



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03419
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Mark S. Zaid, Esquire

03/30/2016

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant’s clearance.

On 5 August 2014, the Department of Defense (DoD) issued an SOR to Applicant detailing security concerns under Guideline B, Foreign Influence.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 1 July 2015, and I convened a hearing 9 September 2015. DOHA received the transcript 17 September 2015, and the record closed.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibit (GE) 1, hearing exhibits (HE) I-II, and Applicant exhibits A-G.

<sup>2</sup>DoD acted 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 (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the SOR allegations. He is a 52-year-old staff principal employed by a defense contractor since January 2014. He has been employed in related businesses since September 2003, although he was briefly unemployed February-March 2009. He has not previously held an industrial clearance, but received a favorable trustworthiness determination from another Government agency in April 2010 (GE 1; Tr. 60).

Applicant was born and raised in India, and obtained his undergraduate degree from a university in India in June 1996. He married in India in April 1996. He has been employed in the information technology field since June 1990, and has worked for companies in India, Australia, and Malaysia (AE A). Applicant is the fourth or fifth generation of Indians who converted to Christianity, and thus find themselves in a less-favored status relative to most Indians.

Applicant and his wife immigrated to the U.S. in November 1998, and they became naturalized U.S. citizens in July 2013. India does not recognize dual citizenship. Its citizenship law permits voluntary renunciation of citizenship, and states that voluntarily obtaining citizenship in another country may be grounds for involuntary loss of Indian citizenship. However, both Applicant and his wife formally renounced their Indian citizenship in August 2013 (AE D, E). They have two sons, born in February 2000 and November 2004, both U.S.-born citizens.

Applicant's father, brother, and father-in-law are resident citizens of India. Applicant's 88-year old father is retired, and receives a pension, from his work as a public works department engineer for the equivalent of a state government (Tr. 63). Applicant speaks to his father by telephone once or twice per month. Applicant's brother works as an engineer for Indian Railway, which Applicant described as a public sector organization with no direct connection to the government, much like AMTRAK in the U.S. (Tr. 66, 79). Applicant speaks to his brother by telephone about every other month. Neither of them served in the military or the national government. Applicant's 78-year-old father-in-law is retired, with a pension, from his work as a bookkeeper in a department store run by the Indian military. He did not otherwise serve in the military or national government.

Applicant's mother and mother-in-law are deceased. He has an older brother living in the U.S. who is also a U.S. citizen. Applicant and his wife have sponsored their fathers for legal permanent residence in the U.S. They hope their fathers will be able to immigrate to the U.S. within the next year.

Applicant estimates his net worth at \$518,000 (AE C), of which \$100,000 consists of three residences, a vacant plot of land, and a \$300 bank account in India. He has \$96,000 equity in a house he recently bought in the U.S. (Tr. 81), \$45,000 in education accounts for his sons, \$45,000 in his 401(k) plan, \$108,000 in an IRA,

\$51,000 in his checking account in the U.S., and \$10,000 in a mutual fund. Applicant earns \$140,000 annually (Tr. 78). He has excellent credit.

Applicant's assets in India are largely for the benefit of his family living there. His father-in-law lives in one residence (SOR 1.d), his father lives in another (SOR 1.e), and the third is an apartment Applicant and his family use when they visit India (SOR 1.f). Applicant has visited India 12 times between December 2000 and May 2013 (GE 1). Applicant uses the bank account as a source of funds when he visits India, because he finds it easier than using travelers checks or credit cards. The vacant land is property his mother inherited, then lost, which Applicant purchased for sentimental reasons. Neither Applicant nor his wife have any desire to live in India in the future. Both expect to dispose of their assets in India once their fathers have immigrated to the U.S.

Applicant reported his foreign relatives as required on his clearance application (GE 1). He reported all his foreign assets as well.

India is a stable multiparty federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The central government has broad administrative powers in relation to its states. The Indian government generally respects the rights of its citizens. Recent elections have been free and fair, despite scattered instances of violence. India has a vibrant civil society, free press, and a robust democratic political system. Yet, endemic government and police corruption, caste-based discrimination, and domestic violence and other abuses against women and children persist, despite criminal penalties for violations and government efforts to implement programs designed to empower members of the lower castes. Police and security forces often act with impunity, and serious abuses have been reported in criminal investigations and efforts to suppress domestic terrorism. Separatist and terrorist groups remain active in areas of conflict. Because of these threats to safety, the U.S. State Department has advised U.S. citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border.

India's size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and of the Non-Aligned Movement. Long a member of the United Nations, the country has held a non-permanent seat on the Security Council in 2011-2012, and seeks a permanent seat on the Council. It has long participated in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The rapidly growing software sector in India is boosting service exports and modernizing the country's economy, although excessive regulatory and bureaucratic structures and corruption present obstacles to growth. The United States, India's largest investment partner, strongly supports the market reforms undertaken by India since 1991 and urges further liberalization of trade and investment barriers. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

Since 2000, India has been listed as actively engaged in economic intelligence collection and industrial espionage directed at the United States, although there is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence. The United States has also had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. Differences between the United States and India still exist over India's nuclear weapons programs, the slow pace of India's economic reforms due to inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls, and India's bilateral strategic partnership with Iran.

At the same time, these differences no longer dominate the United States' attitude toward India. The United States recognizes India as key to strategic interests. Since 2002, the United States and India have held increasingly substantive combined exercises involving all military services. Both countries are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. The Bush and Obama administrations have been committed to establishing a strong, dynamic partnership with India. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2007, the United States and India reached a historic milestone in their strategic partnership by completing negotiations on a bilateral agreement for peaceful nuclear cooperation. In July 2009, the Obama Administration launched a "Strategic Dialogue" calling for collaboration on energy, trade, education, and counterterrorism issues. Major U.S. arms sales to India are underway. In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for the largest-ever U.S. arms transfer to India. During a recent visit to India in June 2012, then-Secretary of Defense Panetta cited the strong, strategic, increasingly collaborative, and transparent relationship between the two countries as the foundation for a new defense strategy guiding the U.S.' military rebalance in the Asia-Pacific region. He called for already strong mutual participation in military exercises to become more regular and complex. As evidence of the U.S.' commitment to providing the best defense technology possible to India, Secretary Panetta pointed to work by the Obama Administration to reform export controls. He called for India to modernize its own regulations in defense procurement and nuclear liability legislation.

Applicant is a highly skilled information technology engineer, with multiple certifications and awards (AE A, B). His work and character witnesses consider him honest and trustworthy, and recommend him for his clearance (AE F, G; Tr. 15-24, 25-31, and 33-38).<sup>3</sup> All five of them have clearances themselves. Applicant describes himself as living the American dream (Tr. 75). He is actively involved in school activities,

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<sup>3</sup>His references include his current company supervisor and friend, his current facility security officer (FSO) who also goes to church with Applicant, a current coworker and friend, a former supervisor and friend, and a former colleague. Each was aware of the SOR, but not necessarily the particulars of each asset. Each of them considers Applicant and his family to be completely assimilated into American culture.

his sons' sports teams, and church events. His family does not celebrate Indian holidays, most of which are Hindu and have no religious relevance to him. Applicant is also aware of his security obligations to report any suspicious foreign contacts to his security office.

## **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>4</sup>

## **Analysis**

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>5</sup> Evaluation of an individual's qualifications for access to protected information

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>AG¶6.

requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>6</sup> Further, security concerns may arise through 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.<sup>7</sup> In addition, security concerns may be raised by 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.<sup>8</sup> Finally, failure to report, where required, association with a foreign national may raise security concerns.<sup>9</sup>

Concerning potential mitigating factors, AG ¶ 8(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.," largely mitigates the Applicant's circumstances regarding his family members living in India.

While the ongoing risk of terrorist activity by rogue elements in India raises safety issues addressed by U.S. Government travel warnings, there is no evidence that terrorist elements use violence as a means of obtaining protected information. Similarly, the Indian government and companies are active collectors of such information, but there is no evidence that they use coercive means or target ex-patriate citizens or former citizens to obtain this information.

Applicant has ongoing contact with his father and brother in India. Most of the contact is by telephone, although Applicant has traveled to India almost yearly since December 2000 to visit his relatives. Although these contacts cannot be considered casual and infrequent, the nature and extent of his contact with his relatives abroad are what one might reasonably expect of any immigrant with a parent or in-laws living in a distant country.

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<sup>6</sup>AG ¶7(a).

<sup>7</sup>AG ¶7(c).

<sup>8</sup>AG ¶7(e).

<sup>9</sup>AG ¶7(f).

Nothing about his family members' previous or present occupations or activities creates a heightened risk. None of them has an affiliation with the Indian government, or any military, security, or intelligence responsibilities. Applicant's father and brother were employed by a state government and a public sector organization, with no direct connection to the national government. His father-in-law worked as a civilian employee of a non-military organization within the Indian military. Both Applicant's father and father-in-law are retired.

India and the United States have significantly improved their bilateral relations in the past decade. They have held a series of substantive combined exercises involving all military services since 2002. As evidence of the U.S.' commitment to provide the best defense technology possible to India, India signed in 2009 a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for the largest-ever U.S. arms transfer to that country. The Obama administration characterizes the relationship between the two nations as strong, strategic, increasingly collaborative, and transparent. India has also been a reliable ally of the United States in the fight against international terrorism. The country has taken steps since the Mumbai attacks to make it more difficult for insurgents or terrorist groups to operate with impunity. Human rights abuses in India largely involve harsh treatment of persons suspected of terrorist activity. India is not known to coerce its law-abiding citizens. Yet Indian-U.S. interests are not aligned on several issues involving Pakistan and other countries. Indian scientists and chemical companies have been sanctioned by the United States in the past for transferring nuclear weapons-related equipment and technology to Iran. Furthermore, India and commercial entities in India have aggressively targeted U.S. economic intelligence in the past, as recently as 2008, although the Defense Department does not presently believe that India is exploiting U.S. technology.

Applicant's \$100,000 of assets in India clearly establish AG ¶7(e). The aggregate value of the properties and bank account comprise 17-19% of Applicant's overall net worth. This is not de minimis, but I conclude that this is not a substantial property interest in a foreign country that could present a heightened risk of foreign influence, particularly where the property is, for all practical purposes, a gift to his father and father-in-law, and a matter of convenience to Applicant when he visits India. Thus, the assets are also mitigated under the first prong of AG ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual." The nature of the interests is routine. Applicant provided housing for his father and father-in-law and a convenient place for him to stay when he visited India. The investments did not cause any financial difficulty for Applicant. His assets in the U.S. are such that he could walk away from his Indian assets if the need arose. Indeed, once his father and father-in-law immigrate to the U.S., Applicant anticipates selling the properties.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), where "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.” Applicant’s sense of loyalty or obligation to his father, brother, and father-in-law cannot be characterized as “so minimal” for the same reasons that his contacts cannot be considered “casual and infrequent.” Yet, there is no similar sense of loyalty to a foreign group, government, or country, particularly where Applicant is a member of a disfavored religious minority. Moreover, Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States, where he has resided since 1998 and established firm roots. He started his family, has purchased property, has significant assets, and established his home here. His children are U.S. citizens; his wife and his older brother are naturalized U.S. citizens. Applicant and his wife formally renounced their Indian citizenship within a month of becoming U.S. citizens. They have no desire to live in India. Their lives are here, the bulk of their assets are here, their friends and activities—school, sports, church—are here.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a). Applicant has family, but mostly financial, ties to India that potentially raise concerns of foreign influence. He is not likely to jeopardize himself, his spouse, or the employment that he values. Applicant has demonstrated his reliability and trustworthiness to his supervisors and co-workers. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-h: For Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge