment and its value are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual because of its value and his arm's length control and his lack of any economic benefit from the property. AG ¶ 8 (f) is established.

## 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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case.

Although this case pertains to Guideline B, the security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that warrant further analysis. First, there is a significant risk of various human rights abuses in India. Industrial espionage is a serious concern also. Persons interested in gaining such information could attempt to use Applicant's siblings and in-laws to obtain such information. Second, he had numerous connections to India before he immigrated to the United States in 1998. Following his birth, he spent his formative years there. He was educated at an Indian university. Third, his three siblings, and in-laws, remain residents and citizens of India. Fourth, he has some contact with these family members on a monthly basis. Fifth, he owns an \$80,000 apartment in India to which his sister has power of attorney and derives the income from its rental.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 18 years, and has been a naturalized citizen for six years. His spouse has been living in the United States since 2009 and is a registered alien. His second son was born in the United States. His wife and oldest son were born in India. He owns a home here. His Indian apartment he stated he would sell on his next trip to India if it would help reduce security

concerns. Out of his sense of patriotism and love for the United States, he obtained a job with a defense contractor. There is no evidence that he has ever taken any action that could cause potential harm to the United States. There is no derogatory information about him in the record.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did mitigate the security concerns under the guideline for foreign influence.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a to 1.d:	For Applicant

### **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge

