



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00249
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/27/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On March 21, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implement by the DOD on June 8, 2017 (AG).

Applicant answered the SOR on March 28, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM) on May 31, 2024. The evidence included in the FORM is identified as Items 2-3. (Item 1 includes pleadings and transmittal information.) Within the FORM, Department Counsel requested that I take administrative notice of certain facts about Bangladesh, as set forth in the request. (Admin I)

The FORM was mailed to Applicant, who received it on June 13, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file any objections or submit any additional evidence. Items 2-3 are admitted into evidence without objection. I will also take administrative notice as requested. The facts noticed concerning Bangladesh are set forth in the decision below. The case was assigned to me on September 12, 2024.

### **Findings of Fact**

In Applicant's answers to the SOR, he admitted all the allegations, with some explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact. (Item 1)

Applicant is 41 years old. He was born in Bangladesh. He lived in the United States (US) to attend school from 2003 to 2006. From 2007 to 2011, he lived and worked in Canada. He returned to the US in 2011, where he gained employment. He became a naturalized US citizen in November 2014 and was issued a US passport. (Items 2-3)

Applicant married in 2009 and has two children, ages 9 and 13. His wife is a naturalized US citizen, and his two children are native-born US citizens. He is a senior consultant for a defense contractor. He holds an associate degree. (Item 2)

Applicant's parents, parents-in-law, and one sister are all citizens and residents of the US. His other sister is a citizen of Canada. (Item 2)

The SOR alleged under Guideline B that Applicant's two aunts (A1 and A2) are citizens and residents of Bangladesh; two uncles (U1 and U2) are citizens and residents of Bangladesh; a cousin (C1) is a citizen and resident of Bangladesh and also is a major in the Bangladesh Army; and three sisters-in-law (SL1 through SL3) are citizens and residents of Bangladesh. (Item 1)

### **Foreign Relatives**

1. A1: She is a citizen and resident of Bangladesh. She has known Applicant since birth. They occasionally talk on the phone or by a video call.

2. A2: She is a citizen and resident of Bangladesh. She has known Applicant since birth. They have minimal contact by the phone or by a video call.

3. U1: He is a citizen and resident of Bangladesh. He is retired. He has known Applicant since May 1987, when he married his aunt. They occasionally talk on the phone or by a video call.

4. U2: He was a citizen and resident of Bangladesh. He had known Applicant since birth. They had minimal contact by the phone or by a video call. Applicant stated in his SOR answer that this uncle passed away.

5. C1: He is a citizen and resident of Bangladesh. He was a major in the Bangladesh Army. Applicant stated in his SOR answer that C1 retired from the military in July 2024. They have regular contact by the phone, video calls, messaging, and emails. Applicant does not know C1's feelings toward the US because they never discuss such things.

6. SL1: She is a citizen and resident of Bangladesh. She is 31 years old. She has known Applicant since his marriage in March 2018. She is a housewife. They talk occasionally through video calls or messaging. The last time was in February 2023. She is not affiliated with any foreign government, military, security, defense industry, foreign movement, or intelligence service.

7. SL2: She is a citizen and resident of Bangladesh. She is 51 years old. She has known Applicant since his marriage in March 2018. She is an officer with a non-government multipurpose cooperative. They talk occasionally through video calls or messaging. The last time was in February 2023. She is not affiliated with any foreign government, military, security, defense industry, foreign movement, or intelligence service.

8. SL3: She is a citizen and resident of Bangladesh. She has known Applicant since his marriage in March 2018. She holds a position in the Bangladeshi government. They talk occasionally through video calls, emails, or messaging. The last time was in March 2023. Applicant believes SL3 loves the US because of her job and the frequent trips she makes here because of her job. (Items 1, 2, 3: February-March 2023 subject interviews)

## **Bangladesh**

Terrorism is an issue for the Bangladeshi government. The Prime Minister emphasized the government's zero-tolerance policy on terrorism. The US has provided training to police units dealing with terrorism and terror suspects. The US also provided training to prosecutors and judges dealing with terrorist cases. (Admin I)

The US State Department has issued a Level 2 travel advisory for Bangladesh. There remain credible terrorist threats against foreigners, however, there has been no significant attack since 2017. (Admin I)

The Government has a poor human rights record. Human rights violations were documented against some anti-terrorism units. The units involved were then deemed ineligible to receive further US assistance by the provisions of the Leahy Act. (Admin I)

There was no information provided within the documents supporting the request for administrative notice about any Bangladesh-sponsored efforts to conduct espionage against the US. (Admin I)

## **Policies**

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 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, 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. According to AG ¶ 2(a), the entire process is a careful weighing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 explains 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.

Guideline B is not limited to countries hostile to the United States. “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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the US, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the US, 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 US. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See generally ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

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; 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). See also ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019) (“Heightened risk” is not a high standard.). Applicant’s family connections and risk of terrorism in Bangladesh are sufficient to establish a “heightened risk.”

The allegations in SOR ¶¶ 1.a-1.d are established. All of Applicant’s listed relatives are currently residents and citizens of Bangladesh, except U2, who has passed away. AG ¶¶ 7(a) and 7(b) apply.

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 U.S.; and

(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.

All of Applicant’s close relatives (wife, children, father, mother, sister, and in-laws) are citizens and residents of the US. Given the nature of the relationship between Bangladesh and the US and the limited contact that Applicant has with his remote

relatives living in Bangladesh it is unlikely that Applicant would be placed in a position of having to choose between the interests of his foreign relatives and those of the United States. AG ¶ 8(a) applies.

Applicant has met his burden to establish his “deep and longstanding relationships and loyalties in the US.” He became a U.S. citizen in 2014 and has lived and worked in the US ever since then. He has a job here and all his immediate family live here (except for one sister who lives in Canada). His connection to Bangladesh is minimal because he has limited contact with the distant relatives that live there. AG ¶ 8(b) applies.

### **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 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. The factors tending to support granting Applicant’s clearance are more significant than the factors weighing towards denying his clearance. I considered his minimal connection to Bangladesh against the strong ties he has to this country and immediate family living here, thereby demonstrating his longstanding loyalty to the US. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the security concerns arising under Guideline B, foreign influence were mitigated.

## 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.d:	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge