



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-18173
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

August 20, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 2, 2007. On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on May 17, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to another Administrative Judge on June 18, 2008. It was later transferred and assigned to the undersigned Administrative Judge on July 7, 2007. A notice of hearing was issued on July 8, 2008, scheduling the hearing for August 6, 2008. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented ten exhibits, referred to as Applicant's Exhibits A through J. He also testified on his own behalf. The official transcript (Tr.) was received on August 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Bangladesh. Applicant had no objection. (Tr. p. 18). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 38 years of age, married and has a Master's Degree in Communication Theory. He is employed as an Electrical Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Dhaka, Bangladesh in 1969. He came to the United States on an F-1 student visa in August 1991, to pursue a college degree. He became a naturalized United States citizen in February 2006. In May or June 1997, he returned to Bangladesh to meet the woman he was arranged to marry, and returned to Bangladesh later that year, in December 1997, to get married. His wife came to the United States in 1997, and she became a naturalized citizen in 2005. He began working for his current employer in October 2006, completed a security clearance application on January 2, 2007, wherein he indicated that he was a dual citizen of Bangladesh and the United States. (Government Exhibit 1, p. 8). He updated his form later to indicate his dual citizenship had expired along with his Bangladeshi passport.

The Applicant's parents and in-laws are citizens and residents of Bangladesh. The Applicant has traveled to Bangladesh two times in 1997, 1998, 1999, 2000, 2001, 2002, 2004 and 2005. His trips to Bangladesh to see his family from 1998 through 2000 were with the permission of his company. In 2001, his trip was for business purposes only. His trips to Bangladesh in 2004 and 2005 were to visit his family there. On most of his trips to Bangladesh his wife travels with him so that she can visit her parents there too. He plans to again travel to Bangladesh at the end of 2008 or the beginning of 2009. When the Applicant visits his family in Bangladesh he brings gifts of chocolates, souvenirs, books and golf items for his father. The Applicant also has a sister who is a financial analyst and resides in Canada.

He considers himself "close" to and maintains regular communication with, his mother, father and in-laws in Bangladesh. He communicates with his mother and father about once a week or every other week. (Tr. p. 46). His father is a retired Brigadier General in the Bangladesh Army after twenty five or thirty years of service. Growing up, the Applicant's father never discussed his work with the Applicant so that Applicant is

not aware of whether he is still affiliated with any military organization. (Tr. p. 51). He does know that he is now a newspaper journalist for the local paper in Bangladesh.

The Applicant's mother-in-law is a teacher or Vice Principal of a private school in Bangladesh. She is currently considering her options to relocate to the United States. Since the early part of 2008, when she separated from her husband, the Applicant has sent his mother-in-law approximately \$300.00 a month to help provide for her support. The Applicant speaks with his mother-in-law about once a month or so. His wife speaks with her mother more frequently, about a couple of times a week. His father-in-law is a retired executive of an electric company and is supported by his properties. He also served in the Bangladesh military and was a Lieutenant Colonel and a civil engineer before he retired. The Applicant's wife has one sister who lives in Canada but is spending the summer in Bangladesh. She speaks to her a couple of times a week. (Tr. P. 61). Her brother is an artist who lives in Bangladesh.

The Applicant has a small bank account in Bangladesh for purposes of exchanging money from the United States to Bangladesh. (Tr. p. 62).

The Applicant does not own a home in the United States. He owns a car and has some money in retirement accounts worth approximately \$120,000.00. (Tr. p. 63).

Letters of recommendation from the Applicant's Director of Human Resources and long time friend attest to his frequent relocations for his company, including Minnesota, Nebraska, and then travel abroad for his company to Australia and Singapore in mid 2001. (Applicant's Exhibits B, C, D, E and F).

I have taken administrative notice of the current political conditions in Bangladesh. Bangladesh obtained its independence from Pakistan in 1971 and pursuant to its constitution of 1972, it became a parliamentary democracy. Relations with Bangladesh and the United States are excellent and Bangladesh has become a valuable United States ally in the Global War on Terrorism. However, its human rights record has worsened over the years. Extra-judicial killings, arbitrary arrest and detention, physical and psychological torture by security forces and politically motivated violence has become more prevalent. Although prohibited by law, security forces and police have frequently employed severe treatment as well as psychological abuse during arrests and interrogations. The United States Department of State advises United States citizens against traveling to certain areas in Bangladesh because of the violence from members of banned terrorist groups that surface in the area.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense.

Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

7. (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant, on his security clearance application, initially indicated that he is a dual citizen of Bangladesh and the United States. It is undisputed that he has significant family ties in Bangladesh, and there is strong evidence of a close bond and affection with his family in Bangladesh. His mother, father, mother-in-law and father-in-law are all citizens of and reside in Bangladesh. He maintains close and continuing contact with them, that ranges from about once a week to about once a month depending on who they are. Although he has been in the United States since 1991, he only became a United States citizen in 2006, just two years ago. He has traveled to Bangladesh extensively, and plans to go back again to visit his family in the near future. He has not cut all ties from Bangladesh.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion*, and 7(d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply. None of the mitigation conditions apply.

It is noted that the current political situation in Bangladesh elevates the cause for concern in this case. Although there is no direct evidence that his family members in Bangladesh are associated in any way with the Bangladesh government, there is evidence of a close bond and strong evidence of affection with his immediate family in Bangladesh. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

Subparas. 1.b.: Against the Applicant

Subparas. 1.c.: Against the Applicant

DECISION

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

Darlene Lokey Anderson
Administrative Judge