



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



In the matter of:)
)
) ISCR Case No. 16-03601
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

11/06/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. He successfully mitigated the security concerns under Guideline C, foreign preference. Eligibility for access to classified information is denied.

Statement of the Case

On January 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on April 12, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 30, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2017. I convened the hearing as scheduled on September 20, 2017. The Government offered exhibits (GE) 1 and 2. Applicant testified and did not offer any exhibits. There were no objections to the Government's exhibits, and they were admitted into evidence. DOHA received the hearing transcript on September 29, 2017.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Bangladesh. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.² The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He was born in what is now Bangladesh. He married in 1982 in Bangladesh and his three sons, ages 32, 27, and 22, were born there. He attended a technical college in Bangladesh from 1972 to 1974. Applicant and his family immigrated to the United States in 2006. He became a naturalized citizen in 2011. He has worked for his current employer, a federal contractor, since November 2014. His wife and children also became naturalized citizens, but it is unknown what year.³

Applicant joined the Bangladesh Air Force when he was 18 years old and worked in the police department of the military. He volunteered to serve as soon as he could because it was considered a very good job. Applicant served in the Bangladesh military from 1976 to 1994. He retired and receives a military pension from the Bangladesh government that is deposited in a local Bangladesh bank each month. He estimated it was less than \$50 a month. When he travels to Bangladesh he uses the account. His second cousin, who lives in Bangladesh, is authorized to make Applicant's pension deposits into his account and has done so since 2011. Applicant testified that he was not involved in combat. He stated he was unaware of the political and government turmoil that was happening while he was serving. He was selected to deploy to serve in a foreign country, but it was detected that he is color blind, so he was denied the assignment and was forced to retire. He testified that he does not maintain contact with any members of the military.⁴

² HE II are the source documents.

³ Tr. 17-19, 34; GE 1.

⁴ Tr. 19-21, 37-43; GE 1, 2.

Applicant's mother, two brothers, and a sister are citizens and residents of Bangladesh. He had another sister who passed away. He talks with his mother weekly by telephone. His mother lived with him and his wife after they married. His mother now lives with his brothers. He visits his family in Bangladesh about once a year. He visited them in March 2017 for about a month and in November 2016 for three months. Before then, he returned in 2011 after he became a U.S. citizen and again in 2013, 2014, and 2015. His wife accompanies him when he returns to Bangladesh.⁵

One of Applicant's sons married a Bangladeshi woman and they live there. Applicant, his wife, and other two sons traveled to Bangladesh for the wedding. His son is hoping to obtain a visa for his wife to come to the United States, but she is pregnant and unable to travel. Applicant's wife intends on traveling to Bangladesh for the birth of the child in October. Applicant occasionally provides his family money if they need it. Applicant's father owned land in Bangladesh and passed it on to Applicant's brothers. Applicant has no assets in Bangladesh.⁶

One of Applicant's brothers is a pharmacist for the Bangladesh health department. He speaks with him every two to three weeks. His other brother owns his own store. He speaks with him every couple of months. His sister is a homemaker. She has children, some of whom are married with their own children. Applicant has contact with them a couple of times a month. His sister's husband is a retired firefighter. His deceased sister also had children. Her husband's occupation is unknown.⁷

Applicant's mother-in-law is a citizen and resident of Bangladesh. His wife has four siblings who are citizens and residents of Bangladesh. Applicant and his wife visit her family when they go to Bangladesh.⁸

Applicant owns a home in the United States worth about \$150,000. He also owns two rental homes worth about \$100,000 combined. He does not have any investment accounts and has about \$2,000 in savings.⁹

Bangladesh

The United States recognized Bangladesh following a 1972 war between Pakistan and India. Since then it has experienced a series of military coups following its 1971 independence. The country returned to democratic rule in 2008 and is now a parliamentary republic.

⁵ Tr. 21-23, 26-30, 35.

⁶ Tr. 26, 43-44, 46.

⁷ Tr. 36-37.

⁸ Tr. 24, 29.

⁹ Tr. 31-33, 45.

The U.S. State Department has assessed Dhaka, the capital of Bangladesh, as being a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. In 2017, it issued a warning to U.S. citizens of continuing threats from terrorist groups in the country, and only allows adult family members of U.S. Government personnel to remain in or return to Dhaka. Those American citizens living there must do so under strict security guidelines.

Since 2015, there have been more than 30 terrorist acts by ISIS-affiliated terrorists that targeted foreigners, religious minorities, police, and security services. Other militant groups have used the country for sheltering foreign jihadists, as well as planning and launching operations domestically and throughout the region.

The U.S. State Department's 2016 Human Rights Report noted that extremist organizations claiming affiliation with terrorist groups had increased their activities in Bangladesh, executing high-profile attacks on religious minorities, academics, foreigners, human rights activities, and minorities based on their sexual orientation. The Bangladesh government has responded with a strong anti-militancy drive, which human rights groups claim has resulted in increased extrajudicial killings, arbitrary detentions for purposes of extortion, torture, and other human rights abuses. The government further used counterterrorism efforts to justify restrictions on civil and political rights.¹⁰

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹⁰ HE I.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, 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;

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

(e) shared 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; and

(f) substantial business, financial, or property interest in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a), 7(e), and 7(f) require evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition 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 or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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."¹¹

The United States has serious concerns about terrorist activities in Bangladesh that are directed toward U.S. Government interests and its citizens. Since 2015, there have been more than 30 terrorist acts by ISIS-affiliated terrorists and its affiliates that targeted foreigners, religious minorities, police, and security services. Other militant groups have used the country for sheltering foreign jihadists, as well as planning and launching operations domestically and throughout the region. Bangladesh's human rights record raises concerns. Terrorist groups have increased their activities in Bangladesh and the Government has responded with a strong anti-militancy drive, which have increased human right abuses by the government and often used to justify restrictions on civil and political rights.

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant's mother, brothers, sister, and mother-in-law are citizens and residents of Bangladesh. Applicant and his wife visit both of their families in Bangladesh about once a year. He maintains close contact with his mother by talking on the phone a couple of times a week. He also maintains regular contact with his siblings. Applicant's wife also maintains regular contact with her mother. Applicant and his wife have strong family ties with their relatives who are citizens and residence of Bangladesh. These ties create a heightened risk, a potential foreign influence concern, and a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Applicant has a small bank account in Bangladesh and his \$50 military pension is deposited in it each month. Applicant owns a home in the U.S. and has two rental properties with an aggregate worth of approximately \$250,000. I find his bank account in Bangladesh does not rise to the level of creating a heightened risk or security concern. AG ¶ 7(f) does not apply.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; and

(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.

Applicant and his wife have ongoing relationships with their families in Bangladesh. They visit their families about once a year in Bangladesh. He contacts his mother several times a week. He and his siblings have regular contact. His wife maintains contact with her mother and they visit her when they are in the country. Their closeness is also evidenced by Applicant generously providing money to them when it is needed.

I cannot find that Applicant's relationship with his and his wife's families is casual or infrequent as they maintain regular contact. This relationship may place him in a position of having to choose between his family and the interests of the United States. His familial relationships create a conflict of interest that could place him in a position of having to choose between the United States and his family. I cannot find that his sense of obligation to his family is minimal. Considering the terrorist problems in Bangladesh

that target U.S. citizens and the human rights issues, I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his family in Bangladesh and the interests of the United States. I find AG ¶¶ 8(a), 8(b), and 8(c) do not apply.

Guideline C: Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

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 provide information or make decision that are harmful to the interests of the United States. Foreign involvement raises concerns about individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(d) participation in foreign activities, including but not limited to: (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

Applicant receives a modest pension from the Bangladesh government for his military service, which ceased in 1994, when he retired. His relationship with the Bangladeshi military ended at that time. He earned this pension before he immigrated to the United States and became a naturalized citizen. There is insufficient evidence to conclude his acceptance of this pension indicates a preference for Bangladesh over the United States. I find in Applicant's favor under Guideline C, foreign preference.

Whole-Person Concept

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

(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 61 years old and became a U.S. citizen six years ago. He has family members who live in Bangladesh, and with whom he has regular contact, both by traveling there and visiting them and by telephone. The heightened risks raised by these contacts continue to raise security concerns and are unmitigated. Applicant's acceptance of a small military pension does not raise security concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guideline C, foreign preference, but failed to mitigate them under Guideline B, foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge