



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



In the matter of: )  
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----- ) ISCR Case No. 14-05449  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Sean M. Bigley, Esquire  
Bigley Ranish, LLP

June 11, 2015

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on April 5, 2013. (Government Exhibit 1.) On December 4, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the 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 for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR, with four attached Answer Exhibits, through his original counsel<sup>1</sup> on January 17, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 24, 2015. I received the case assignment on March 2, 2015. The case was reassigned to another administrative judge on March 12, 2015, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing that same day. Due to scheduling issues the case was reassigned to me on March 13, 2015. A new notice of hearing was issued on March 13, 2015, and I convened the hearing as scheduled on April 7, 2015. The Government offered Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant Exhibits A through I, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on April 15, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of India (India). Applicant's counsel raised various objections to the weight, relevance and admissibility of some of the governmental documents referenced by Department Counsel in support of his request. Applicant's counsel was particularly concerned with the age of some of the documents. (Tr. 17-21.) Applicant's counsel also submitted an administrative notice request, with attached documents. (Tr. 26.) The requests and the referenced documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

Applicant is 41, married to his second wife, and has both a master's degree and a doctorate from an American university. His wife is a native-born American citizen. He and his second wife have a new-born American son, and he has a native-born American daughter with his first wife. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. This is his first application for a security clearance. (Government Exhibit 1 at Section 18; Applicant Exhibits D, E, and F; Tr. 64-66, 68-70.)

Applicant denied all of the allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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<sup>1</sup>Claery & Green, LLP.

## Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability, or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

Applicant was born in India in 1975. He moved to the United States in 1998 to continue his education. He received his master's degree and doctorate from an American university, the last in 2002. He began working for his defense contractor employer in 2013. (Government Exhibit 1 at Sections 12, 13A.)

Applicant states, "I came from a very poor background and poor state in India." Applicant testified that he was discriminated against in India, including during his time in college, because of where he was from. He eloquently described his feelings of freedom from such discrimination when he first arrived in the United States, and how that was the impetus to the realization that he wanted to become an American citizen. "This is my country and this will be my country always," he testified. Regarding Applicant or his family ever returning to India permanently he states, "Never." He returns to India about once every two years for two weeks at a time to visit. Finally, Applicant stated that his feelings of love and affection are stronger for his wife and family here in the United States than towards his extended family in India. (Tr. 46-51, 52-53, 64, 66, 72-73, 76-81.)

Applicant began the process of applying for a security clearance in April 2013. On June 19, 2013, Applicant had his company's facility security officer destroy his then-current Indian passport. (Applicant Exhibit A.)

Applicant and his wife own four houses in the United States. Their combined income is \$360,000 a year. Including their investments in the United States, and the four houses, Applicant's net worth is approximately \$4.5 million. Applicant has no assets in India. (Applicant Exhibits B, C, D, E and F; Tr. 51-53.)

The allegations in this case concern Applicant's relations in India and how much money he gives them on an annual basis. Applicant admits that he has relatives in India, and that he has given them money on a voluntary basis from time to time because of the poverty his relatives live in. (Government Exhibit 2 at 3.) He denies that he has given them as much money on an annual basis as the SOR alleges. The SOR allegations were based on incorrect information provided by Applicant, which was due to his misreading of the intent of part of the e-QIP.

Applicant's basic confusion is with two questions under Section 20A of the e-QIP, particularly the subsection, "Foreign Financial Interests - Foreign National Support." Immediately under that title the questionnaire asks, "Have you **EVER** provided financial support for any foreign nationals?" (Emphasis in original.) Applicant answered, "Yes," and proceeded to list eight relatives in India to whom he had given money over the

years. For each relative, after providing basic identity information, the questionnaire first asks, "Provide the amount (in U.S. dollars) of all financial support provided." The next question is, "Provide the frequency of your support." Applicant reasonably viewed these two questions as being separate, not connected.

Applicant testified:

All - - that's what I interpreted all as, lifetime, how much all I have supported, so I said 5,000 or 6,000 in the lifetime that on 15 years or 17 years that I have been here I have given.

Then they say - - ask me a question, "Provide the frequency of your support." so sometime if let's say I give somebody \$100 once in a while in a month or so or somebody get a yearly, then I say, Okay." If - - I give them financial support yearly, but I did not mean to interpret that I give that much amount per year.

I took that, those two questions, as independent question. (Tr. 60-61.)

For example, Applicant first lists that he provided support to his father, who passed away in 2009.<sup>2</sup> He stated that the total of all financial support he provided to his father was \$6,000. Applicant then stated that he provided financial support to him on a yearly basis. The end result was that the support amounts for his remaining living relatives are lifetime totals of all support, not yearly or monthly totals, which are much less. In order to provide corroboration for this interpretation Applicant attached his bank records for the years 2012, 2013, and 2014 to his Answer.<sup>3</sup> He also provided a spreadsheet, which describes in detail when and how much support he gave each relative. (Government Exhibit 1; Answer at 4-5; Answer Exhibit 2; Applicant Exhibit I; Tr. 59-61.)

Turning to the specific allegations in the SOR:

1.a. Applicant's mother is a citizen and resident of India.<sup>4</sup> She is a housewife. Applicant talks to her by telephone every week. He may speak to his other relatives every two or three months. The SOR alleges that Applicant provides her \$5,000 in financial support per year. Applicant testified, and his financial records confirm, that he has not provided financial support to his mother since before 2012. When he did provide

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<sup>2</sup>Government Exhibit 1, Section 20A, Entry 1.

<sup>3</sup>The bank records are in Indian rupees. The exchange rate between 2012 and 2014 ranged between approximately 55 rupees to the dollar and 59 rupees. X-Rates, *Historic Exchange Rates*, <http://www.x-rates.com/historical/?from=USD&amount=1&date=2014-06-05> (accessed June 5, 2015). (The date of June 5, 2014, in the pinpoint website address is merely given as an example.)

<sup>4</sup>Government Exhibit 1, Section 20A, Entry 2.

such support, it was much less than \$5,000 per year. (Answer Exhibit 2; Applicant Exhibit I; Tr. 71-74.)

1.b. One of Applicant's brothers<sup>5</sup> is a citizen and resident of India. The SOR alleges that Applicant provides him \$6,000 in financial support per year. Applicant testified, and his financial records confirm, that he provided business loans to this brother, who is in the landscape and irrigation business. In 2013 the amount was \$1,836, and in 2014 the amount was \$2,727.<sup>6</sup> The total amount provided in the last three years is \$4,563. Applicant expects this money to be paid back by this brother. No money was provided to this brother in 2012. (Answer Exhibit 2; Applicant Exhibit I; Tr. 57, 73, 83-84.)

1.c. Applicant has a second brother<sup>7</sup> who is also a citizen and resident of India. The SOR alleges that Applicant has provided this brother with \$10,000 per year. Applicant testified, and his bank records confirm, that he provided a business loan to this brother in the amount of \$3,636 in 2013. The loan was to help his brother establish a fertilizer business. Applicant expects this money to be paid back by his brother. No money was provided to this person in 2012 or 2014. (Answer Exhibit 2; Applicant Exhibit I; Tr. 57, 73, 83-84.)

1.d. Applicant has three cousins who are citizens and residents of India.<sup>8</sup> The SOR alleges that Applicant has provided these three cousins collectively with \$13,000 per year. Applicant's financial records show the following:

Cousin 5 received \$182 in 2013 as a business loan. This person makes bricks. Applicant expects this amount to be repaid to him. Cousin 5 received no money in 2012 or 2014. (Answer Exhibit 2; Applicant Exhibit I.)

Cousin 6 received no money in 2012, 2013, or 2014. (Answer Exhibit 2; Applicant Exhibit 1.)

Cousin 7 received \$3,636 in 2014 as a gift for the dowry of his sister. He is an engineer. He received no money in 2012 or 2013. (Answer Exhibit 2; Applicant Exhibit I; Tr. 57.)

1.e. Applicant has a nephew who is a citizen and resident of India.<sup>9</sup> He is a student. The SOR alleges that Applicant provides this nephew \$5,000 in support per

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<sup>5</sup>Government Exhibit 1, Section 20A, Entry 4.

<sup>6</sup>An average exchange rate of 55 rupees to the dollar is used in this decision.

<sup>7</sup>Government Exhibit 1, Section 20A, Entry 3.

<sup>8</sup>Government Exhibit 1, Section 20A, Entries 5, 6, and 7 (Cousin 5, 6, and 7.).

<sup>9</sup>Government Exhibit 1, Section 20A, Entry 8.

year. Applicant's financial records show that the nephew received \$536 in 2012, and \$327 in 2013 to support his studies. He received no money in 2014. (Answer Exhibit 2; Applicant Exhibit I; Tr. 54-55.)

In summation, the SOR alleges that Applicant provides various relatives with approximately \$39,000 of financial support per year. The reality is that he gave them much less. In addition to the relatives set forth in the SOR, Applicant also provided small cash gifts or business loans to other relatives and friends in India. When asked to describe the socioeconomic class of his friends and relatives he said, "They are very poor people." He also stated they would not understand what classified information is. (Tr. 58.) Those people and amounts are set forth in Applicant Exhibit I. The total amount of money Applicant sent to India amounted to \$1,736 in 2012; \$12,245 in 2013; and \$7,818 in 2014. (Tr. 62.)

### **Administrative Notice**

Applicant has contacts with India. Accordingly, it is appropriate to discuss the current situation concerning India and the United States.<sup>10</sup> India is the most populous democracy in the world. There have been incidents in the past when parties in the United States attempted to export military or dual-use technologies to India. In addition, there is a history of political differences between the United States and India. Finally, there are concerns with widespread human rights problems, and terrorist activity, particularly in northwest India.

However, this year, the President of the United States and the Prime Minister of India signed the "Dehli Declaration of Friendship." The Office of the Press Secretary at the White House issued a press release about the Declaration.<sup>11</sup> At page 1 it says, "The Declaration makes tangible and enduring the commitment of our two countries to harness the inherent potential of our two democracies, and upgrades the unique nature of our relationship, committing our Governments to work through areas of difference." The Leaders also issued a U.S.-India Joint Statement entitled, "Shared Effort; Progress for All." Under the heading "Defence and Homeland Security Cooperation" paragraph 35 states the Leaders are interested in expanding "bilateral defense cooperation in areas of mutual interest and reaffirmed their commitment to continue to work towards deepening the bilateral defence relationship."

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<sup>10</sup>All of the following statements are supported by the documents submitted by the Department Counsel or Applicant's counsel in support of their requests for administrative notice and the referenced documents or attachments.

<sup>11</sup>All of the documents referenced in this paragraph are attached to Applicant's administrative notice request.

## **Mitigation**

Applicant has never held a security clearance. However, he is knowledgeable of his security responsibilities. (Tr. 64-66.) His supervisor states Applicant has not had any security-related incidents with company material. (Applicant Exhibit H.)

A co-worker testified that he has known Applicant 12 to 15 years, meeting in graduate school. The witness has a security clearance and highly recommends that Applicant receive one. In a letter he states, “[Applicant] is of high moral character, has a strong [sense] of duty, and he generously gives to others (family and community), he also possesses a great deal of integrity and constantly strives to do the right thing.” (Answer Exhibit 3; Tr. 33-43.)

A former supervisor testified and provided a written statement. He has known Applicant for 12 years, supervised him for four years, and considers him a personal friend. He states, “In all circumstances I have found him to demonstrate the highest integrity and moral character, as well as technical expertise. His dedication to his job was exceeded by no colleague . . . with whom I’ve been associated before or since. . . . I would not hesitate to trust [Applicant] with information and assignments of the highest sensitivity or importance.”(Answer Exhibit 4; Tr. 27-32.)

Applicant’s current supervisor submitted a written statement. He states, “[Applicant] is highly intelligent, hard working, has a stable family life and has been completely loyal to the United States during my professional and personal interactions with him over the last two years.” (Applicant Exhibit H.) (See Applicant Exhibit G.)

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's situation conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

## Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at AG ¶ 6:

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.

Applicant has family connections to India, specifically his mother, brothers, cousins and nephew, which can be viewed under a heightened risk standard. The following Disqualifying Condition applies to this case under AG ¶ 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.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this case, given his particular background:

(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.

It is difficult, if not impossible, to minimize the distance that Applicant has come since his birth in rural India. His family in India has no running water or electricity. His

relatives primarily have menial jobs. When they need extra financial help, Applicant provides minimal funds to his family and friends on an occasional basis. The amount is a mere fraction of his annual income, much less his net worth. None of these people are in the Indian government.

Applicant proved that he is a conscientious and patriotic citizen, and member of the defense industry. He has lived in the United States for more than seventeen years, receiving two advanced degrees here. His new child is an American citizen, as are his wife, and daughter from his first marriage. He has substantial family and financial ties in the United States that significantly outweigh his contacts and relations in India. The testimony and record show a person who has completely and fully assimilated into the American way of life. He understands and appreciates that the United States has provided him an advanced education, a successful career, and a good life. As stated, his net worth in the United States is over \$4 million. Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his family members' presence in India. Guideline B is found for Applicant.

### **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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. I have also specifically examined the relationship between the United States and India, which has improved dramatically, particularly this year. The evidence shows that Applicant is a patriotic American citizen. Applicant testified eloquently, emotionally, and at great length about the importance to him of being a citizen of the United States, and his pride in being a member of the defense industry. Though he has never held a security clearance, he is knowledgeable about security and understands his responsibility. He provides his family in India minimal funds on an occasional basis. It is obvious that as time goes on his emotional

relationship with India is less and less important to him. Accordingly, based on the available evidence, I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign influence and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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 through 1.e:	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.

WILFORD H. ROSS  
Administrative Judge