

DATE: June 28, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-06901

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a native of Bangladesh, renewed his foreign passport after he became a United States naturalized citizen. In February 2001, he renounced his foreign citizenship and surrendered his foreign passport, demonstrating a clear preference for the United States. While his mother, stepmother and ten siblings remain citizens of Bangladesh, there is little risk of foreign influence presented by the foreign citizenship and residency of these family members. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated December 11, 2001, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (guideline C) related to exercise of dual citizenship, possession of a Bangladeshi passport and renewal of that passport after acquisition of United States citizenship through naturalization. Also alleged were foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members (mother, stepmother, and siblings).

On February 26, 2002, Applicant responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on April 11, 2002, and pursuant to formal notice dated April 12, 2002, a hearing was scheduled for May 29, 2002. At the hearing, which was held as scheduled, the Government submitted two exhibits, which were entered into the record without objection. Applicant testified on his behalf and submitted two documents, which were marked and admitted as Exhibits A and B. With the receipt on June 7, 2002, of the transcript of the hearing, this case is ripe for a decision.

## FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of same, I render the following findings of fact:

Applicant is a 53-year-old software engineer currently working as an associate member of the technical staff for an academic research laboratory (company A) involved in classified defense work. In February 2000, Applicant was granted an Interim Secret security clearance, which was subsequently withdrawn. (1) He seeks a Secret clearance for his defense-related duties.

Applicant was born in 1949 in Bangladesh to resident citizens of that nation. Raised and educated through his formative years in Bangladesh, Applicant on a merit scholarship earned a Bachelor of Science degree in physics from a university in Bangladesh. In 1972, he was awarded a Master's degree in physics from a university in a nearby country in South Asia.

Circa 1973, Applicant applied for a merit scholarship for study abroad. Awarded a scholarship to study at a university in Eastern Europe, Applicant pursued doctorate studies in physics at the foreign university. On earning his Ph.D. in 1977, Applicant served a one-year post doctorate fellowship at a Western European institution. In September 1978, Applicant married a Bangladeshi native.

In 1978, Applicant and his new wife moved to Canada, where he engaged in further study on a scholarship from a Canadian university and she pursued a degree in electrical engineering from another institution of higher learning.

In 1980, Applicant came to the United States, where he taught mathematics at a private college in the Northeast for two years and then at a state university in the South. Applicant became a permanent resident of the United States in 1982.

Not happy living in the southern state, Applicant's spouse gained employment with a corporation in the Northeast. Applicant taught mathematics in their new geographic locale while pursuing a Master's degree in computer science at a nearby technological university from September 1985 to June 1987. In June 1987, a daughter was born to Applicant and his spouse in the United States.

Circa 1988, Applicant filed an application for United States citizenship. He traveled to Bangladesh that year for about two weeks when his father died. Travel was on a Bangladeshi passport. In January 1989, Applicant became a United States naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. (2) Applicant took no action at that time to formally renounce his Bangladeshi citizenship or to relinquish his Bangladeshi passport. He obtained his United States passport that same year, which he used to travel to Bangladesh when his mother was ill in 1990.

In April 1989, Applicant and his spouse had a son. That October, Applicant commenced employment as a software engineer for a United States defense contractor. Working onsite at company A as a subcontractor, Applicant was granted a Department of Defense Secret security clearance, which he held until he left the job when funding for the project was cut in July 1993. Applicant was unemployed until August 1994, with the exception of the first three months of 1994 when he worked as a clerk at a convenience store. During this period, he and his spouse were granted a divorce by a court of competent jurisdiction in the United States.

In August 1994, Applicant secured a position as a software engineer for another corporation doing work for company A. In conjunction with a planned trip to Bangladesh to visit family members in July 1997, Applicant contacted the Bangladesh Embassy in the United States to inquire about travel as a dual citizen (United States and Bangladesh). Informed a United States citizen required a visa to stay longer than two weeks in Bangladesh, Applicant renewed his Bangladeshi passport in the event some unforeseen circumstance necessitated his stay (such as unexpected illness of his children who would be accompanying him) beyond the planned two weeks. At the time Applicant renewed his foreign passport, he did not possess a security clearance for his duties.

For two weeks in August 1997, Applicant went to Bangladesh with his children to visit family (mother, stepmother,

siblings) who remain resident citizens of that nation. Applicant entered and exited Bangladesh on his United States passport. He had in his possession as well his Bangladeshi passport as a precaution, but did not use it as the trip was uneventful. In July 1999, Applicant's United States passport was renewed for a period of ten years.

Circa 2000, Applicant's employer requested he be granted a Secret security clearance for his duties onsite at company A. On February 8, 2000, Applicant executed a security clearance application (SF 86) on which he listed his dual citizenship with the United States and Bangladesh; his possession of a valid United States passport issued on renewal in July 1999; his foreign travel, including a trip to Bangladesh in 1997; and the Bangladeshi citizenship and residency of his mother and stepmother. Applicant responded "NO" to whether in the last 7 years he had an active passport that was issued by a foreign government (question 15), as he assumed the question pertained only to use of that passport and he had not used his Bangladeshi passport since acquiring his United States passport in 1989.

On December 16, 2000, Applicant was interviewed by a special agent of the Defense Security Service about his dual citizenship and issues of foreign influence presented by the Bangladeshi residency and citizenship of close family members. Applicant informed the agent his mother and stepmother, citizens of Bangladesh, also maintained legal immigrant status in the United States. Both live with him in the United States a portion of the year, while spending the winter months in Bangladesh. With respect to his ten siblings, all of whom are Bangladeshi citizens, Applicant related eight reside in Bangladesh. A brother was working in the Middle East and a sister was in the United States on a student visa. Applicant indicated a few of his younger siblings desired to emigrate to the United States, and he would likely sponsor their applications. He denied providing any financial support for his foreign national relatives, but described "regular" telephonic contact with several of them. Applicant explained his possession of a Bangladeshi passport, which he renewed in July 1997 on the advice of the Bangladeshi Embassy. He indicated he would not use this foreign passport in preference to his United States passport, which he has used exclusively for foreign travel since 1989. Denying any foreign financial interests, any employment for a foreign government, any foreign military service, any voting in foreign elections, Applicant declared himself "100% loyal to the U.S.," and he expressed a willingness to renounce his foreign citizenship and relinquish his foreign passport in order to maintain his security clearance.

Informed by the special agent on December 16, 2000, possession of a foreign passport presented a security issue, <sup>(3)</sup> Applicant by letter to the Bangladeshi Embassy dated February 2, 2001, surrendered his Bangladeshi passport and relinquished his Bangladeshi citizenship. The surrender of the passport to the Embassy, "as [Applicant] has accepted/will be accepting US citizenship" was confirmed by the Embassy in mid-March 2001. In March 2001, Applicant became a direct employee of company A.

Applicant's mother is a 73-year-old homemaker, who is a resident citizen of Bangladesh for most of the year. For about two to three months every year, she lives with Applicant in the United States to maintain her status as a lawful resident alien. She has twice applied for United States citizenship, but failed the English language test. Applicant's stepmother does not work outside the home. She also lives with Applicant part of the year in order to maintain her status as a resident alien in the United States. Of Applicant's ten siblings, eight are resident citizens of Bangladesh. Applicant has frequent contact with his older brother, with whom he corresponds via electronic mail about once per week. This brother works for a utility (power) company as an electrical engineer. He has not visited Applicant in the United States. Applicant contacts his other siblings in Bangladesh about once per year, usually over the holidays ("allegiance festival"). Two brothers are physicians. Another brother works at odd jobs (construction, janitorial); one works in a clerical position at a private garment factory in Bangladesh. Applicant has three sisters who are married and do not work outside the home.

Applicant has three to four times monthly email contact with a brother who has worked for the last ten years in the Middle East for a chemical company. This brother remains a Bangladeshi citizen. Applicant is not certain whether the company is a United States corporation or owned by the Middle Eastern nation. A younger sister, also a Bangladeshi citizen, is currently in the United States on a student visa studying chemistry. Applicant has frequent contact with this sister.

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past

and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Preference**

E2.A3.1.1. The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A3.1.2.1. The exercise of dual citizenship

E2.A3.1.2.2. Possession and/or use of a foreign passport

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based on parents' citizenship or birth in a foreign country

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

### **Foreign Influence**

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the

United States.

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Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. (4) A native of Bangladesh, Applicant came to the United States from Canada in the early 1980s. Electing to maintain his home and career here, Applicant in January 1989 became a United States naturalized citizen, and he subsequently applied for, and was granted, a United States passport. While there is no evidence he used his Bangladeshi passport thereafter, his continued possession of a foreign passport, with renewal of that passport in July 1997 after becoming a United States citizen, constitutes the exercise of his foreign citizenship. As set forth by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence in his August 16, 2000 policy clarification, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the United States is paramount, and it could also facilitate foreign travel unverifiable by the United States. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1., the exercise of dual citizenship, and E2.A3.1.2.2., possession and/or use of a foreign passport, must be considered in evaluating Applicant's security worthiness.

Applicant has the burden of overcoming the security concerns engendered by his continued acceptance of a benefit/privilege of his foreign citizenship after he became a United States naturalized citizen. Foreign preference concerns may be mitigated if the dual citizenship was based solely on birth or the foreign citizenship of one's parents (MC E2.A3.1.3.1.), the indicators of possible foreign preference occurred before obtaining United States citizenship (MC E2.A3.1.3.2.), the activity is sanctioned by the United States (MC E2.A3.1.3.3.), or the individual has expressed a willingness to renounce dual citizenship (MC E2.A3.1.3.4.). Whereas Applicant's foreign citizenship is derived from his birth in Bangladesh, MC E2.A3.1.3.1. applies in this case. (5) However, the presence or absence of a given factor, for or against clearance, is not necessarily dispositive. The foreign preference concerns engendered by his possession of a

foreign passport find inadequate redress in MC E2.A3.1.3.1. The risk of unverifiable travel can only be completely eliminated by making it impossible through surrender of the foreign passport, or giving the Government some oversight authority over the use of a foreign passport. (6)

When interviewed by the DSS special agent in December 2000, Applicant indicated he considered himself "100% loyal" to the United States, and he expressed a willingness to renounce his foreign citizenship and relinquish his foreign passport. Unaware before this interview that his possession of a foreign passport presented a security issue, Applicant took prompt action to surrender his foreign passport, thereby mitigating the concerns over unverifiable travel and demonstrating his willingness to comply with Department of Defense requirements. His renunciation of his foreign citizenship confirms his allegiance to the United States. Given his renunciation of his foreign citizenship, his exclusive use of his United States passport since 1989, his domicile and employment in the United States for some twenty years, and the absence of any evidence that he has sought Bangladeshi citizenship for his two children born in the United States, there is little risk, if any, of Applicant acting in preference to Bangladesh (or any foreign country) over the United States in the future. Accordingly, subparagraphs 1.a., 1.b., and 1.c. are resolved in his favor.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's mother, stepmother, and ten siblings remain citizens of Bangladesh. While Applicant's mother and stepmother have resident alien status in the United States, both reside in Bangladesh for most of the year. Eight of his siblings work and reside in Bangladesh. One brother currently works in the Middle East. Disqualifying condition E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, applies in evaluating Applicant's security worthiness.

The security concerns engendered by the foreign citizenship of close family members may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (MC E2.A2.1.3.1.). Regarding those relatives who reside abroad, there is no evidence they have ever come under any undue influence by foreign authorities. Neither Applicant's mother nor his stepmother were ever engaged in professional or business pursuits which would cause attention to their activities. Those sisters who remain resident citizens of Bangladesh do not work outside the home. Of his siblings who work outside the home, Applicant does not have a particularly close bond with his brothers, with the exception of his older brother. He speaks with most of his siblings (including his sisters in Bangladesh) once per year over the holidays. Regarding his older brother, Applicant has a closer personal relationship, which he maintains primarily through email correspondence once weekly. There is no evidence that this brother, who works for a power company, is an agent of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to this family member and the United States. Applicant has frequent contact with a sister, who is currently attending a nearby college in the United States. While she remains a Bangladeshi citizen, her presence in the United States lessens the risk of coercion being placed on her by a foreign official. There is nothing untoward or unreasonable about Applicant's contacts with his family members. Although divorced, Applicant remains close to his two children, a thirteen-year-old son, whom he sees regularly, and a fifteen-year-old daughter who recently moved in with him. Those individuals to whom Applicant is closest are United States resident citizens. In the unlikely event Applicant's relatives abroad would fall subject to undue influence or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests or threats, by foreign authorities or individuals. Subparagraphs 2.a., 2.b., 2.c., 2.d. and 2.e. are concluded for Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. During an interview with a Defense Security Service (DSS) special agent in December 2001, Applicant indicated he had been granted an Interim Secret clearance in February 2000, and a final Secret clearance in October 2000. (Ex. 2). At the hearing, he testified his Interim Secret had been withdrawn. (Transcript p. 12).
2. Applicant's spouse apparently also acquired United States citizenship (*see* Ex. 1), although the date on which she was naturalized is not of record.
3. On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence [ASD(C<sup>3</sup>I)] issued a memorandum clarifying the foreign preference adjudicative guideline with respect to the use and/or possession of a foreign passport to the effect that clearance is to be denied or revoked unless an applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.
4. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.
5. The DOHA Appeal Board, in a rather expansive reading of the adjudicative guideline, has held that MC E2.A3.1.3.1. applies in cases where dual citizenship is based on birth.
6. In his memorandum of August 16, 2000, the ASD(C<sup>3</sup>I) stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the

appropriate agency of the United States Government.