

DATE: November 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01936

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

Perry Russell-Hunter, Esquire, Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in 1974 in Bangladesh, but became a U.S. citizen in 1998. His wife is a Bangladeshi citizen who has never lived in the U.S. His mother and his two sisters-in-law are permanent resident aliens in the U.S. He also has distant relatives in Bangladesh. Applicant has not mitigated the security concerns under Guideline B (Foreign Influence) stemming from his wife's foreign citizenship, or Guideline C (Foreign Preference), resulting from his use of a foreign passport to exercise rights as a Bangladeshi citizen. Clearance is denied.

STATEMENT OF THE CASE

On March 24, 2003, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.⁽¹⁾

On April 9, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 2, 2003. On July 8, 2003, DOHA issued a Notice of Hearing setting this case to be heard on August 6, 2003.⁽²⁾ All parties appeared as scheduled, and the government presented documentary evidence. The Applicant testified in his own behalf and presented documentary evidence and the testimony of one witness. DOHA received the transcript (Tr) on August 15, 2003.

PROCEDURAL ISSUES

At the outset of the hearing, Department Counsel moved to limit Applicant's ability to present evidence about his

brothers' security clearance adjudications. I granted the motion for the reasons stated in Department Counsel's motion and cautioned Applicant that I would only consider evidence regarding his own circumstances and background.

Additionally, I left the record open after the hearing to afford Applicant time to submit a character reference from a co-worker, and to submit information about the status of his alleged dual citizenship and of his foreign passport. Applicant's timely submission through Department Counsel is included in the record as Applicant's Exhibit B.

FINDINGS OF FACT

Applicant has admitted with explanation all of the allegations in the SOR. Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 29-year-old employee of a defense contractor where he works as database administrator. He was born in Bangladesh in 1974, but became a U.S. citizen in 1998. He left Bangladesh in 1991 with his parents and siblings. He was naturalized as a U.S. citizen in August 1998. Since November 2001, Applicant has been assigned by his employer to a work site in the Persian Gulf supporting military activities in that region.

Applicant held a Bangladeshi passport when he arrived in the U.S. In 1996, he renewed the passport, but obtained a U.S. passport in October 1999. He then visited the Bangladeshi embassy, in anticipation of travel back to Bangladesh, to obtain a stamp on his U.S. passport signifying that he also held a Bangladeshi passport. Bangladesh does not recognize dual citizenship in persons who have obtained citizenship elsewhere. There is a separate application available to Bangladeshis who have become American citizens, for example, but who desire to also retain their Bangladeshi citizenship. However, Bangladesh also provides a stamp to persons who still hold a valid Bangladeshi passport, as did Applicant, even though he had been naturalized in the U.S. (3) This stamp relieved Applicant of the Bangladeshi government requirement that non-Bangladeshis or Bangladeshis with dual citizenship obtain a visa before entering the country. (4) The stamp is good until at least 2009 when his U.S. passport expires. Applicant's Bangladeshi passport expired in 2001, but Applicant does not know where it is. The only travel outside the U.S. he has undertaken since 1991 has been as a U.S. citizen using only his U.S. passport, albeit with the Bangladeshi government stamp on it.

Applicant has three brothers and one sister, all born in Bangladesh and now naturalized U.S. citizens. His sister and one brother reside in the U.S., while the other brother works with Applicant at the aforementioned overseas work site. Applicant and his brothers are married to Bangladeshi citizens. Applicant's wife has never been to the U.S. and only recently was able to leave Bangladesh to join him at his work site. The brother who lives overseas resides there with his wife, who is a permanent U.S. resident alien. Applicant's other sister-in-law lives in the U.S. as a permanent resident alien.

Applicant's mother is an elderly widow who lives in the U.S. as a permanent resident alien with Applicant's brother and his wife. She has not yet been naturalized because (1) after applying for naturalization in 1998, she missed an interview to tend to her ailing husband, but never rescheduled the interview, and (2) she has been unable to become proficient enough in the English language to pass the required test. Much of her family (Applicant's aunts, uncles and cousins) is still in Bangladesh, and she communicates with a few of them occasionally by telephone. A maternal uncle (by marriage to his mother's sister) is a retired Bangladeshi military officer, and a paternal uncle is a regional government official known as a "union officer," but his job is akin only to a rural town council member in the U.S.

Applicant's father, who died in early 2001, was a Bangladeshi citizen employed by a U.S. government agency in Bangladesh until 1991, when he was afforded an opportunity to move his family to the U.S. to escape a deteriorating societal circumstance, and to seek a better life. That country has been plagued throughout its history by civil unrest and government corruption. There has recently been an increase in violent acts against the government, but the U.S. State Department has little indication that these acts are related to the recent wave of global terrorism aimed at the U.S. and its interests. (5) What is clear from the evidence is that Bangladesh is a poor, unstable and often violent country that is dangerous not only to Americans but to many of its own citizens as well.

In 1999, Applicant graduated from a U.S. university with a bachelors' degree in management information systems. While a student there, he and other Bangladeshi-Americans formed a student organization known as the Bangladesh

Patriots. The "Patriots" moniker derived from the university's nickname, which is also used by its athletic teams and other school organizations. Applicant and his fellow students formed this group to showcase Bangladeshi culture, and was not engaged in any political causes. If anything, this organization was a social entity aimed at providing other students from Bangladesh a way to interact with their peers and to network with prominent Bangladeshi-Americans. The group disbanded after Applicant graduated. I specifically find that Applicant's participation in the Bangladesh Patriots organization has no security significance.

Applicant has a friend from college who is the son of a Bangladeshi government minister. Through this association, Applicant has attended social functions at the Embassy of Bangladesh in Washington, D.C. However, aside from the aforementioned visit to the embassy to have his passport stamped, Applicant has had no official interaction with the Bangladeshi government either here or in Bangladesh.

Applicant has traveled back to Bangladesh five times. In 2000, he went there to meet his future wife (the daughter of a neighbor in the U.S.) as had been arranged between Applicant's family and their neighbors. He returned to Bangladesh in January 2001 to attend the weddings of both of his brothers and of his friend from college. In April 2001, Applicant took his father's body back to Bangladesh for a traditional burial. In January 2002, he was married in Bangladesh, and he went back earlier in 2003 to visit his wife who had not yet received permission to leave Bangladesh.

While in Bangladesh, Applicant has stayed at the homes of various relatives in the capital city of Dhaka. While some of his extended family came to see him there, many stayed away due both to the fact many of them live in remote rural areas and in light of civil unrest around Dhaka. Aside from these visits, most of Applicant's contact with these relatives takes place indirectly through his mother.

Applicant is willing to renounce his Bangladeshi citizenship, and he would relinquish his Bangladeshi passport if he could find it. He no longer has any need or desire to return to Bangladesh as it has nothing to offer him. It is a poor, corrupt society where unrest, kidnappings, theft and bombings have stunted any hope of widespread modernization or stability.

Applicant is thought of well by his friends and colleagues. He is a bright, well-spoken person who is family-oriented and whose ties are almost completely in the U.S.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁶⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. 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 of a conclusion for or against an Applicant. However, specific applicable 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. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection to foreign citizens, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁷⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.⁽⁸⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each

Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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. [\(9\)](#)

CONCLUSIONS

Guideline B (Foreign Influence). 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. [\(10\)](#)

The Government has established its case under Guideline B by showing that Applicant has close ties of affection to foreign citizens, namely, his wife, mother and his two sisters-in-law. He also has relatives who are citizens of and reside in Bangladesh. Guideline B disqualifying condition (DC) 1 [\(11\)](#) applies here. His mother and sisters-in-law do not pose a security risk due to their status as permanent resident aliens, and, in the case of his mother and one sister-in-law, their residence in the U.S. While Applicant's other sister-in-law does not live in the U.S., she does not reside in Bangladesh either. Rather, she lives with her husband in a Persian Gulf emirate in a controlled residence compound provided by Applicant's brother's employer there. She is, therefore, far enough removed from possible influence by the Bangladeshi government that her foreign citizenship does not bear any security significance. Applicant's other, more distant relatives, while still Bangladeshi citizens do not have such ties to the Bangladeshi government that they can be said to be at risk of influence or coercion. Even if I were to conclude they were at risk, it does not appear that the Bangladeshi government has an active intelligence service that targets persons for purposes of extracting sensitive U.S. information. Quite the opposite is more likely - Bangladesh is so caught up with its own internal problems that it does not try to project its interests abroad. The Bangladeshi government requires so much aid from the U.S. that it would not want to jeopardize relations between the two countries. Further, Applicant has so little contact with his relatives in Bangladesh that it is unlikely he would be vulnerable to influence as contemplated by Guideline B. Mitigating condition (MC) 1 [\(12\)](#) and MC 3 [\(13\)](#) apply here.

Regarding the SOR allegation at subparagraph 1.f, Applicant's involvement in a Bangladeshi student organization does not have the security significance the government alleges. I disagree that Applicant's contacts with foreign government officials was so "close" as to constitute a risk that those officials might try to influence Applicant in a way adverse to U.S. interests. On this count, the government has failed to establish its case.

However, with respect to Applicant's wife, none of the listed mitigating conditions apply. She is a Bangladeshi citizen only who has not yet been to the U.S. She has no ties to any country other than Bangladesh, and is living abroad with Applicant while he performs his duties as a defense contractor in a forward area supporting the U.S. military in ongoing combat operations. Applicant's representations that his wife will begin the naturalization process when the couple returns to the U.S. are insufficient at this time to mitigate the security concerns arising from these circumstances. I conclude Guideline B against the Applicant.

Guideline C (Foreign Preference). A security concern arises when an individual acts in a way that may indicate a preference for the interests of a foreign country over those of the United States, raising the possibility he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. [\(14\)](#) Here, the government's concerns stem from Applicant's claim of dual citizenship on his February 2001 SF-86, and his possession and/or use of a foreign passport after he became a U.S. citizen.

With respect to Applicant's status as a dual citizen, it appears from Bangladeshi law that he ceased to be a citizen of Bangladesh when he became a U.S. citizen. His response to SF-86 question 3 was technically inaccurate. However, Applicant's possession of a Bangladeshi passport until it expired in 2001 is potentially disqualifying under Guideline C DC 2. [\(15\)](#) Because his foreign passport was never used for foreign travel and he no longer knows its whereabouts, Applicant might be able to avail himself of the mitigating conditions outlined in the August 2000 OASDC3I

memorandum (known as the "Money memo" after its author)⁽¹⁶⁾ on the theory that it is effectively relinquished. However, I conclude that such relief is not available here as he continues to travel using a foreign instrument in the form of a stamp on his U.S. passport. Applicant used his foreign passport to take advantage of a Bangladeshi law that will allow him, until 2009, to travel to that country without having to obtain a visa he would otherwise have had to get if he were a U.S. citizen with no ties to Bangladesh. Despite the technical fact that he is no longer considered a foreign citizen, it is clear he has exercised rights as a Bangladeshi to ease his entry and exit to that country. I believe such conduct constitutes an exercise of dual citizenship within the meaning of Guideline C DC 1.⁽¹⁷⁾

Of the listed mitigating conditions, only MC 4⁽¹⁸⁾ applies here. The indicators of his foreign preference - his possession of a foreign passport, his use of the "no visa" stamp, and his several trips to Bangladesh using that stamp on his U.S. passport - have all occurred after obtaining U.S. citizenship. The other mitigators are inapplicable based on the facts presented. Despite his willingness to renounce his foreign citizenship, I conclude Guideline C against the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. A commonsense assessment of these facts leads me to conclude that Applicant's ties of affection to a foreign citizen, and his exercise of dual citizenship, when combined with his relative lack of ties to the U.S., engender doubts about his suitability to hold a security clearance. Such doubts must be resolved in favor of the government's compelling interest in protecting its classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Paragraph 2, Foreign Preference (Guideline C): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. Applicant is physically located at a defense contractor site in the Persian Gulf. The hearing was scheduled to accommodate a previously scheduled trip back to the U.S.
3. Applicant's Exhibit B.
4. Government Exhibit 4.
5. Id.
6. Directive, Enclosure 2.
7. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. *See Egan*, 484 U.S. at 528, 531.
9. *See Egan*; Directive E2.2.2.
10. Directive, E2.A2.1.1.
11. Directive, 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;
12. 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;
13. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
14. Directive, E2.A3.1.1.
15. Directive, E2.A3.1.2.2. Possession and/or use of a foreign passport;
16. "[C]onsistent application of [Guideline C] 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." *Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (OASDC3I) Memorandum*, dated August 16, 2000.
17. Directive, E2.A3.1.2.1. The exercise of dual citizenship;
18. E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.