



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 08-03428  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Jonathan Bell, Esq.

11/14/2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 16, 2007. On May 11, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines B and E. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on May 21, 2012; answered it on May 24, 2012; supplemented his answer on July 25, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 1, 2012, and the case was assigned to me on September 7, 2012. The hearing was tentatively scheduled for the week of October 9-12, 2012, but it was postponed because of Applicant's attorney's scheduling conflicts. DOHA issued a notice of hearing on October 1, 2012, scheduling it to be conducted by video teleconference on October 22, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and requested that the record be kept open to enable him to present two documents in addition to the documents appended to his answer to the SOR. I kept the record open until October 24, 2012, and he timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on November 1, 2012.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Bangladesh. The request and the documents attached as enclosures to the request are attached to the record as Hearing Exhibit I. Applicant did not object, and I granted Department Counsel's request. Applicant also requested that I take administrative notice of the facts recited in a U.S. Government document attached to his answer to the SOR, and I granted his request. (Tr. 13-14.) The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶ 1.b and denied the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 2.a, and 2.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 58-year-old security officer employed by a federal contractor since May 2001. He has held a security clearance since April 2003.

Applicant was born in Bangladesh. He completed college in June 1975, with a bachelor's degree in commerce. After graduating, he lived about 300 miles away from his family. He worked as a receptionist at the front desk of a hotel, was promoted to night auditor after three years, and then was made a supervisor. He worked at the hotel until early 1985, when he decided to move to the United States in search of a better life. (Tr. 23-24.) He flew to Mexico with a tour group and then traveled by ship to the United States, where he entered legally as a tourist, but without disclosing his intention to remain permanently in the United States. He contacted his brother, who already resided in the United States, and worked "off the books" at various jobs. In June 1985, he moved to a farm that hired illegal aliens and worked as a clerk and bookkeeper. He returned to his brother's home in October 1985 and worked in a grocery store and as a laborer. He obtained a work permit in November 1988, pursuant to an amnesty program for illegal aliens. He began working at various security officer positions in June 1988. He

became a U.S. citizen in August 1996. He began his current job in May 2001. (GX 2 at 1-6.)

Applicant married in October 1991. His wife, a native of Bangladesh, came to the United States in 1995 and became a U.S. citizen in 2002. Their 16-year-old son is a native-born U.S. citizen. (GX 1 at 14-18; Supplemental Answer to SOR at 3-4.)

Applicant took no sick leave or vacation time from 2005 to 2011, because he was saving his money to buy a home. He bought a home for \$170,000 in December 2011. (Tr. 38-39.)

Applicant's parents are deceased. His father passed away in 1985. (Tr. 24.) His mother became seriously ill in 2003 and passed away in April 2009.

Applicant has four brothers and four sisters. He is the oldest of the male siblings, and older than three of his four sisters. The SOR alleges foreign influence concerns raised by the citizenship and location of his siblings. The table below summarizes the information about Applicant's siblings.

<b>Sibling</b>	<b>Citizenship/ Residence</b>	<b>Occupation</b>	<b>Spouse Occupation</b>	<b>Frequency of Contact</b>	<b>Evidence</b>
Brother #1	United States	Cab Driver	Housewife (U.S. citizen)	Monthly by telephone; in person every 2-3 months	GX 3 at 12-13; Answer
Brother #2	Bangladesh	Bank clerk	Housewife	Monthly; sends annual gift	GX 3 at 14; Answer
Brother #3	Bangladesh	Hotel marketing	Housewife	None since April 2009	GX 3 at 26
Brother #4	Bangladesh	Food/drink distributor	Bank officer	None since April 2009	GX 3 at 27
Sister #1	United Kingdom	Housewife	Restaurant Owner (U.K. citizen)	Monthly	GX 3 at 14-15
Sister #2	Bangladesh	Housewife	Retired teacher	None since April 2009	GX 3 at 25
Sister #3	Bangladesh	Housewife	Police inspector	None since April 2009	GX 3 at 26
Sister #4	Bangladesh	Housewife	Bank officer	None since April 2009	GX 3 at 26

Brother #1 came to the United States in early 1985, before Applicant's arrival, and Applicant lived with him for about 20 years. This brother became a U.S. citizen in September 2009. (GX 3 at 12-13; Supplemental Answer to SOR at 12-13.)

Brother #2 manages the family agricultural property and works as a clerk in a bank that provides loans to farmers. In a sworn statement in November 2009, Applicant stated that his brother was employed by a government-owned bank, but in his supplemental answer to the SOR he denied that the bank is owned by the government. At the hearing, he testified he “doesn’t think” the bank is owned by the government. Applicant has telephone contact with Brother #2 about once a month and personal contact every three or four months. He sends Brother #2 an annual gift of about \$300. (GX 3 at 14; Supplemental Answer to SOR at 10; Tr. 52, 63-64.)

Applicant speaks to Sister #1 about once a month. (GX 3 at 14-15.) He had no contact with Brother #3, Brother #4, or his other sisters until his mother’s death in 2009. When Applicant’s mother died, his wife telephoned each of his siblings and suggested that he “say something.” He briefly spoke to each sibling, asking them to pray for their mother. He has had no contact with Brother #3, Brother #4, or his three sisters in Bangladesh since April 2009. (GX 3 at 25-26; Tr. 66-68, 85-86.)

Applicant traveled to Bangladesh to visit his wife annually in 1991 through 1994, but he had no contact with any of his siblings during these visits. He visited his ailing mother and Brother #2 in Bangladesh in 2003 but had no contact with his other siblings. (Tr. 42-43.)

Applicant submitted a security clearance application (SCA) in April 2001, as part of his in-processing for his current job. He had no previous experience with employment by a federal contractor or with the security clearance process. In Section 9, asking him to list his relatives and associates, he listed his parents, Brother #1, an extended family member who lived with Brother #1, Brother #2, and Sister #1. He listed the full address for Brother #1 and Sister #1, but he listed only a post office for his Brother #2. He omitted the other siblings who live in Bangladesh. (GX 2.) He testified that he omitted five of his siblings because he had only about two hours to complete all his paperwork, including the SCA, did not know the whereabouts or dates of birth of his siblings, and did not understand the importance of listing all his siblings. At the time he completed this SCA, he had no contact with the five siblings he omitted. (Tr. 32-34.) He testified that he did not simply list their names, without the other information required on the form, because he thought that incomplete information “would be a problem.” (Tr. 82.)

Applicant testified that he had some information about his family members in a notebook that he carried in his back pocket, such as his mother’s maiden name, his naturalization certificate number, and his sister’s telephone number in the United Kingdom. He attempted to call Brother #1 to obtain additional information, but could not reach him. He was able to call his wife and obtain her personal information. (Tr. 74-79.)

Applicant completed another SCA in July 2007, seeking to continue his clearance. In Section 15, asking him to his relatives and associates, he listed his parents and the same three siblings that he listed on his previous SCA. He did not list his other siblings who are citizens and residents of Bangladesh. (GX 1.)

Applicant was interviewed by a security investigator in November 2007, and he verified the information regarding the family members that he listed on his July 2007 SCA. He was not asked if he had any family members other than those he listed on his SCA. (Tr. 48.)

Applicant was interviewed again in November 2009. He testified that the interview was triggered because his background investigation revealed a second home address and a second job in his name. He told the investigator that he noticed several suspicious entries on his credit report, challenged them with the credit reporting agencies, and reported the apparent identity theft to the police. This investigator also verified the information Applicant had provided regarding the siblings listed on his July 2007 SCA. Applicant realized after the detailed questioning in November 2009 about his childhood and family history that he should have listed all his siblings on his SCA. When he mentioned his concern about the omitted information to his wife, she suggested that Brother #1 might be able to provide the information. (GX 2 at 24-25; AX B; Tr. 48-51, 89.)

On the following day, Applicant contacted the security investigator and informed him that he wanted to add the information about his other siblings to his investigative file. He provided information about all eight siblings in a sworn statement dated November 20, 2009. (Tr. 51; GX 3 at 25-28.)

In November 2011, DOHA asked Applicant to verify that the summary of his November 2007 interview was accurate. He verified that the summary accurately described the interview, but he added the information about the siblings who were not discussed during that interview. (GX 4 at 3-12.)

Applicant's duties since May 2001 have included protection of senior officials of the United States and foreign countries. After the terrorist attacks of September 11, 2001, he distinguished himself by voluntarily remaining at his duty station for 24 hours to protect senior officials and U.S. property. He distinguished himself again in 2003 during a significant diplomatic event, and during an emergency evacuation of a government building in 2007. He was appointed as a Special Deputy U.S. Marshal in 2007. He has received numerous certificates of appreciation and accolades from officials ranging from his immediate superiors to senior government officials. He enjoys a reputation for honesty, integrity, and devotion to duty. (Enclosures to Supplemental Answer to SOR.)

Bangladesh is a parliamentary democracy. The president is the chief of state, but the post is primarily ceremonial, with the real executive power held by the prime minister, who is elected by the legislature every five years. The legislature is a 300-seat unicameral body, elected by universal suffrage every five years. The judiciary is a civil court system based on the British model.

Bangladesh is one of the world's poorest and most densely populated countries. Its economy is primarily agricultural. The United States is Bangladesh's third-largest

export market. Despite the country's dysfunctional political system, weak governance, and pervasive corruption, Bangladesh has begun competing in the global clothing market, exporting significant amounts of garments and knitwear to the United States.

Bangladesh pursues a moderate foreign policy that relies heavily on multinational diplomacy, especially at the United Nations. In recent years, it has played a significant role in international peacekeeping activities.

The United States' relationship with Bangladesh initially was troubled because of strong U.S. ties to Pakistan, but it developed quickly after Bangladesh gained its independence from Pakistan in 1971. U.S.-Bangladesh relations now are excellent. In May 2012, the United States and Bangladesh signed a partnership agreement, affirming their strong bonds of friendship and shared values. The two countries pledged to develop deeper and broader people-to-people ties and to further support the exchange of information, skills, and technology.

Bangladesh has experienced significant human rights problems involving killings and torture by security forces, societal violence, government discrimination, and life-threatening prison conditions. Members of the security forces often act with impunity. Corruption within security forces and the judiciary is a serious problem. Terrorist and extremist groups have targeted the United States and the United Kingdom as "enemies of Islam." Nevertheless, the government has conducted numerous arrests and seizures as part of its commitment to counterterrorism.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B, Foreign Influence**

The SOR alleges that Applicant has one brother who is a citizen of Bangladesh and resides in the United States (SOR ¶ 1.a) and three brothers and three sisters who are citizens and residents of Bangladesh (SOR ¶ 1.b). It also alleges that one of his brothers is employed by a bank owned by the Bangladesh government (SOR ¶ 1.c), and one of his sisters is a police inspector in Bangladesh (SOR ¶ 1.d).

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(a): contact 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

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

AG ¶ 7(a) requires substantial 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.

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, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, 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 United States. 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).

When an applicant's family ties are at issue, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant has isolated himself from his siblings and their families in Bangladesh, except for Brother #2. Nevertheless, his family ties in Bangladesh are numerous. Brother #2 has a possible government connection at the bank where he works, and Sister #4 is married to a senior police official. In addition, there is some likelihood that Applicant's family members could be targeted by radical terrorist groups because of their connection to "enemies of Islam." These factors are sufficient to raise the "heightened risk" required under AG ¶ 7(a) and the possibility of a conflict of interest under AG ¶ 7(b).

Three mitigating conditions under this guideline are relevant:

AG ¶ 8(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.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Bangladesh is a friendly country with a moderate foreign policy and a strong commitment to counterterrorism. It has an agricultural and light manufacturing economy that is not dependent on sensitive technological information, and there is no evidence that it targets the United States for economic or military intelligence. Nevertheless, the instability of the Middle East and the activities of anti-U.S. terrorist groups in Bangladesh preclude a finding that a possible conflict of interest is unlikely. Thus, I conclude that AG ¶ 8(a) is not established.

On the other hand, Applicant has deep and longstanding ties to the United States. He has resided in the United States for 27 years, has been a citizen for 16 years, and has held a security clearance for 11 years. He is married to a U.S. citizen, his son is a native-born U.S. citizen, Brother #1 is a U.S. citizen, and the spouse of Brother #1 is a U.S. citizen. Applicant has demonstrated his dedication to duty on numerous occasions. He has occasional contact with Brother #2, but no contact with his

other siblings or their families in Bangladesh. I am satisfied that Applicant would resolve any conflict of interest in favor of the United States. Accordingly, I conclude that AG ¶ 8(b) is established.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). I am not satisfied that Applicant's contacts with Brother #2 are "minimal," and he has not rebutted the presumption that those infrequent contacts are not casual. However, Applicant has had no contact with his other siblings in Bangladesh since April 2009. I conclude that AG ¶ 8(c) is not established for Brother #2, but it is established for Applicant's other siblings in Bangladesh.

### **Guideline E, Personal Conduct**

The SOR alleges that Applicant falsified a security clearance application in July 2007 by omitting two brothers and three sisters in response to question 15, asking him to list his relatives and associates (SOR ¶ 2.a). It also alleges that he falsified an SCA in April 2001 by omitting two brothers and four sisters (SOR ¶ 2.b). The concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant deliberately failed to list some of his siblings on his 2001 SCA and again on his 2007 SCA. His explanation that he believed that providing partial information would be "a problem" is plausible and credible, but it does not refute his admissions that he deliberately omitted the information on both SCAs. He weighed the option of providing incomplete information about his siblings against the option of providing an incomplete listing of his siblings, and chose the second option, not fully

understanding the importance of the omitted information. I conclude that AG ¶ 16(a) is raised.

The following mitigating conditions under this guideline are relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant receives partial credit under AG ¶ 17(a). He did not correct his omissions promptly after submitting his SCAs in 2001 and 2007, but he contacted the investigator shortly after his interview in 2009, and he volunteered the information about his siblings without being confronted with any evidence that his SCAs were incomplete.

Applicant also receives partial credit under AG ¶ 17(c). His intentional omissions were not "minor." The fact that he provided incomplete information on two successive SCAs and the initial November 2009 interview militates against a conclusion that his conduct was "infrequent." However, it has been more than three years since he supplied full information about his siblings, he has continued to perform his duties with dedication and integrity, and he continues to enjoy the support of his supervisors. His misunderstanding of the importance of the information about his siblings, his remorse about his omissions, and his recognition of the importance of full disclosure make further intentional omissions of material information unlikely to recur. His supervisors have no doubts about his current reliability, trustworthiness, and good judgment.

Finally, Applicant receives partial credit under AG ¶ 17(d). He has acknowledged his behavior and expressed remorse for it. He did not intend to be deceptive, and none of the omitted information was derogatory. The factor that caused his conduct, i.e., his misunderstanding of the importance of the omitted information, has been overcome. I am satisfied that his behavior is unlikely to recur.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guideline(s), but some warrant additional comment.

Applicant was sincere, candid, and credible at the hearing. His explanation for omitting information about his siblings was plausible, and his remorse was genuine. He has continued to perform his duties with distinction even though it has been more than five years since he submitted his SCA and almost three years since he provided detailed information about all his siblings. He has held a clearance for 11 years, apparently without incident. He has been isolated from his family members in Bangladesh since he graduated from college in 1975, and that isolation was intensified when he came to the United States in 1985. His strong ties to the United States leave me with no doubt that he would resolve any conflict of interest in favor of the United States.

After weighing the disqualifying and mitigating conditions under Guideline B and E, evaluating all the evidence in the context of the whole person, and mindful of my duty to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on his foreign family ties and his personal conduct. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Paragraph 2, Guideline E (Personal Conduct):

FOR APPLICANT

Subparagraphs 2.a and 2.b:

For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge