



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

[REDACTED]

Applicant for Security Clearance

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ISCR Case No. 14-05228

**Appearances**

For Government, Tovah Minster, Esq., Department Counsel  
For Applicant: William F. Savarino, Esq.

JUL 11 2016

**Decision**

MASON, Paul J., Administrative Judge:

Applicant has three sisters who are citizen-residents of India. Applicant's parents willed her and her three sisters a one-quarter interest in a house and \$19,000, her one-quarter share of a bank account. She has been living and working in the United States since 1975. She and her husband became naturalized U.S. citizens in 1984. She purchased her home in 1988. She and her husband have accumulated well over \$12,000,000 in U.S. assets in the last 40 years. Her husband started his own U.S. company in 1999, and she is currently holding two important company positions. Applicant has mitigated the foreign influence concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed and certified her Electronic Questionnaire for Investigations Processing (e-QIP) on April 23, 2014. On April 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). 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 in DOD on September 1, 2006.

Applicant submitted her notarized answer to the SOR on April 28, 2015. A notice of hearing was mailed to Applicant on December 3, 2015, scheduling a hearing for December 22, 2015. The hearing was held as scheduled. The Government's two exhibits (GE 1, 2) and Applicant's eleven exhibits (AE A-K) were admitted in evidence without objection. Two witnesses testified in Applicant's behalf. Applicant testified. The transcript (Tr.) was received by the Defense Office of Hearings and Appeals (DOHA) on December 29, 2015, and the record closed the same day.

### **Ruling on Procedure**

Department Counsel requested that I take administrative notice of certain facts about India. The facts which I will administratively notice appear after the Findings of Fact. The facts administratively noticed are based on source material from U.S. Department of State, U.S. Department of Justice, Congressional Research Service, and several DOHA Appeal Board decisions recognizing the need for Administrative Judges to take administrative notice. These facts are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. The administrative notice memorandum and source material have been marked as Hearing Exhibit (HE 1).

AE B-K, which provides additional information about the Republic of India and its relationship with the United States and the region, were generated by the U.S. Department of State and the White House. The information outlines the cooperation that the two countries have at various economic and commercial levels, as well as their joint efforts in combating terrorism.

### **Findings of Fact**

The SOR contains four allegations under foreign influence (Guideline B). Applicant admitted all allegations. She noted that the \$7,100 (SOR 1.d) is an inheritance from her parents and is designated as a gift for her daughter when she marries. (Answer to SOR)

Applicant, 61 years old, was born in India in January 1954. She earned her bachelor's degree in July 1973 and her master's degree in July 1975 from Indian educational institutions. She married her husband on July 7, 1975, and immigrated with him to the United States on July 21, 1975. After receiving her permanent resident card in 1979, she waited the required five years before she and her husband became naturalized U.S. citizens in January 1984. Applicant took additional credits at a U.S. college, but did not receive a degree. Applicant's daughter was born in the United States and is 28 years old. She completed medical school and currently is in the residency portion of her training at a U.S. hospital. (GE 1; Tr. 37-39)

In April 1979, Applicant began working in the accounting department of a county government responsible for administering several programs for children. In January 2012, she retired from the accounting department as a management analyst. In July 1999, Applicant's husband established a defense contractor company. After receiving a security clearance in November 2002, she began working there part time in 2003. After she retired from the county government position in January 2012, she became chief executive officer (CEO) and chief financial officer (CFO) of the company. (GE 1; Tr. 39-41)

Applicant has three sisters who are citizen-residents of India. (SOR 1.a) Her youngest sister, 51 years old, is married. She is a housewife and has never been employed or associated with the Indian government or military. Her husband operates a business that Applicant could not identify. Applicant's married 59-year-old sister has been employed by the Indian government for 39 years (SOR 1.b), though Applicant did not know how or where she was employed, or if and where her husband was employed. Applicant opined that her sister should be close to retirement because the mandatory retirement age in India is 60. Applicant's 63-year-old sister is currently a housewife who was a teacher a long time ago. Her husband is retired, but Applicant did not know where he was employed. (GE 1; Tr. 42-48)

Applicant speaks to her sisters about two or three times a month by telephone and infrequently by email. In these conversations or email contacts, Applicant checks on the welfare of her sisters and their children, or to remember birthdays and other celebratory occasions. Her sisters do not know what Applicant does for a living. Her security training has taught her not to talk about her security clearance. She has never given or received money from her sisters. (Tr. 48-53)

Applicant has traveled to India 13 times since 2007. Each trip has been to visit family or friends or to attend funerals. She last visited the country in April 2015 when her mother-in-law passed away. She reported each one of the trips to her facility security officer (FSO) as required. She also reported the trips in her e-QIP. In 2014, Applicant's 63-year-old sister visited Applicant in the U.S. Her 51-year-old sister visited her, but Applicant could not recall when. (GE 1 at 32-52; Tr. 53-57)

In their will, Applicant's parents left Applicant and her three sisters a one-quarter interest of a house (SOR 1.c) in India that her parents owned and occupied until her father's death in 2009 and her mother's death in 2010. The house is valued at approximately \$100,000. When the house is sold, the proceeds will be divided between Applicant and her three sisters. However, before the house can be sold, the names of the four sisters must be officially placed on the deed. Two of Applicant's sisters currently live rent-free in the house. (GE 1; Tr. 61-63)

In their will, Applicant's parents also left her and her three sisters about \$77,000 to be distributed equally among the sisters.<sup>1</sup> (SOR 1.d) The money is in an Indian bank.

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<sup>1</sup> A one-quarter interest of the total amount (\$19,250) is almost three times the amount alleged in SOR 1.d.

According to the will, Applicant's share (\$19,000) is specifically designated as a gift to Applicant's daughter when she marries. Applicant has no other interests in India. (Answer to SOR; Tr. 60-63)

Applicant and her husband have U.S assets in the form of commercial and utility stocks, certificates of deposit, retirement accounts, and life insurance. The investments, retirement accounts, and life insurance policies total about \$6,353,320. Adding the value of their three cars and their house, the total amount of assets increases to approximately \$7,151,320. When the company's value is added, their total U.S. assets are \$12,153,320. Applicant earns \$673,242 a year in salary. (AE A; Tr. 58-59)

### **Character Evidence**

Witness A is a director of a county government office that manages programs for children. The office services approximately 13,000 children located in the county. Several responsibilities of the office are to administer: government programs for children; adult and child food programs; child care provider homes; the child care subsidy program; and the employee child care center. From March 1999 until her retirement in January 2012, Applicant worked in the accounting department. Witness A and Applicant began as coworkers, but for the last three years of Applicant's employment, Witness A supervised her on a daily basis. Applicant consistently received exceptional evaluations in those three years and she always adhered to office procedures. Other than retirement parties, witness A did not interact with Applicant away from the job. (Tr. 15-21)

Witness B is the FSO and human relations (HR) officer. She has only been an FSO at Applicant's company for nine months. However, she has been an FSO for about 18 years with previous employers. She has held a security clearance since 1979. She conducts security briefings either online or in person. Her security briefings on foreign influence address counterintelligence, how foreigners try to obtain restricted information, and the necessity of reporting all events to the FSO so that she can take additional action if needed. Applicant understands the foreign influence issues and has complied with security requirements by reporting her foreign travel as required. (Tr. 22-32)

### **Administrative Notice**

#### **Republic of India (India)**

India is a sovereign, socialist, secular democratic republic with multiple political parties conducting government activities in a federal parliamentary democracy model. The country has about 1.21 billion citizens.

The United States considers India key to its strategic interests and has strengthened its relationship after a period of strained ties caused by India's development of nuclear weapons, the speed of India's economic reforms, and partnerships with Iran and China. The United States has removed or revised U.S. export requirements for sale to India of dual-use and civil nuclear items, including nuclear

reactors, even though there have been several documented cases involving the illegal export of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to be applied for prohibited purposes. As of 2000, India was considered actively engaged in economic intelligence collection and industrial espionage directed at the United States. By 2008, India was considered heavily involved in criminal espionage in illegally obtaining U.S. export-related products.

Both countries are dedicated to the free flow of commerce and establishing stability in Asia. The United States is India's largest trading and investment partner. Foreign assistance to the country was about \$3 billion, with the United States providing about \$126 million in developmental assistance.

In 2015, President Obama recognized that a long term partnership with India was vital to U.S. interests in the Asian and Pacific region and around the globe. While India and the United States have a deeply shared concern in fighting global terrorism, the country continues to have problems with domestic terrorism. Terrorist activity is concentrated in Kashmir, a disputed area bordering Pakistan, and terrorist groups are still active in other parts of the country. Terrorist attacks occurred in the Punjab in July 2015, and in Kashmir in August 2015.

Regarding human rights issues, the government of India generally respects its citizens' rights. However, corruption in the police and security forces continues to be a problem, particularly in criminal investigations and during efforts to suppress separatist and terrorist groups. Abusive practices against women and children, and caste-based discrimination persist, despite criminal penalties for violations. But there is no evidence that India uses force or duress to obtain economic intelligence from its citizens.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition 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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **Analysis**

### **Foreign Influence**

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains three potential disqualifying conditions that may be pertinent 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 individual’s desire to help a foreign person, group, or country by providing that information; and
- (e) a substantial business, financial, or property interest in a foreign country, or any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant’s three sisters are citizen-residents of India. One of the three sisters works for the Indian government. Applicant has traveled to see them on 13 occasions since 2007 and talks to them about two or three times a month. Even though the country is recognized as having the world’s largest democratic government, India has human rights problems and has been victimized by terrorist activity. This creates a heightened risk of foreign exploitation, inducement, manipulation under AG ¶ 7(a) and a potential conflict of interest under AG ¶ 7(b).

Applicant's has a one-quarter inheritance interest in her parents' \$100,000 house in India, and a \$19,000 share of her parents' bank account. The house and the bank account are Applicant's only financial interests in India. AG ¶ 7(e) applies.

The potential mitigating conditions under the foreign influence guideline are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting 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 of and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has regular contacts with her three sisters who are citizen-residents of India. Her 51-year-old sister has always been a housewife with no affiliation with the Indian government or the military. Her husband operates his own business although Applicant did not know the nature of the business. Applicant's 59-year-old sister is married and has worked for the federal government of India for 39 years. Applicant does not know what she does, but believes she is nearing retirement. She does not know whether the husband is employed. Applicant's 63-year-old sister has been a housewife after ending a teaching career a long time ago. The sister's husband may have retired from his employment, but Applicant was unaware of the nature of the employment. Except for Applicant's 59-year-old sister, none of Applicant's family members have been affiliated with the Indian government or military.

India is a democracy that has developed a strong bond with the U.S. in the areas of trade, investment, as well as in fighting global terrorism. It is highly unlikely that the country would jeopardize that relationship by applying pressure on Applicant or one of her sisters because of their relationship with her. AG ¶ 8(a) applies.

Applicant's ties to his family members in India are minimal in comparison to her stronger ties to the United States. She and her husband have been living and working in the United States since 1975. They became naturalized U.S. citizens in 1984. They own their home that they purchased in 1988. Applicant's 29-year-old daughter, born in the United States, is in her first year of medical residency at a U.S. hospital. Applicant's husband incorporated a defense contractor company in 1999, and Applicant is currently the CFO and CEO of the company. I conclude that if a conflict of interest were to arise,

Applicant would choose her U.S. ties over her family member ties in India. AG ¶ 8(b) applies. Applicant's travel to India has no independent security significance.

Applicant's inheritance of a one-quarter interest of her parents' \$100,000 house in India and a one-quarter interest of a \$77,000 bank account (\$19,000) amounts to about \$44,000. The house and bank account, when compared with Applicant's total U.S. assets of over \$12,000,000, are unlikely to result in a conflict that could be used effectively to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies.

### **Whole-Person Concept**

I have evaluated this case under the specific disqualifying and mitigating conditions of the foreign influence and foreign preference guidelines. I now consider those findings in the context of the nine general factors of the whole-person concept identified in 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 the participation was 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 on careful consideration of the specific guidelines and nine factors for the whole-person concept.

In weighing the record as a whole, I have carefully considered the factor of domestic terrorism that still exists in India. However, the chances of it occurring against foreign family members of persons that are employed in a position requiring a security clearance, are higher in countries that support terrorism, or have an authoritarian form of government, or are hostile to the United States. India, a country with a democratic governmental system, is a friend of the United States, and is committed to a longstanding partnership with this country in fighting terrorism, both domestically and internationally. Although Applicant has ties with her sisters in India, she has stronger relationships and ties in the United States. Applicant, her husband, and her daughter, are all U.S. citizens. She has accumulated substantial U.S. assets, including her home that she has owned since 1988. Applicant's former supervisor praised Applicant's consistently high-level job performance while working as a management analyst in her final three years of employment with the county before retiring in January 2012. The current FSO acknowledged that Applicant has always complied with security requirements in reporting her foreign travel. After weighing the disqualifying and mitigating conditions, in the context of the whole-person concept, Applicant has mitigated the security concerns associated with foreign influence.



### **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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a-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.

A handwritten signature in cursive script, appearing to read "Paul J. Mason", is written over a horizontal line.

Paul J. Mason  
Administrative Judge