



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



In the matter of: )  
)  
) ISCR Case No. 22-00419  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: Pro se

09/27/2023

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**Decision**

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Hyams, Ross D., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 5, 2019. On June 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on June 19, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to me on June 15, 2023.

The hearing was convened as scheduled on August 10, 2023. Department Counsel submitted Government Exhibits (GE) 1-3, which were admitted in evidence without objection. Applicant did not submit any exhibits at the hearing. After the hearing, I held the record open for two weeks to provide Applicant the opportunity to submit documentary evidence. He timely submitted documents that I marked as Applicant's Exhibits (AE) A-K and admitted in evidence without objection.

## **Request for Administrative Notice**

At Department Counsel's request, I took administrative notice of facts concerning Bangladesh. Department Counsel provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filing GE 3 and are included in the findings of fact. Applicant also requested that I take administrative notice of mitigating facts concerning Bangladesh. Those facts are detailed in AE H and are included in the findings of fact.

### **Findings of Fact**

In his Answer, Applicant admitted all of the SOR allegations with explanation. After review of the pleadings, testimony, and evidence submitted, I make the following findings of fact.

Applicant is 47 years old. He was married in 2011. He earned a bachelor's degree in 2018. He has worked for a defense contractor since 2019 as a software engineer. (Tr. 20-21; GE 1)

In 1998, Applicant came to the U.S. on a student visa. Shortly after arriving, he started a relationship with an American woman of whom his family disapproved. This caused a rift in his relationship with his family in Bangladesh. He did not have any contact with family from 1999 until his mother contacted him in about 2009. He traveled to Bangladesh to see her in 2017. During this trip, he visited family members over a three-week period, and reconnected with some former classmates. This is the only time that he has been back to Bangladesh since arriving in the U.S. in 1998. Family members have not visited him in the U.S. (Tr. 22-26, 37-48, 77-80; Answer; GE 1, 2)

Applicant maintained limited contact with some family members and school friends after his 2017 trip to Bangladesh. He reported that these connections faded shortly after returning home and that everyone went back to their normal routines. He stated that he was over-inclusive in reporting foreign contacts on his 2019 SCA, and that most of the contacts would no longer meet the criteria for inclusion if he filled out the SCA today. (Tr. 22-26, 37-48, 77-80; Answer)

In 2019, Applicant surrendered his Bangladeshi passport to the Embassy and renounced his Bangladeshi citizenship. He and his wife own a home, two cars, and have retirement and savings accounts in the U.S. He does not maintain any assets outside of the U.S. He provided two character references that state that he is reliable; trustworthy; an excellent employee; has good judgement; and is recommended for a security clearance. (Tr. 22-26, 37-48, 77-80; Answer; AE A, B, C)

The SOR alleges the following foreign influence concerns:

SOR ¶ 1.a alleges that Applicant's mother is a citizen and resident of Bangladesh, and that he provides her about \$275 of financial support bimonthly. He stated that he

speaks to his mother once a week, and sends her money as a gift, not as support. He reported that this is common cultural practice in Bangladesh, and that she is not financially dependent on the money. She lives with several of her siblings in a family home that was divided into individual units. He applied for her green card in 2022, and hopes that she eventually comes to stay in the U.S. (Tr. 24-25, 37; Answer; GE 2; AE K)

SOR ¶ 1.b alleges that Applicant's step-mother is a citizen and resident of Bangladesh. He reported that he and his step-mother do not like each other, but he is close to her daughters, his half-sisters. He stated that he has not spoken with her in a year, only has contact with her about once a year through one of his half-sisters, and has not seen her since 2017. (Tr. 37-41; Answer; GE 2)

SOR ¶ 1.c alleges that Applicant's brother is a citizen and resident of Bangladesh. He reported that he has quarterly contact with him. His brother is 51 years old, has three minor children, and works in human resources for a Bangladeshi corporation. (Tr. 48-54; Answer; GE 2)

SOR ¶ 1.d alleges that Applicant's half-sisters are citizens and residents of Bangladesh, and one is a civilian employee with a Bangladeshi court. He reported that his half-sisters are 49 and 56 years old. The older sister works as an assistant at the local probate court. He has not talked to her for a year, but has talked to her quarterly in the past. He has contact with the younger sister quarterly. (Tr. 55-60; Answer; GE 2)

SOR ¶ 1.e alleges that Applicant maintains frequent communications with several aunts and uncles who are citizens and residents of Bangladesh. He reported that he does not maintain contact with aunts and uncles on his father's side. His mother has four siblings, three live on the same property with her. He asserted that he is not close with any of them, but will talk to them out of courtesy if they are present when he speaks to his mother. This contact occurs quarterly. (Tr. 60-66; GE 2)

SOR ¶ 1.f alleges that Applicant purchased a mobile phone in Bangladesh that he uses to maintain communication with Bangladeshi family members and to chat with former Bangladeshi classmates. He reported that he purchased this phone when he visited Bangladesh for three weeks in 2017. His U.S. phone did not work well there and was expensive to use. He reported that he used this phone to keep these communications separate from his U.S. phone. After about two years he could no longer update the phone, and it stopped working in early 2020. This was the last time that he had communications with his former classmates. His contact with his relatives is detailed in the other SOR allegations. (Tr. 66-73; Answer; GE 2)

### **Bangladesh**

In GE 3, the Government included information from the U.S. Department of State as of September 2022, about the United States' relations with Bangladesh and the current conditions in that country. I take administrative notice of the following facts:

The U.S. Department of State has issued a Level 2 Travel Advisory for Bangladesh, advising U.S. travelers to exercise increased caution in Bangladesh due to crime, terrorism, and kidnapping.

Some terror groups are active in Bangladesh. The U.S. government assesses that there remains a credible terrorist threat against foreigners in Bangladesh. There has been no significant terrorist attack in Bangladesh since March 2017, but the country remains a target.

In 2021, incidents causing injury and death in Bangladesh derived from hate-based communal protests and political differences occurred, with some violent extremist group involvement. In 2022, there were some credible claims of significant human rights violations which were alleged to have occurred in Bangladesh.

In AE H, Applicant included mitigating facts concerning Bangladesh from the U.S. State Department. I take administrative notice of the following facts:

In July 2022, the U.S. State Department reported that Bangladesh is an important regional partner on economic, climate, humanitarian, and security priorities. There have been 50 years of relations with Bangladesh, including multiple high level and strategic engagements to deepen bilateral, economic, commercial, and security collaboration, and promote security, human rights, rule of law, and freedom of expression. The U.S. has invested over \$8 Billion in Bangladesh to improve the lives of its citizens. Bangladesh recently hosted nearly one million refugees fleeing Burma. Bangladesh is the largest contributor of troops to UN peacekeeping operations. Both countries belong to many of the same international and regional organizations.

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the

“whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 details the security concern about “foreign contacts and interests” as follows:

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

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(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.

Applicant maintains close and continuing contact with his mother and three siblings, who are citizens and residents of Bangladesh. AG ¶ 7(a) applies to SOR ¶¶ 1.a, 1.c, and 1.d. It was not established that Applicant maintains close and continuing contact with his step-mother, or his aunts and uncles. Possessing a phone that was purchased in a foreign country is not disqualifying behavior under AG ¶ 7. SOR ¶¶ 1.b, 1.e, and 1.f are not established.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant provided sufficient evidence and testimony to find that ¶¶ 8(a), 8(b), and 8(c) apply. While he is close to his mother, and has continuing contact and affection for his siblings, it is unlikely that he will be placed in the position of having to choose between their interests and the interests of the U.S. He has been living in the U.S. for about 25 years, and his wife, all of his assets, and employment are all in the U.S. He has only been to Bangladesh once in 25 years.

Applicant has deep and longstanding relationships and loyalties in the United States, and can be expected to resolve any conflict of interest in favor of the U.S. interest. Given the U.S. relationship with Bangladesh and the country conditions in Bangladesh,

there is little likelihood that these relationships could create a risk for foreign influence or exploitation.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered his character letters and his service working for a defense contractor. I have incorporated my comments under Guideline B in my whole-person analysis.

I had the chance to observe Applicant's demeanor and assess his credibility. The information he provided was thorough, he adequately explained the circumstances surrounding the SOR allegations, and I found his testimony and explanations to be credible and substantially corroborated by documentary evidence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the foreign influence security concerns.

### **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-1.f:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

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Ross D. Hyams  
Administrative Judge