

KEYWORD: Foreign Influence

DIGEST: The government’s evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family connections to Bangladesh. Eligibility for an ADP I/II/III position granted.

CASENO: 06-01410.h1

DATE: 08/23/2007

DATE: August 23, 2007

In Re:	)	
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	)	
-----	)	ADP Case No. 06-01410
SSN: -----	)	
	)	
Applicant for ADP I/II/III Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esquire, Department Counsel

**FOR APPLICANT**

William F. Savarino, Esquire

**SYNOPSIS**

\_\_\_\_\_The government’s evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family connections to Bangladesh. Eligibility for an ADP I/II/III position granted.

## STATEMENT OF THE CASE

Applicant challenges the 5 March 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his eligibility for an ADP I/II/III position because of unresolved foreign influence concerns.<sup>1</sup> He answered the SOR 27 April 2007, and requested a hearing. DOHA assigned the case to me 14 June 2007, and I convened a hearing 23 July 2007. DOHA received the transcript (Tr.) 1 August 2007.

## FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact. He is a 33-year-old quality assurance manager for a defense contractor, and seeks access to sensitive personnel information. He has not previously had a background investigation.

Applicant was born in Bangladesh in July 1973, and grew up there. He immigrated to the U.S. in 1996, when he won the Immigration and Naturalization Service (INS)<sup>2</sup> diversity lottery, awarding him legal permanent resident (LPR) status. He became a naturalized U.S. citizen in April 2002, and obtained his first U.S. passport in June 2002. He applied for the diversity lottery because of his dream to come to the U.S. to study and be able to work (Tr. 40). He attended community college in the U.S. before transferring to a university to complete his undergraduate degree in computer science in January 2002. All his financial assets are in the U.S.

Applicant's parents and his two sisters are resident citizens of Bangladesh. His father is a civil attorney with no government affiliation. His mother is a life-long housewife. Applicant provides them no financial support, and he receives none from them. His two sisters are housewives. One is married to an attorney who was an associate with her father before striking out on his own. The other is married to an accountant. None of the four of them have any affiliation with the government of Bangladesh.

Applicant has sponsored his parents and siblings to immigrate to the U.S. (A.E. D). His parents' petitions have been approved, and they await final processing through the U.S. Department of State National Visa Center. His sisters' petitions are still pending, but siblings occupy a lower priority than parents of U.S. citizens, and generally must wait longer to have their petitions approved.

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<sup>1</sup>Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992—as amended and modified, most recently in August 2006 (Directive). Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on 31 August 2006. The Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>2</sup>INS functions have been transferred to the Department of Homeland Security (DHS), and the organization has been renamed Citizenship and Immigration Services (CIS).

Applicant has 25-30 cousins who are resident citizens of Bangladesh. He sees them occasionally when he travels to Bangladesh to visit family, as he has done in December 1998, December 2000, December 2003, July 2006, and February 2007. He has no contact with any of them when he is in the U.S.

Applicant's supervisor for the last three years in the quality assurance division testified that Applicant is an excellent software tester, and handles sensitive information appropriately (Tr. 29). Applicant completes on-line security training annually to stay apprised of security requirements (Tr. 57).

Bangladesh obtained its independence from Pakistan in 1971, and pursuant to its 1972 constitution, has a democratic parliamentary form of government. It is one of the world's poorest and most densely populated countries, with a population of 146 million people and a per capita GDP of \$456. Bangladesh remains one of the few democracies in the Muslim world, but suffers from a dysfunctional political system, weak governance, and pervasive corruption. Nevertheless, Bangladeshis regard democracy as an important legacy of their war for independence. However in January 2007, the government declared a state of emergency, suspended certain fundamental rights, and postponed the scheduled January 2007 elections until late 2008.

Despite a poor human rights record, Bangladesh is generally a force for moderation in international forums, and is also a long-time leader in international peacekeeping operations. Its activities in international organizations, with other governments, and its regional partners to promote human rights, democracy, and free markets are coordinated and high profile. U.S.-Bangladesh relations are excellent. Further, Bangladesh has become a valuable U.S. ally in the global war on terrorism. While Bangladesh has witnessed the emergence of a dangerous terrorist group, the JMB, which has identified the governments of the U.S. and the United Kingdom as alleged enemies of Islam and has the goal of imposing a fundamentalist Islamic society on Bangladesh, the government has banned the group and pursues its leaders to limit its effectiveness in Bangladesh. There was no JMB-linked violence in 2006, and U.S. and Bangladeshi law enforcement agencies cooperated well on several cases related to domestic and international terrorism.

Bangladesh is not a known collector of U.S. intelligence or sensitive economic information. Bangladesh is not known to target U.S. citizens to obtain protected information. Bangladesh is not on the U.S. Department of State's list of current travel warnings, although the State Department notes that the security situation in Bangladesh remains fluid.

Applicant's roommate, a former college friend, is—like Applicant—a native-born Bangladeshi who became a naturalized U.S. citizen. In January 2007, the roommate was granted his eligibility for an ADP I/II/III position administratively by DOHA based on an SOR and answer that are virtually indistinguishable from Applicant's, except that Applicant has cousins in addition to parents and siblings living in Bangladesh (SOR 1.c.)(A.E. A-C). The roommate was a listed contact on Applicant's application (G.E. 1).

## POLICIES AND BURDENS

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an applicant's suitability for access to sensitive information.<sup>3</sup> Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>4</sup>

## CONCLUSIONS

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign

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<sup>3</sup> A memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004), directed that adjudication of trustworthiness cases for ADP I, II, and III positions be resolved using the provisions of the Directive rather than, as originally drafted, DoD Regulation 5200.2-R, *DoD Personnel Security Program*, as amended (Regulation). Positions designated as ADP I or ADP II are classified as sensitive positions in section AP10.2.1 of the Regulation. ADP III positions are nonsensitive positions. (Regulation, AP102.3.1) By virtue of the aforementioned memorandum, however, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

<sup>4</sup>*See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>5</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>6</sup>

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the foreign country involved, Bangladesh and the U.S. enjoy excellent foreign relations. However, while Bangladesh has a poor human rights record, it is a voice of moderation in its international relations, promotes democracy in its region, and has actively cooperated with the U.S. in ending global terrorism. Bangladesh is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. Further, this case contains evidence that the government has concluded, in at least one case, that Bangladesh poses insufficient risk of targeting protected information. While Department Counsel correctly observes that DOHA’s decision to grant eligibility in ADP Case No. 05-11711 (A.E. C) does not specifically address Bangladesh and lacks precedential value for this case, Department Counsel is incorrect in suggesting that DOHA’s decision does not support favorable inferences about the government’s overall view of the risk posed by Bangladesh. In addition, the only other DOHA case to have considered Bangladesh under the Revised Adjudicative Guidelines (ISCR Case No. 06-14160) similarly concluded that Bangladesh posed insufficient risk to protected information. Again, that decision has no precedential value for this case, but does provide support for my conclusion that Bangladesh neither seeks protected information from the U.S. nor targets its former citizens to obtain that information. The risk that Bangladesh might seek protected information from Applicant is low, if not non-existent.

On the Applicant side of the equation, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant’s limited family contacts in Bangladesh. Applicant has sponsored his parents and sisters for immigration to the U.S. His parents’ petitions have been approved. None of Applicant’s immediate family members (or his sisters’ husbands) have any affiliation with the government of Bangladesh. He contacts his cousins only when he is in Bangladesh, and he does not always see the same cousins when he travels to Bangladesh. There is nothing in the circumstances of their being in Bangladesh, or in Applicant’s contacts with his parents and sisters, to heighten the risk that he could be impelled to provide protected information to Bangladesh. I resolve Guideline B for Applicant.

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<sup>5</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>6</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

**FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant

**DECISION**

In light of all of the information presented, it is clearly consistent with the interests of national security to grant Applicant a position of public trust.

**John G. Metz, Jr.  
Administrative Judge**