



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



In the matter of:)
)
 ---) ISCR Case No. 18-01653
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

02/27/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations, but did mitigate the foreign influence concerns. Eligibility for a security clearance is denied.

Statement of the Case

On January 21, 2016, Applicant applied for a security clearance and submitted Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a set of interrogatories, essentially to confirm the accuracy of reports of subject interviews conducted by investigators from the U.S. Office of Personnel Management (OPM). Applicant responded to the interrogatories on June 25, 2018. That same day, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security*

Adjudicative Guidelines (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guidelines B (Foreign Influence) and F (Financial Considerations) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated August 3, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on September 14, 2018, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on October 10, 2018. Applicant apparently chose not to respond to the FORM, for as of November 30, 2018, he had not done so. The case was assigned to me on January 25, 2019.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the People's Republic of Bangladesh (Bangladesh) appearing in eight U.S. Government publications which were identified, but only fragments of extracts of those publications were attached to the request.¹ Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Bangladesh in publications of the U.S. Department of State and the Central Intelligence Agency. AG ¶ 6, Foreign Influence, provides, "Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk

¹ Item 9 (Request for Administrative Notice – Bangladesh, dated September 13, 2018). The publications cited are: U.S. Department of State, Office of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Bangladesh*; Central Intelligence Agency, *The World Factbook: Bangladesh* (Aug 21, 2018); U.S. Department of State, *U.S. Relations with Bangladesh* (Aug 15, 2018); U.S. Department of State, Bureau of Diplomatic Security, Overseas Security Advisory Council (OSAC), *Bangladesh 2018 Crime & Safety Report* (Mar 6, 2018); U.S. Department of State, Bureau of Consular Affairs, *Bangladesh Travel Advisory* (Jul 3, 2018); U.S. Department of State, Bureau of Consular Affairs, *Country Information: Bangladesh International Travel Information* (Jul 3, 2018); U.S. Department of State, Bureau of Counterterrorism and Countering Violent Extremism, *Country Reports on Terrorism 2016: South and Central Asia: Bangladesh* (Jul 2017); U.S. Department of State, Bureau of Human Rights, Democracy, and Labor, *Executive Summary: Bangladesh 2017 Human Rights Report* (Apr 20, 2018).

of terrorism.” A risk assessment in this case necessitates administrative notice of facts concerning Bangladesh.

Applicant did not object to the administrative notice request, and he did not offer any evidence to refute or rebut any of the enumerated facts therein. After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,² as set forth below under the Bangladesh subsection.

Findings of Fact

In his Answer to the SOR, Applicant denied, with brief comments, all of the factual allegations pertaining to foreign influence in the SOR (SOR ¶¶ 1.a. through 1.c.), and all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 2.b. through 2.j.), claiming that the citizenship and residence of his family members and the issues regarding his debts have no bearing on his trustworthiness and do not compromise his ability to hold a security clearance. Other than those brief comments, Applicant offered no facts or explanations addressing the specifics of the allegations in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 51-year-old employee of a defense contractor. He has been serving as a manager, advanced verification, since he joined his employer in February 2016. Applicant received a bachelor’s degree from a foreign university in 1991; and a master’s degree from a university in the United States in 1995. He has never served with the U.S. military or any other military. He has never held a security clearance. Applicant was married in 1996, and he reports one child, born in 2006.

² Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

Foreign Influence³

Applicant was born in Bangladesh. He entered the United States in 1994, and he became a naturalized U.S. citizen in 2005. Applicant's parents are both residents and citizens of Bangladesh. His father worked in education until he retired nearly 25 years ago, and his mother worked in family planning until she retired over 22 years ago. Both parents are in their 70s or 80s. Applicant has two brothers who are also residents and citizens of Bangladesh. One brother works for a private company associated with the construction business, and his other brother owns his own business. None of those family members were affiliated with a foreign government, military, security, or intelligence service. Applicant speaks with his parents monthly, and he travels to Bangladesh to visit them every one to two years. He speaks and texts his brothers monthly, and he sees them whenever he visits his parents. His relationship with one sister is more distant, and while he infrequently exchanges texts and e-mails, he has not seen her since 2014. His relationship with his other sister is generally non-existent, and he has not had any contact with her, or seen her, since 2005. Applicant has contributed approximately \$1,000 every three to six months to one of his brothers to assist with their parents' needs.

Applicant's wife was also born in Bangladesh, and she too is a naturalized U.S. citizen. Both of her parents were born in Bangladesh, but they were naturalized U.S. citizens and residents of the United States. Her father passed away in 2016.

Bangladesh

Bangladesh is located on the northern edge of the Bay of Bengal; it is bordered on three sides by India and shares a small border with Burma. Approximately 160 million people inhabit Bangladesh, which has a land area of 55,598 square miles, slightly less than that of Iowa. It is the eighth most populous nation in the world and the most densely populated country, aside from some city states and tiny island nations.

Originally part of British India, after the partition of British India in 1947, the entity known initially as East Bengal and then East Pakistan was established. In April 1972, following a war between India and Pakistan, the United States recognized East Pakistan as Bangladesh - a parliamentary democracy with a unicameral legislature. The nation is a developing country with severe infrastructure shortcomings. Outside of Dhaka, tourist facilities are under-developed as are capacities to deal with emergency situations.

Despite some earlier military coups following independence, Bangladesh has made significant progress toward a more prosperous and pluralistic society since its independence in 1971. Bangladesh returned to democratic rule in December 2008. Bangladesh's economy has grown at 6 percent annually for more than two decades. The United States remains

³ To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of individuals, groups, or locations. The cited sources: Item 3 (e-QIP, dated January 21, 2016); Item 4 (Enhanced Subject Interview, dated January 3, 2017); Item 4 (Subject Contact, dated January 6, 2017); Item 4 (Subject Contact, dated January 10, 2017); Item 4 (Triggered Enhanced Subject Interview, dated December 7, 2017); and Item 4 (Triggered Enhanced Subject Interview, dated April 26, 2018) contain more specific information.

actively engaged in efforts to strengthen respect for labor rights and improve workplace safety. Despite significant development achievements, poverty remains a challenge. Infrastructure shortcomings, weak governance structures, and potential terrorist exploitation by extremist groups are also vulnerabilities. The fact that Bangladesh is one of the world's most densely populated countries compounds these challenges.

U.S. Assistance to Bangladesh

Bangladesh is the largest recipient of U.S. assistance in Asia outside of Afghanistan and Pakistan. U.S. assistance fosters engagement with the Government of Bangladesh and complements support from other donors to address the underlying social, demographic, and economic factors that threaten democratic governance, stifle economic growth, and increase vulnerability to extremism in Bangladesh. The United States continues to build upon previous gains to reduce poverty, improve health and education, mitigate the impact of natural disasters, and achieve better governance to spur equitable and sustainable growth.

Bilateral Economic Relations

The United States exports to Bangladesh include agricultural products (cotton, wheat, dairy), aircraft, machinery, and iron and steel products. The United States is Bangladesh's single largest importer of goods including apparel, other textile products, headgear, shrimp and prawns, and agricultural products (primarily tobacco). The two countries conduct annual talks under a Trade and Investment Cooperation Framework Agreement (TICFA) signed in 2013.

Bangladesh's Membership in International Organizations

Bangladesh and the United States belong to a number of the same international organizations, including the United Nations, ASEAN Regional Forum, International Monetary Fund, World Bank, and World Trade Organization. The United States and Bangladesh cooperate closely on security issues, ranging from counterterrorism to peacekeeping.

Human Rights and Terrorism in Bangladesh

Bangladesh's legal system is based on common law, and its principal source of laws are acts of Parliament. Although human rights are enshrined in the country's constitution, government and security forces have been known to flout constitutional principles and have been accused of human rights abuses. In a 2017 Human Rights Report, the U.S. Department of State stated that the most significant human rights issues included extrajudicial killings, torture, arbitrary or unlawful detentions, and forced disappearances by government security forces; restrictions on civil liberties, including freedom of speech, press, and the activities of nongovernmental organizations; a lack of freedom to participate in the political process; corruption; violence and discrimination based on gender, religious affiliation, caste, tribe, including indigenous persons; trafficking in persons; and restrictions on worker's rights and the worst forms of child labor.

In addition to the usual criminal activities of some persons in the society, several anti-Western Islamic terrorist groups have engaged in a variety of attacks against diverse

groups and individuals, including students, Hindus, Buddhists, Christians, Shia, and secular bloggers. Americans have not been specifically targeted for terrorist activity simply because they are Americans, but there is a current terrorist threat of attack against Westerners in Bangladesh. Counter-terrorism raids have been conducted by the government. The U.S. Department of State has assessed Dhaka and Chittagong as being high-threat locations for crime and terrorist activity, including such activity directed at or affecting official U.S. government interests.

Although Applicant's family members resided well outside (more than 200 miles) the two cited areas of heightened risk, some of them moved several years ago to one of those areas.⁴

Applicant's Travel to Bangladesh

Since becoming a U.S. citizen, Applicant has traveled to Bangladesh on at least six occasions, visiting his family members for periods of up to 21 days each. He was never contacted by or had any contact with any person known or suspected of being involved or associated with foreign intelligence, terrorists, security, or military organizations. He was never in contact with anyone exhibiting excessive knowledge or undue interest in him or his job. He was not in contact with anyone attempting to obtain classified information or unclassified, sensitive information. He was never threatened, coerced, or pressured in any way to cooperate with a foreign government official or foreign intelligence or security service. He was never threatened, coerced, pressured, put under duress or blackmailed because of relatives, friends, or other contacts living in Bangladesh.⁵

Financial Considerations⁶

It is unclear when Applicant first started having financial difficulties, although he acknowledged that during an unspecified period leading up to October 2007, a business with his personal guarantees went under. As a result, in October 2007, Applicant and his wife filed a joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code citing \$242,800 in creditors holding secured claims; and \$602,402 in creditors holding unsecured nonpriority claims, totaling \$845,202 in total liabilities. On May 6, 2008, Applicant's debts were discharged.⁷ In January 2016, when completing his e-QIP, Applicant denied any financial issues such as delinquencies, collections, or accounts being charged off. In January 2017, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During that initial interview, Applicant stated that since his bankruptcy discharge, he re-established his credit, and that his

⁴ Item 4 (January 3, 2017), *supra* note 3, at 3.

⁵ Item 4 (January 6, 2017), *supra* note 3, at 16-17.

⁶ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 9, 2016); Item 8 (Equifax Credit Report, dated June 21, 2018); Item 5 (Bankruptcy File, various dates); Item 6 (Debt Negotiation Agreement, dated September 20, 2017); Item 4, *supra* note 3.

⁷ Item 5, *supra* note 6.

financial status since the bankruptcy is stable. He added that he feels he is capable of meeting his current financial obligations.⁸

During a subsequent OPM interview in December 2017, Applicant acknowledged that despite the bankruptcy discharge, he still owed large amounts of undocumented money to family and friends. In addition, he was caring for his parents, resulting in multiple overseas trips, and medical and living expenses for them. Because of the bankruptcy, he continued to borrow money from non-conventional sources with high interest rates to keep up with payments and living expenses. With insufficient funds to maintain his accounts, in September 2017, he engaged the professional services of a company that performs debt negotiations to provide debt relief.⁹ Under that agreement, Applicant agreed to make \$1,514 in monthly payments to the debt company commencing on October 6, 2017, and the debt company would attempt to negotiate debt relief regarding 23 different accounts totaling \$117,230.¹⁰ Applicant did not submit any documentation, such as cancelled checks, bank statements, receipts, etc., to indicate that any monthly payments were made to the debt company, or that any payments were made by Applicant or the debt company to any of Applicant's creditors.

At the end of his December 2017 interview, Applicant was questioned about a substantial number of cash transactions, each in excess of \$10,000, that were made throughout the period 2005 through 2017 at various casinos in several states. Applicant was reluctant to answer questions regarding the casinos, and specifically refused to answer questions pertaining to the frequent transactions. He did, however, acknowledge that since he was struggling financially, and he felt he was good at gambling, he did so to win money to help pay his debts. He acknowledged that "sometimes he won," implying that most of the time he lost. Applicant gambles as a hobby and for fun to perfect his skills. He denied having issues with gambling. He denied that gambling ever created any financial problems for him. Furthermore, Applicant was unsure if he will continue to visit casinos in the future.¹¹

In addition to Applicant's Chapter 7 Bankruptcy (SOR ¶ 2.b.); his enrollment in a debt relief program covering \$117,230 in debts (SOR ¶ 2.c.); and his casino gambling activities (SOR ¶ 2.a.), described above, the SOR identified eight delinquent accounts that had been placed for collection or charged off as generally reflected by Applicant's February 2016 or June 2018 credit reports. Those debts, total approximately \$57,027. Among the list of creditors the debt company was supposed to contact, are some of the SOR-related accounts. There are also a substantial number of accounts in that list, most

⁸ Item 4 (January 3, 2017), *supra* note 3, at 9.

⁹ Item 4 (December 7, 2017), *supra* note 3, at 11.

¹⁰ Item 6, *supra* note 6.

¹¹ Item 4 (December 7, 2017), *supra* note 3, at 12-14; Item 4 (April 26, 2018), *supra* note 3, at 16.

of which had balances between \$3,000 and \$12,000, which were not alleged in the SOR.¹²

Applicant's outstanding financial obligations alleged in the SOR, all of which Applicant simply denied in his Answer to the SOR, but essentially acknowledged to the debt company, are as follows: an unspecified type of account for \$6,551, but listed for \$10,647 in his creditor list (SOR ¶ 2.d.); a credit card for \$1,564 that was charged off, but listed for \$715 in his creditor list (SOR ¶ 2.e.); a credit card for \$8,129 that was charged off, but listed for \$6,471 in his creditor list (SOR ¶ 2.f.); a credit card for \$5,296 that was charged off, but listed for \$4,135 in his creditor list (SOR ¶ 2.g.); a credit card for \$1,929, but listed for \$1,277 in his creditor list (SOR ¶ 2.h.); an unspecified type of account for \$755 that was past due in the amount of \$196 (SOR ¶ 2.i.); an unspecified type of account for \$3,760 that was charged off, but listed for \$3,614 in his creditor list (SOR ¶ 2.j.); and an unspecified type of account for \$22,492 that was charged off, but listed for \$22,044 in his creditor list (SOR ¶ 2.k.).¹³

In September 2017, Applicant submitted a Personal Financial Summary to his debt company. It indicated that his monthly take-home-pay was \$9,000; monthly expenses were \$7,406, not including his debt company program payments; leaving a monthly remainder of \$1,695 if no such program payments were made, or \$81 if those program payments were made, available for discretionary saving or spending.¹⁴ It is not known what Applicant's current financial resources may be because he did not report his current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. Except for an acknowledgment that he had received credit counseling associated with his 2007 bankruptcy, there is no indication that subsequent financial counseling from a legitimate and credible source had been received. As noted above, during his initial OPM interview, Applicant stated that since his bankruptcy discharge, he re-established his credit, and that his financial status since the bankruptcy was stable. He added that he felt he was capable of meeting his current financial obligations. Facts developed following that

¹² Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged delinquent accounts, as well as his lack of candor on his e-QIP, will be considered only for the five purposes listed above.

¹³ Item 6, *supra* note 6; Item 7, *supra* note 6; Item 8, *supra* note 6.

¹⁴ Item 6, *supra* note 6.

interview fail to support Applicant's comments. There is no evidence to indicate that Applicant's financial situation is now under control.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."¹⁵ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁶

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."¹⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁷ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹⁸

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹⁹

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline B, Foreign Influence

¶ 6. The security concern relating to the guideline for Foreign Influence is set out in AG

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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is

¹⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ See Exec. Or. 10865 § 7.

known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes conditions that could raise security concerns under AG ¶ 7:

(a) contact, regardless of method, 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

(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 or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology

Applicant's parents are both residents and citizens of Bangladesh. His father worked in education until he retired nearly 25 years ago, and his mother worked in family planning until she retired over 22 years ago. Both parents are in their 70s or 80s. Applicant has two brothers who are also residents and citizens of Bangladesh. One brother works for a private company associated with the construction business, and his other brother owns his own business. None of those family members were affiliated with a foreign government, military, security, or intelligence service. Applicant speaks with his parents monthly, and he travels to Bangladesh to visit them every one to two years. He speaks and texts his brothers monthly, and he sees them whenever he visits his parents. His relationships with his sisters are more distant, and they were not of any security concern.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family member must be analyzed.²¹ If only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²² The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Moreover, Guideline B is not limited to countries hostile to the United States.²³ Furthermore, "even friendly countries can have profound disagreements with the United States over matters they view as important to their vital interests or national security."²⁴ Friendly nations have engaged in espionage against the United States,

²¹ ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

²² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

²³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) ("The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.").

²⁴ ISCR Case No. 00-00317 at 6 (App. Bd. Mar. 29, 2002).

especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. It is reasonable to presume that a contentious relationship, or the absence of a democratic government, is not determinative, but it may make it more likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.²⁵

In this instance, there is no evidence to reflect that Bangladesh engages in economic espionage or military intelligence activity directed toward the United States. Bangladesh is the largest recipient of U.S. assistance in Asia outside of Afghanistan and Pakistan. Moreover, the United States is Bangladesh's single largest importer of goods. Moreover, the United States and Bangladesh cooperate closely on security issues, ranging from counterterrorism to peacekeeping. The most significant fear is not the official actions of the government, but rather the acts of terrorism conducted against individuals and groups, not necessarily specifically targeting Americans. Those terrorist activities in Bangladesh are sufficient to establish a "heightened risk" – a risk that is greater than the normal risk inherent in having a family member living under a foreign government where terrorist activities frequently take place. AG ¶¶ 7(a) and 7(b) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under 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;
- (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; and
- (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.

²⁵ See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

AG ¶¶ 8(a), 8(b), and 8(c) partially apply. As noted above, there is no evidence that Applicant's relatives have been political activists, challenging the policies of the Bangladesh Government. There is no evidence these relatives currently work for or have ever worked for the Bangladesh Government, military, or intelligence service. Likewise, there is no evidence that terrorists or the Bangladesh Government have approached or threatened Applicant or his relatives for any reason. And, there is no evidence that those family members in Bangladesh currently engage in activities which would bring attention to them or that they or other Bangladesh elements are even aware of Applicant's work. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation. Furthermore, in this instance, if the most significant "heightened risk" is Applicant's or his family's potential exposure to terrorist threats, not government intervention, residing in Bangladesh is not so different from residing in New York City (2001), Paris (2015), Brussels (2016), Orlando (2016), Barcelona (2017), or London (2017), the locations of significant terrorist attacks.

Applicant's loyalty and connections to his family members are positive character traits. However, for security clearance purposes, those same connections with relatives living in foreign countries negate the possibility of full mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are living in foreign countries] could create a risk for foreign influence or exploitation." Applicant's ties to the United States run relatively deep. He immigrated to the United States 25 years ago, and he has been a naturalized U.S. citizen for 14 years. He has worked for U.S. companies, or was self-employed, since 2004. He has one child born in the United States. His deep relationship with the United States weighs against a security concern for the relationships he has with his retired elderly parents and his brothers. His wife and her mother are naturalized U.S. citizens, residing in the United States. His father-in-law passed away.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

In addition to Applicant's 2007 bankruptcy, his gambling activities, and his debt negotiation agreement, the SOR identified eight delinquent accounts that had been placed for collection or charged off, totaling approximately \$57,027. Those accounts remain unaddressed and delinquent. His September 2017 Personal Financial Summary indicated that his monthly take-home-pay was \$9,000; monthly expenses were \$7,406, not including his debt company program payments; leaving a monthly remainder of \$1,695 if no such program payments were made, or \$81 if those program payments were made, available for discretionary saving or spending. Because of the absence of more recent information regarding Applicant's finances over the past few years, it is difficult to determine if he was unwilling, but able, to address his debts, or simply unable to do so. Applicant's gambling over the years, as well as the large cash transactions associated with casinos that he refused to discuss, remain a security concern. AG ¶¶ 19(a), 19(b), 19(c), 19(e), 19(h), and 19(i) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;²⁶

²⁶ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁷ and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶¶ 20(b) and 20(c) minimally apply, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant failed to explain why or how he got into debt, other than to refer initially to business-related expenses that led to his 2007 bankruptcy, and then his acknowledgment that he concealed other debts with family or friends. He did not specifically attribute his financial difficulties to any identified factors. He offered no statements or documentation to reflect that he had made any efforts, before or after he was interviewed by OPM, or before or after the SOR was issued in June 2018, to: obtain financial counseling from a legitimate and credible source, such as a non-profit credit counseling service; dispute his delinquent accounts with the credit reporting agencies or the creditors themselves; contact his creditors to set up repayment plans; or indicate that

²⁷ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

payments had been made to his creditors.²⁸ Instead, he simply referred to an agreement he entered into with a debt company to resolve his debts. When offered the opportunity to submit documentation to reflect payments, he failed to do so. Normally, an applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.²⁹ In this instance, there is no evidence of any actions even after receiving the SOR.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, to date, there is no evidence that any corrective actions, other than the 2017 debt negotiation agreement, have been taken by Applicant to reflect any initial or continuing payments to his creditors. There is no evidence to conclude that Applicant's finances are under control. Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.³⁰

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. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (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.

²⁸ See ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017).

²⁹ See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

³⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³¹

There is very little evidence mitigating Applicant's conduct. Applicant is a 51-year-old employee of a defense contractor. He has been serving as a manager, advanced verification, since he joined his employer in February 2016. Applicant's loyalty and connections to his family members are positive character traits.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant's 2007 Chapter 7 bankruptcy discharge involved \$845,202 in total liabilities. When he completed his e-QIP, Applicant denied having any delinquent accounts or charged-off accounts. In doing so he concealed his delinquent accounts. In 2017, during his initial OPM interview, Applicant stated that since his bankruptcy discharge, he re-established his credit, and that his financial status since the bankruptcy was stable. He added that he felt he was capable of meeting his current financial obligations. Both of those statements were inaccurate. During a subsequent OPM interview, Applicant acknowledged that despite the bankruptcy discharge, he still owed large amounts of money to family and friends. In 2017, he reported to a debt company that he had 23 different accounts totaling \$117,230. Applicant did not submit any documentation, such as cancelled checks, bank statements, receipts, etc., to indicate that any monthly payments were made to any of Applicant's creditors. Applicant's gambling over the years, as well as his unexplained large cash transactions associated with casinos, remain a security concern, especially since he refused to provide details of those transactions. Applicant's current financial situation is unknown.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³²

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible

³¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

³² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, failing to take any meaningful or documented corrective actions with respect to his delinquent debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. In addition, his lack of candor is a concern. For all of these reasons, I conclude while Applicant mitigated the foreign influence concerns, he has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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, Guideline B:	FOR APPLICANT
Subparagraphs 1.a. through 1.c:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b:	Against Applicant
Subparagraph 2.c.:	For Applicant
Subparagraphs 2.d. through 2.k.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge