



On February 27, 2023, during an interview with an investigator as part of an investigation into his eligibility for access authorization, the Individual admitted that he failed to disclose multiple trips to India and extensive contact with Indian nationals on the QNSP. *Id.* at Bates 107. The local security office (LSO) issued the Individual a letter of interrogatory (First LOI) concerning his foreign contacts. Ex. 7. In his response, the Individual stated that he had been issued an Indian passport and that his ex-wife was born in India. *Id.* at Bates 130, 132. The LSO issued the Individual a second LOI (Second LOI) in June 2023. Ex. 6. In his response to the Second LOI, the Individual admitted that his wife had a bank account in India which he had not disclosed on the QNSP. *Id.* at Bates 126.

The LSO subsequently issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines B and E of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted seven exhibits (Exs. 1–7). The Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf and offered the testimony of his father and a personal friend. Hearing Transcript (Tr.) at 3, 10, 34, 42. The LSO did not call any witnesses to testify. *Id.* at 3.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline B (Foreign Influence) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at Bates 7–8.

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.

Adjudicative Guidelines at ¶ 6. The SSC cited the Individual's ownership of an Indian passport, travel to India, marriages to two Indian nationals, extensive personal contacts with foreign nationals, and failure to disclose these facts on the QNSP. Ex. 2 at Bates 7–8. The LSO alleged that the Individual's foreign contacts and connections created a potential conflict of interest and heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. *Id.* at Bates 7. The LSO also cited the Individual's failure to fully report associations with a foreign person, group, government, or country on the QNSP. *Id.* The LSO's allegations justify its invocation of Guideline B. Adjudicative Guidelines at ¶ 7(a)–(c).

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at Bates 5–7.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual failed to fully disclose his foreign travel, former ownership of an Indian passport, his ex-wife's Indian citizenship, his sponsorship of his wife for U.S. citizenship, his contacts with Indian nationals, his wife's ownership of an Indian bank account, or his wife's maiden name on the QNSP. Ex. 2 at Bates 5–7. The LSO's allegations that the Individual deliberately omitted relevant facts from the QNSP, or that his omissions were so careless that they support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules and regulations, justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a), (c).

### **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. FINDINGS OF FACT**

The Individual was born in India. Ex. 5 at Bates 68. The Individual travelled to the U.S. using an Indian passport in the 1990s and gained U.S. citizenship in 2004. *Id.* at Bates 68–69; Ex. 7 at Bates

130. In December 2017, the Individual traveled to India for approximately three weeks and visited family members. Ex. 5 at Bates 108; Ex. 6 at Bates 125; *see also* Tr. at 26–28 (reflecting the testimony of the Individual’s father that he, the Individual’s mother, and the Individual visited family members, none of whom have ever been employed by the Indian government). In May 2019, the Individual married his now ex-wife, an Indian national who acquired U.S. citizenship by naturalization. Ex. 5 at Bates 82; Ex. 6 at Bates 124. The Individual and his ex-wife divorced in 2021. Ex. 5 at Bates 82.

The Individual met his current wife via an online dating service in 2022. Ex. 6 at Bates 125. In April 2022, the Individual travelled with members of his family to India where he met his wife in person for the first time. *Id.* at Bates 126. Several days later, the Individual and his wife were married. Ex. 5 at Bates 81.

The Individual remained in India for approximately three weeks following the wedding before returning to the U.S. *Id.* at Bates 108. The Individual’s wife continued to reside in India, where she worked in a medical profession, following the wedding. *Id.* at Bates 81, 107. The Individual’s wife maintains a bank account in India into which she deposits wages from her job. Ex. 6 at Bates 126. In June 2022, the Individual began the process of sponsoring his wife for U.S. citizenship. Ex. 5 at Bates 107–08.

In January 2023, the Individual traveled to India for approximately two weeks to visit his wife and returned to the U.S. on January 22, 2023. *Id.* at Bates 108; Ex. 7 at Bates 132. On January 23, 2023, the Individual completed and signed the QNSP. Ex. 5 at Bates 99. As part of completing the QNSP, the Individual certified that his statements therein were “true, correct, and complete to the best of [his] knowledge and belief and [were] made in good faith.” *Id.*

The Individual checked a box marked “no” on the QNSP in response to a question concerning whether he had “EVER” been issued a passport by a country other than the U.S. *Id.* at Bates 70. The Individual also checked a box denying that his wife had ever used any names other than her current one, which included his surname, and represented that his ex-wife was born in the U.S. *Id.* at Bates 81. The Individual also checked a box marked “no” in response to a question asking whether he had “close and/or continuing contact with a foreign national within the last [] seven years.” *Id.* at Bates 89. The Individual checked another box marked “no” in response to a question asking whether he or his spouse had any foreign financial interests, including bank accounts. *Id.* Additionally, the Individual checked a box marked “no” in response to a question concerning whether he had traveled outside the U.S. in the prior seven years. *Id.* at Bates 91.

On February 27, 2023, the Individual met with the investigator for an interview. *Id.* at Bates 107. The investigator requested to see the Individual’s passport and observed that the passport had been stamped ten times, reflecting international travel that the Individual failed to disclose on the QNSP. *Id.* at Bates 108. The Individual admitted that he had not disclosed his foreign travel on the QNSP.<sup>3</sup> *Id.* During the interview, the Individual also admitted that, in addition to daily contact with his wife who resides in India, he communicated with his aunt, uncle, and several cousins, who are all Indian citizens residing in India, via Whatsapp on birthdays and holidays. *Id.*; *see also* Ex. 7 at

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<sup>3</sup> In addition to the travel to India described above, the Individual also admitted to having travelled to several other countries on five occasions since 2016. Ex. 5 at Bates 108.

Bates 131 (indicating that he communicated with his relatives approximately monthly). The Individual attributed his failure to disclose his foreign contacts and travel on the QNSP to not having thought of them at the time he completed the QNSP and the length of the QNSP. Ex. 5 at Bates 108.

On May 7, 2023, the Individual submitted his response to the First LOI. Ex. 7 at Bates 129. In the response, the Individual represented that his omissions on the QNSP were mistakes. *Id.* at Bates 130. The Individual also acknowledged that he had inaccurately indicated on the QNSP that his ex-wife was born in the U.S. when she was actually born in India. *Id.* at Bates 132.

On June 18, 2023, the Individual submitted his response to the Second LOI. Ex. 6 at Bates 124. In his response, the Individual provided his wife's maiden name, which he had not provided as required on the QNSP, and disclosed his wife's Indian bank account for the first time. *Id.* at Bates 125–26.

At the hearing, the Individual asserted that he had made “minor errors” in completing the QNSP, which he speculated might have been partially due to jet lag following his return from India the previous day, and denied that he intentionally failed to disclose required information or was careless in completing the QNSP. Tr. at 43, 45, 50, 52, 63. The Individual represented that he had not disclosed his sponsorship of his wife for U.S. citizenship on the QNSP because he interpreted the question, which asked whether he had “sponsored any foreign national to come to the U.S.” in the prior seven years, as only applying to approved applications for sponsorship and therefore concluded that his ongoing application for his wife did “not count[.]” *Id.* at 46–47; *see also* Ex. 5 at Bates 89 (reflecting the text of the question on the QNSP). The Individual also represented that his approximately monthly contact with relatives other than his wife in India did not seem sufficiently frequent to him to justify disclosing them on the QNSP. Tr. at 67. The Individual acknowledged that he had interpreted the QNSP questions in a manner that made sense to him rather than as they were literally written. *Id.* at 68.

The Individual testified that his wife's application for U.S. citizenship was still being processed, and that she was scheduled to be interviewed as part of obtaining a visa to come to the U.S. in November. *Id.* at 72. He indicated that he had interacted with his wife in person on only two trips and that he did not know with whom she associated on a daily basis in India. *Id.* at 71.

The Individual's father testified to the Individual's good character and opined that the Individual would not have intentionally concealed information on the QNSP. *Id.* at 21–22. The Individual's friend also testified to the Individual's honesty and work ethic. *Id.* at 38–39; *see also* Ex. A (containing a letter of recommendation from a former coworker of the Individual as to the Individual's work ethic and professionalism).

## **V. ANALYSIS**

### **A. Guideline B**

Conditions that could mitigate security concerns under Guideline B include:

- (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;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the 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;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Adjudicative Guidelines at ¶ 8.

There is no indication that the Individual's relationship with his family members in India, with whom he communicates approximately monthly to commemorate birthdays and holidays, is so close that he would be susceptible to manipulation on their behalf. *See Personnel Security Hearing*, OHA Case No. PSH-14-0010 at 8 (2014) (finding that security concerns presented by an individual's brother residing in a foreign county were mitigated because their relationship was not close, and they communicated solely on birthdays and holidays). Moreover, the Individual's father credibly testified as to the professional backgrounds of these family members and denied that any of them are employed by the Indian government. In light of the nature of the Individual's relationship with these relatives, and their lack of connection to a foreign government, I find that the security concerns posed by the Individual's contacts with his family members who reside in India are mitigated under the first, second, and third mitigating conditions. Adjudicative Guidelines at ¶ 8(a)-(c).

To the extent that the Individual's travel to India and ownership of an Indian passport present security concerns, I find that they are mitigated under the second mitigating condition. The Individual has resided in the U.S. for his entire adult life. With the exception of his wife, his immediate family, including his father who testified at the hearing, reside in the U.S. There is no

basis in the record to infer that his occasional travel to India is indicative of divided loyalty between the U.S. and India. *Id.* at ¶ 8(b).

However, there is insufficient evidence to resolve the security concerns posed by the Individual's wife residing in India. The Individual's relationship to his wife, which is more significant than his relationship to his relatives, poses a greater risk of susceptibility to manipulation. The Individual has no first-hand knowledge of his wife's day-to-day interactions due to their physical separation, and she is still in the process of seeking legal authorization to leave India for the U.S. In light of the Individual's close relationship to his wife, his lack of knowledge concerning whether she interacts with persons connected to the Indian government, and the fact that the Individual's wife is still engaged in the immigration process, I find that there is insufficient evidence to establish that the Individual is not subject to manipulation via his wife. *Id.* at ¶ 8(a)–(c).

The fourth mitigating condition is irrelevant to the facts of this case as the Individual's foreign contacts were not for U.S. government business or approved by DOE. *Id.* at ¶ 8(d). The fifth mitigating condition is inapplicable because the Individual failed to disclose his contacts with his Indian family members and the fact that his ex-wife was an Indian national on the QNSP as required. *Id.* at ¶ 8(e). The sixth mitigating condition does not resolve the security concerns posed by the Individual's wife's Indian bank account because there is no record evidence as to the value of her financial assets held in the account. *Id.* at ¶ 8(f).

For the aforementioned reasons, I find that the Individual has mitigated the security concerns posed by his contacts with relatives in India, his ownership of an Indian passport, and his travel to India, but not those posed by his wife residing in India or his failure to disclose his ownership of an Indian passport, travel to India, and his ex-wife having been born in India on the QNSP. Accordingly, I conclude that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline B.

## **B. Guideline E**

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and,
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

*Id.* at ¶ 17.

The Individual did not correct his omissions on the QNSP until after being confronted by the investigator. Even though he acknowledged some of his omissions during the interview, he did not fully correct his omissions until he submitted his response to the Second LOI in which he provided his wife's maiden name and disclosed her foreign bank account. As the Individual was confronted with his omissions on the QNSP before he disclosed them and, even then, did not fully correct his omissions until several months later, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a). The second mitigating condition is inapplicable because the Individual did not claim to have relied on the advice of another person in completing the QNSP. *Id.* at ¶ 17(b).

Foreign travel, contacts, and financial assets all have the potential to significantly affect an individual's eligibility for access authorization, and therefore the Individual's omissions on the QNSP are not of such of a minor nature as to mitigate the security concerns posed by failing to accurately complete the QNSP. The Individual submitted the QNSP approximately nine months prior to the hearing and did not fully correct his omissions until his response to the Second LOI in June 2023. Thus, the Individual's omissions did not occur so long ago that the passage of time, in of itself, resolves the security concerns. While there is no indication that the Individual has a pattern of dishonesty or carelessness, the magnitude of the Individual's carelessness in completing the QNSP, particularly denying having engaged in foreign travel the day after returning from a multi-week trip to India, raises substantial doubt as to whether he will reliably carry out his obligations concerning access authorization in the future. Moreover, the idiosyncratic interpretations of the QNSP questions that the Individual articulated at the hearing to justify his responses call into further question his judgment and reliability and lead me to conclude that his failure to accurately complete the QNSP was due to factors related to his judgment and reliability rather than jet lag. For these reasons, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The fourth mitigating condition is inapplicable because the Individual did not allege that he obtained counseling to address a behavior or condition that influenced his responses on the QNSP.



*Id.* at ¶ 17(d). The fifth mitigating condition is inapplicable because the LSO did not assert security concerns under Guideline E related to susceptibility to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the Individual acknowledged his omissions on the QNSP, and the LSO did not rely on sources of questionable reliability. *Id.* at ¶ 17(f). The seventh mitigating condition is not relevant to the facts of this case because the LSO did not allege that the Individual associated with persons involved in criminal activity. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that none of the mitigating conditions are applicable to the Individual's failure to accurately complete the QNSP. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines B and E of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals