



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



In the matter of: )  
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----- ) ISCR Case No. 14-03629  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2015

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her a security clearance to work in the defense industry. A 45-year-old engineer, Applicant is a native-born citizen of India who immigrated to the United States in 1995 and became a naturalized U.S. citizen in 2005. She met her burden to present sufficient evidence to explain and mitigate the foreign influence and foreign preference security concerns stemming from her ties or connections to India. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on April 30, 2014.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense

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<sup>1</sup> Exhibit 1 (for ease of understanding, it will be referred to as a security clearance application or simply an application).

(DOD),<sup>2</sup> on October 31, 2014, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference. She answered the SOR in writing on November 4, 2014, and she requested a decision based on the written record in lieu of a hearing. Thereafter, Department Counsel made a timely request for a hearing.<sup>4</sup>

The case was assigned to me December 22, 2014. The hearing was held as scheduled on January 29, 2015. The transcript of the hearing (Tr.) was received February 6, 2015.

### Findings of Fact

Applicant is a 45-year-old employee who is seeking to obtain a security clearance for the first time. Her educational background includes earning a master's degree in computer information systems from a U.S. university in 2000. She is employed as an engineer for the business-operations team of a technology company. Beginning in April 2013, she worked as a consultant for the technology company until she became a full-time employee in March 2014.

One month later, Applicant's employer decided to sponsor her for a security clearance, and she submitted the necessary application.<sup>5</sup> That action was taken after the company's chief executive officer (CEO) and chief operating officer (COO) were satisfied that their internal-review process sufficiently vetted Applicant.<sup>6</sup> The COO testified at the hearing that they were "very impressed" and "delighted" with Applicant's job performance, and he had no concerns about her character or trustworthiness.<sup>7</sup> The company's internal-review process included a review of Applicant by the company's

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> Appellant Exhibit I.

<sup>5</sup> Exhibit 1.

<sup>6</sup> 75-77.

<sup>7</sup> Tr. 78-81; see Exhibit B at 3.

facility security officer (FSO), a former investigator of national security matters related to industry with 41 years of experience at a major federal law enforcement agency.<sup>8</sup> Based on the review, the FSO testified at the hearing that Applicant was an “excellent candidate” for a security clearance.<sup>9</sup>

## **1. Applicant’s background in India and immigration to the United States**

Applicant was born and raised in India. She grew up on military bases in India because her father, a physician, served as an officer in the Indian Army.<sup>10</sup> In 1991, she earned a bachelor’s degree in commerce (with an emphasis in statistics) while at the same time earning an honors diploma in systems management from an institute of information technology. During 1991–1993, she earned a bachelor’s degree in education, and she then went on to work as a teacher.

In about 1994, Applicant met her future husband, who was then a citizen of India living and working in the United States. They decided to marry and move to the United States. They wed in January 1995 in India, and they entered the United States within ten days of their wedding.<sup>11</sup> Applicant was then 25 years old.

By 1997, Applicant and her husband had decided to remain permanently in the United States, because they were both very happy with the work environment and their quality of life, and they knew they wanted to raise a family here.<sup>12</sup> They bought a home that same year and have lived there continuously to date. Their home, for tax purposes, has an assessed value of about \$450,000,<sup>13</sup> although she estimated the market value at about \$700,000 to \$800,000.<sup>14</sup>

## **2. Applicant’s family ties to the United States and India**

Applicant and her husband became naturalized U.S. citizens in 2005 and 2006, respectively, and she obtained a U.S. passport that same year.<sup>15</sup> They have three

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<sup>8</sup> Exhibit B at 2.

<sup>9</sup> Tr. 70.

<sup>10</sup> Tr. 42–43.

<sup>11</sup> Exhibit 1.

<sup>12</sup> Tr. 49–50.

<sup>13</sup> Exhibit A at 10.

<sup>14</sup> Tr. 53.

<sup>15</sup> Exhibit A at 4, 5, and 6.

children, ages 15, 12, and 10, who are native-born U.S. citizens.<sup>16</sup> The eldest child is attending a parochial high school while the other two attend a private school. She described her children as “absolutely Americans” who are fully immersed into American life, and who, when visiting India, do so as tourists.<sup>17</sup>

Applicant’s father and mother are both citizens of and residents in India. Her father, now age 80, was a career military officer in the Indian Army.<sup>18</sup> A physician by training, he served in the medical corps as a doctor working in Army hospitals, and he also served as a professor of medicine. He retired more than 20 years ago at the rank of brigadier. As such, he receives retired pay or a pension from the Indian government. He has continued to practice medicine in a volunteer capacity for a charity hospital. Applicant described her mother as a housewife.<sup>19</sup> She has contact with her parents by calling them on a weekly basis.<sup>20</sup> Applicant does not provide any type of financial support to her parents.

Applicant has one sibling, an older brother, who is a citizen of and resident in India. Her brother lives in the same city as their parents. A physician by training, her brother practices medicine for a living. She has contact with her brother by calling him on a monthly basis.

Applicant also has in-laws who are citizens of and residents in India. She described her father-in-law as a retired civil engineer and her mother-in-law as a housewife.<sup>21</sup> She stated that she has “a normal in-laws relationship” with her husband’s parents.<sup>22</sup> She estimated having contact with her parents-in-law by calling them on a less frequent basis than her parents, perhaps every other week or so. She and her husband do not provide any type of financial support to her parents-in-law.

Applicant’s husband has two siblings.<sup>23</sup> Her sister-in-law is a married housewife who lives in a major city in India. Her brother-in-law is a computer engineer who lives with her husband’s parents in a major city in India.

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<sup>16</sup> Exhibit A at 7, 8, and 9.

<sup>17</sup> Tr. 51.

<sup>18</sup> Tr. 42–44.

<sup>19</sup> Tr. 40.

<sup>20</sup> Tr. 58–59.

<sup>21</sup> Tr. 60–61.

<sup>22</sup> Tr. 60.

<sup>23</sup> Tr. 42.

Applicant expressed no hesitation or reluctance when stating that her family in the United States comes first ahead of her family in India.<sup>24</sup>

### **3. Applicant's use of an Overseas Citizen of India (OCI) registration certificate**

In August 2006, after obtaining U.S. citizenship, Applicant obtained an OCI registration certificate from the Indian government to facilitate travel to India. By way of background, the Indian government's OCI program is often incorrectly described as offering dual nationality or citizenship, but that is not the case as India does not recognize or permit dual citizenship.<sup>25</sup> Instead, the OCI program amounts to the issuance of a travel document or visa that provides some travel and residency privileges.

The main benefits of the OCI program are (1) multiple-entry, lifelong visa to visit India; (2) exemption from reporting to police authorities for any length of stay in India; and (3) parity with nonresident Indians in financial, economic, and education fields except in relation to acquisition of agriculture and plantation properties.<sup>26</sup> The OCI holder is not eligible to exercise rights of citizenship, such as voting. The visa stamp is placed in the traveler's non-Indian passport.

Applicant presented a copy of the relevant page of her U.S. passport showing the overseas citizen visa stamp.<sup>27</sup> Applicant used that visa in her U.S. passport when she traveled to India to visit her family in 2006, 2009, 2011, and 2014.<sup>28</sup> She explained her rationale as follows:

So, when we applied for the certificate it was just introduced by the Indian government. It does ease the process of having to apply for a visa every time you want to travel. And it just takes care of the overhead of having to go through the additional hassle of doing that. So it seemed the natural thing to do.<sup>29</sup>

She further explained that all foreign travel was with her U.S. passport, and that she was willing to give up the OCI visa.<sup>30</sup>

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<sup>24</sup> Tr. 59.

<sup>25</sup> Exhibit B at 2 (information from the U.S. Embassy in India); Exhibit B at 3 (information from the Consulate General of India, Houston, Texas).

<sup>26</sup> Exhibit B at 2 (information from the India OCI Center).

<sup>27</sup> Exhibit B at 1.

<sup>28</sup> Exhibit B at 1 and Exhibit 1.

<sup>29</sup> Tr. 56–57.

<sup>30</sup> Tr. 57.

#### **4. Applicant's financial interests in the United States and India**

Applicant has no financial, business, or pecuniary interests in India, and all such interests are in the United States. In addition to their incomes earned from their employment, Applicant and her husband own a home with an estimated market value of \$700,000 to \$800,000. She also believes they have sufficient savings to take care of their children's education.<sup>31</sup> She estimated they have a net worth in excess of \$1 million.<sup>32</sup>

#### **5. Applicant's credibility during the hearing**

Applicant was businesslike, polite, and respectful throughout the hearing, and she answered questions in an open and honest way without hesitation. I was favorably impressed by Applicant, and I had no concerns about her credibility or truthfulness.

#### **6. Background information on India<sup>33</sup>**

India is the world's largest democracy. It has a multiparty, federal, parliamentary democracy with a bicameral parliament, and a population of more than one billion. Its political history since it gained independence from Great Britain in 1947 includes several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatists and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

The United States and India share a common interest in fighting terrorism and in creating a stable Asia. To that end, the United States and India share membership in a variety of international organizations, such as the United Nations (UN), G-20, and World Trade Organization, for example. The United States supports a reformed UN Security Council that includes India as a permanent member.

India's size, population, and strategic location give it a prominent voice in international affairs. The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnerships with Iran. But the United States recognizes that India is important to U.S. interests. The U.S.–India Strategic Dialogue, launched in 2009, provides opportunities to strengthen collaboration in areas including energy, climate change, trade, education, and counterterrorism. The fifth annual meeting was held in 2014.

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<sup>31</sup> Tr. 53.

<sup>32</sup> Tr. 54–55.

<sup>33</sup> This information is gleaned from Department Counsel's request for administrative notice, which was granted, and documentary matters presented by Applicant. Exhibits 2 and C.

In 2015 President Obama called India one of the defining partnerships of the 21<sup>st</sup> century, one which will be vital to the U.S. strategic interests in Asia-Pacific and across the globe. The U.S.–Indian relationship is rooted in common values, including the rule of law, respect for diversity, and democratic government. The United States is one of India’s largest trade and investment partners.

In the past, India had longstanding military supply relationships with the Soviet Union, and Russia remains India’s largest supplier of military systems and spare parts. In a 2008 report to Congress, India was one of many countries involved in criminal espionage and U.S. export controls enforcement cases.

The Indian government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to support separatist and terrorist groups.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>34</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>35</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>36</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>37</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>38</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>39</sup> An

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<sup>34</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>35</sup> 484 U.S. at 531.

<sup>36</sup> Directive, ¶ 3.2.

<sup>37</sup> Directive, ¶ 3.2.

<sup>38</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>39</sup> Directive, Enclosure 3, ¶ E3.1.14.

applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>40</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>41</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>42</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>43</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>44</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

## Discussion

### 1. The foreign influence concern

The gravamen of the SOR under Guideline B is whether Applicant's ties to India disqualify her from eligibility for access to classified information. Under Guideline B for foreign influence,<sup>45</sup> the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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

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<sup>40</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>41</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>42</sup> *Egan*, 484 U.S. at 531.

<sup>43</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>44</sup> Executive Order 10865, § 7.

<sup>45</sup> AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

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.<sup>46</sup>

The guideline contains several disqualifying conditions. Given the evidence of Applicant's ties to India, I have especially considered the following disqualifying conditions:

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; and

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Based on U.S. concerns about (1) industrial and economic espionage, (2) the risk of terrorism in India, (3) India's relationships with Iran, Pakistan, and Russia, and (4) human-rights matters, India meets the heightened-risk standard in AG ¶ 7(a).

Applicant's family ties to India are sufficient to raise a concern. Although her husband and three children are U.S. citizens living in the United States, Applicant's mother, father, and brother, as well as her in-laws, are citizens of and residents in India. None of her family members or in-laws in India are in a job or position that is particularly troubling, but her father is a retired Indian Army officer who reached the rank of brigadier. Although he retired many years ago, his status as a retired Army officer does create a potential conflict of interest. Taken together, her family ties to India are sufficient to justify further review.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

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 United States; and

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<sup>46</sup> AG ¶ 6.

AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant is a successful engineer who has spent the vast majority of her adulthood in the United States. She and her husband have lived, worked, and raised a family in the United States for the last 20 years. Their financial interests, which are substantial, are solely in the United States. Her ties or connections to her family members and in-laws in India are about what you would expect of a first-generation immigrant given the time and distance between them. She is being a good daughter by keeping in regular contact, via telephone calls, with her parents, while she has less frequent contact with her brother and in-laws. That contact has included trips to India to visit family. But her strongest family ties are to her family, her husband and three children, who are U.S. citizens living in the United States. She made that point quite evident when she unequivocally stated that her family here comes first. Taken together, her family, employment, and financial ties to the United States are stronger than her ties to India.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties to India. Those circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially considering the matters the United States views of concern in India. On balance, I am satisfied that this is not a case of "divided loyalties," with an applicant who has one foot in each country, as contemplated by the guideline. Instead, I am satisfied that Applicant has both feet firmly planted in the United States and those ties, after 20 years, are now quite strong. Any security concern or potential conflict of interest presented by her ties to India is outweighed and overcome by her much stronger family, employment, and financial ties to the United States. I am confident that Applicant can be expected to resolve any such concern or potential conflict of interest in favor of the U.S. interest.

## **2. The foreign preference concern**

The gravamen of the SOR under Guideline C is whether Applicant's possession and use of an OCI visa since 2006 disqualifies her from eligibility for access to classified information. Under Guideline C for foreign influence,<sup>47</sup> the suitability of an applicant may be questioned or put into doubt due to actions that indicate a foreign preference. The overall concern is:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to

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<sup>47</sup> AG ¶¶ 9, 10, and 11 (setting forth the concern and the disqualifying and mitigating conditions).

provide information or make decisions that are harmful to the interests of the United States.<sup>48</sup>

Applicant has rebutted the allegation, in part, in SOR ¶ 1.a that she exercised dual citizenship with India and the United States. She presented persuasive documentary evidence, from both the United States and India, that the OCI visa is not dual citizenship and does not confer rights of citizenship because India does not permit dual citizenship. For that reason, obtaining and using the OCI visa is not an exercise of foreign citizenship. The OCI visa does not fall under the plain meaning of the disqualifying condition at AG ¶ 10(a), because it was not an “exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen,” nor does it fall under the other disqualifying conditions at AG ¶¶ 10(b), (c), or (d).<sup>49</sup>

But that does not end the analysis, because possession and use of the OCI visa does fall under the general concern at AG ¶ 9, by acting “in such a way as to indicate a preference for a foreign country over the United States.” The OCI visa, although not a privilege or benefit of citizenship, is a privilege or benefit extended to Applicant as a former citizen of India. According, the DOD was justified in inquiring into Applicant’s possession and use of the OCI visa after becoming a U.S. citizen.

In mitigation, like the disqualifying conditions at AG ¶ 10, this case does not fall under any of the mitigating conditions at AG ¶ 11, but that too does not end the analysis. First, I considered the circumstances surrounding Applicant’s conduct, to include her knowledgeable participation.<sup>50</sup> She was not working for a defense contractor in a cleared environment when she obtained the OCI visa nearly ten years ago. She did not know in 2006, nor should she have known, that her possession and use of the OCI visa would fall under the scrutiny of DOD security officials years later in 2014–2015.

Second, I considered Applicant’s motivation in obtaining the OCI visa.<sup>51</sup> She explained she obtained the OCI visa in 2006 to ease travel to India, because it is a permanent travel document that allows multiple entries. In other words, her motivation was convenience (as opposed to taking advantage of an opportunity without regard for the consequences), which is benign or neutral and not a demonstration of a preference for India over the United States. Had her motivation been otherwise, she could have decided to remain an Indian citizen living in the United States as a lawful resident alien and traveled on an Indian passport, a course of action she rejected in 2005 when she became a U.S. citizen.

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<sup>48</sup> AG ¶ 9.

<sup>49</sup> In the alternative, if the OCI visa does fall under a disqualifying condition at AG ¶ 10, I would still conclude that Applicant mitigated the concern under the same rationale.

<sup>50</sup> AG ¶ 2(a)(2).

<sup>51</sup> AG ¶ 2(a)(7).

Third, I considered Applicant's willingness or lack thereof to forgo the benefit of the OCI visa. At the hearing, she expressed a willingness to give up or relinquish the OCI visa. Her willingness to do so is a strong indication that she does not prefer India over the United States.

Applicant appears to be a model immigrant who is fully invested in the United States in various ways (e.g., children, employment, education, and financial), and those circumstances are very unlikely to change in the foreseeable future. Her possession and use of the OCI visa, although not a minor or trivial matter, does not justify an unfavorable clearance decision based on a foreign preference over the United States.

Applicant met her burden to present sufficient evidence to explain and mitigate the foreign influence and foreign preference security concerns stemming from her ties or connections to India. I have no doubts about her reliability, trustworthiness, good judgment. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>52</sup> Accordingly, I conclude that she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>52</sup> AG ¶ 2(a)(1)-(9).