



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-06274  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

12/03/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has two sisters, S1 and S2, who are citizens and residents of Bangladesh. S1 is a high-level Bangladesh elected official. He has frequent contacts with S1, and she visited him when she most recently came to the United States in 2014. Her high-profile in Bangladesh raises unmitigated foreign influence security concerns. Access to classified information is denied.

**Statement of the Case**

On March 24, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On March 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The SOR detailed reasons why the DOD CAF was unable to

find that it is clearly consistent with national interest to grant or continue Applicant's access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On January 28, 2015, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On July 13, 2015, Department Counsel indicated she was ready to proceed with Applicant's case. On September 14, 2015, the case was assigned to me. On September 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for October 15, 2015. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 12) Applicant's hearing was held as scheduled on October 15, 2015. Department Counsel offered one exhibit into evidence, and Applicant offered seven exhibits into evidence. (Tr. 14-18; GE 1; Applicant Exhibit (AE) A-G) All exhibits were admitted into evidence without objection. (Tr. 14, 18; AE A-G) On October 23, 2015, DOHA received the transcript of the hearing. On November 21, 2015, I issued a decision denying Applicant's access to classified information. On December 2, 2015, Applicant's counsel called me and indicated the whole-person concept at pages 12-13 conflicted with the introductory paragraph, formal findings, and conclusion. I informed Applicant's counsel that the whole-person concept had errors, and I would vacate that decision, and issue a corrected decision on December 3, 2015.

### **Procedural Rulings**

At the hearing, I suggested that I would take administrative notice (AN) of facts concerning Bangladesh from the U.S. State Department website. (Tr. 15) The parties had no objection. Two U.S. State Department documents concerning Bangladesh are admitted as HE 4-5. See note 3, *infra*.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>1</sup>**

In his SOR response, Applicant admitted SOR ¶¶ 1.a, 1.c, and 1.d, and he denied the remaining SOR allegations. (HE 3) He admitted his two sisters and one brother are citizens of Bangladesh; his two sisters, S1 and S2, are residents of

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are from Applicant's SF 86. (GE 1)

Bangladesh; and S1 is an elected Bangladesh Government official. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 45-year-old accountant, who works with information technology systems for various U.S. government agencies. (Tr. 5, 19-20; GE 1) In 1988, when he was 18 years old, he immigrated to the United States. (GE 1) In 1993, he received a bachelor's degree in accounting in the United States, and in 2001, he received his certification as a public accountant (CPA) while working for a nationally recognized U.S. accounting firm. (Tr. 7; AE G) In 2002, he was naturalized as a U.S. citizen. (GE 1) In 2004, Applicant married, and he has twins who are four, and his other two children are five years old and seven years old. (Tr. 5-6) All four of his children were born in the United States. (Tr. 41) Applicant lives with his spouse, who was born in Bangladesh. The record lacks evidence of his spouse's relationships with her family, if any, who are residents and citizens of Bangladesh. He has never served in the U.S. military or a foreign military. (Tr. 6)

Applicant's parents, brother, and parents-in-law are permanent U.S. residents or Green Card holders. (Tr. 21, 25, 30-31) They intend to remain in the United States. (Tr. 32-33) Applicant's brother sponsored his parents' Green Cards, and his spouse sponsored her parents' Green Cards. (Tr. 37) His parents and parents-in-law sometimes visit Bangladesh for extended periods of time to visit family living in Bangladesh. (Tr. 33-34) Applicant's father visited Bangladesh from about 2005 to about 2014. (Tr. 30-32)

Applicant's two sisters, S1 and S2, are in their 50s, and they are a citizens and residents of Bangladesh. (SOR response; GE 1) S1 is serving a five-year-term in a high-level elected government position in Bangladesh. (Tr. 20, 23) S1's husband is a retired accountant, who was employed in the private sector. (Tr. 26-27) Applicant casually communicates with S1 one to three times annually on holidays. (Tr. 20, 27, 40-41) His most recent communication with S1 was six months ago. (Tr. 41) Applicant never discussed his employment plans with S1 in detail; she has not discussed her employment plans with him; and he does not know whether S1 will run for reelection. (Tr. 23-24, 27) Applicant's most recent visit to Bangladesh was in 2011, and on that occasion, he visited S1. (Tr. 24) S1 has two children who attend college in the United States, and S1 visits the United States every two or three years. (Tr. 24-25) Applicant occasionally sees S1's children who attend college in the United States. (Tr. 26) In 2014, Applicant met with S1, when she came to the United States to visit her children. (Tr. 24-25) Applicant has no intention of going to visit S1 in Bangladesh. (Tr. 29)

Applicant went to Bangladesh twice in the previous five years, in 2010 and 2011. (Tr. 40) The only reason he would go to Bangladesh in the future would be if his mother was visiting Bangladesh and became ill. (Tr. 29) There is no evidence that Applicant has any property interests in Bangladesh.

S2 works for an entity providing services to the poor. (Tr. 36) The frequency of Applicant's contacts with S2 is not part of the record evidence. There is no negative information concerning Applicant's police or financial records or evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. (GE 1) Applicant has lived in the United States for 27 years, and he said he would resolve any conflict between Bangladesh and the United States on behalf of the United States over Bangladesh. (Tr. 39) He has worked with federal agencies for 20 years, and has held a Top Secret security clearance issued by the DOD for several years. (SOR response) He described himself as a patriotic person who loves the United States. (Tr. 40, 43; AE A)

## **Character Evidence**

The chief executive officer (CEO)/president of an information technology company, and a coworker with Applicant in an accounting firm have known Applicant since 1999.<sup>2</sup> They describe him as honest, diligent, patriotic, loyal, and professional. Their statements support reinstatement of his security clearance.

## **Bangladesh<sup>3</sup>**

Bangladesh is located on the northern edge of the Bay of Bengal; it is bordered on three sides by India and shares a small border with Burma. Approximately 160 million people inhabit Bangladesh, which has a land area of 55,598 square miles, slightly less than that of Iowa. It is the eighth most populous nation in the world and the most densely populated country, aside from some city states and tiny island nations.

Bangladesh is a parliamentary democracy with a unicameral legislature. The nation is a developing country with severe infrastructure shortcomings. Outside of Dhaka, tourist facilities are under-developed as are capacities to deal with emergency situations.

The U.S.-Bangladesh Partnership Dialogue advances shared bilateral, regional, and global objectives and gives strategic direction to ongoing and future cooperative activities. The third U.S.-Bangladesh Partnership Dialogue meeting, held in Washington October 28-29, 2014, covered a wide variety of topics: democracy and governance, trade and investment, and security cooperation. The delegations also worked to deepen cooperation on bilateral, regional and international priorities, including sustainable

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<sup>2</sup>The sources for the information in this paragraph are two character statements Applicant provided. (AE B; AE C)

<sup>3</sup>The source for the first two paragraphs is quoted from the U.S. Department of State Website, Travel to Bangladesh, <http://travel.state.gov/content/passports/en/country/bangladesh.html>. (HE 4) The source for the remainder of the information in this section is the U.S. State Department Website, Diplomacy in Action, "U.S. Relations With Bangladesh," Bureau of South and Central Asian Affairs, Fact Sheet (Jan. 30, 2015) <http://www.state.gov/r/pa/ei/bgn/3452.htm>. (HE 5) That publication is quoted in this section. (HE 5)

development, counterterrorism, migration, and climate change. The fourth annual meeting will occur in Dhaka in 2015.

Bangladesh has made significant progress toward a more prosperous and pluralistic society since its independence in 1971. Bangladesh's economy has grown at 6 percent annually for more than two decades. Since the tragic collapse of Rana Plaza, Bangladesh has made progress in transforming its garment sector, and the United States remains actively engaged in efforts to strengthen respect for labor rights and improve workplace safety. Despite significant development achievements, poverty remains a challenge. Infrastructure shortcomings, weak governance structures, and potential terrorist exploitation by extremist groups are also vulnerabilities. The fact that Bangladesh is one of the world's most densely populated countries compounds these challenges.

### **U.S. Assistance to Bangladesh**

Bangladesh is the largest recipient of U.S. assistance in Asia outside of Afghanistan and Pakistan. U.S. assistance fosters engagement with the Government of Bangladesh and complements support from other donors to address the underlying social, demographic, and economic factors that threaten democratic governance, stifle economic growth, and increase vulnerability to extremism in Bangladesh. The United States continues to build upon previous gains to reduce poverty, enhance food security, improve health and education, mitigate the impact of climate change and natural disasters, and achieve better governance to spur equitable and sustainable growth.

### **Bilateral Economic Relations**

U.S. exports to Bangladesh include agricultural products (cotton, wheat, dairy), aircraft, machinery, and iron and steel products. U.S. imports from Bangladesh include apparel, other textile products, headgear, shrimp and prawns, and agricultural products (primarily tobacco). The United States is Bangladesh's largest export market. The two countries have signed a bilateral investment treaty, a bilateral treaty for the avoidance of double taxation, and the Trade and Investment Cooperation Forum Agreement (TICFA). Bangladesh provides several tax, foreign exchange, customs, and labor incentives to investors in its export processing zones. On June 27, 2013, President Barack Obama suspended Bangladesh's designation as a beneficiary country under the Generalized System of Preferences (GSP) program, citing Bangladesh's inability to take steps to adopt internationally recognized workers' rights. The decision to suspend Bangladesh's designation came after a multi-year review by the U.S. Trade Representative. At the time of the suspension, the Obama administration provided an action plan to improve labor rights and regain GSP benefits.

### **Bangladesh's Membership in International Organizations**

Bangladesh and the United States belong to a number of the same international organizations, including the United Nations, ASEAN Regional Forum, International Monetary Fund, World Bank, and World Trade Organization.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 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 “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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (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;
- (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; and
- (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.

Applicant was born and educated through high school in Bangladesh. Applicant’s two sisters, S1 and S2, are citizens and residents of Bangladesh. His parents, parents-in-law, and brother are U.S. permanent residents; however, his parents have visited

Bangladesh for extended periods after becoming U.S. permanent residents. He has frequent<sup>4</sup> contacts with S1 in Bangladesh.

Applicant lives with his spouse, who was born in Bangladesh. The record lacks evidence of his spouse's relationships with her family, if any, who are residents and citizens of Bangladesh. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, and if she has relatives in Bangladesh, she may be close to them. “[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). In this case, there is no evidence that Applicant’s spouse has relatives who continue to live in Bangladesh and AG ¶ 7(d) is not established.

Applicant’s relationships with residents of Bangladesh create a concern about Applicant’s “obligation to protect sensitive information or technology” and his desire to help his relatives, who live in that country. For example, if terrorists, intelligence agents, or government officials in that country wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in Bangladesh. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

Applicant’s possessions of close family ties with his family living in a foreign country, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation’s government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of Bangladesh with the United States, places some, but not an insurmountable burden of persuasion on

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<sup>4</sup>It is unclear how often contacts must occur to be considered “frequent” under AG ¶¶ 7 and 8. See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8). Applicant communicates with his sisters one to three times a year, substantially less frequently than indicated in ISCR Case No. 09-03114. In this case, I am presuming that communication three times a year and a visit with S1 in 2014, is sufficiently often to be “frequent.”

Applicant to demonstrate that his relationships with family members living in that country do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in Bangladesh.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from any foreign country seek or have sought classified or sensitive information from or through Applicant or his relatives living any foreign country, nevertheless, it is not possible to rule out such a possibility in the future. Terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services. Applicant's relationships with family members living in Bangladesh create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in that country by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts and relationships with family living in Bangladesh, and raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) through 8(c) have limited applicability. Applicant has frequent contacts with S1, and the frequency of his contacts with S2 is not detailed in the record. Applicant's loyalty and connections to family are positive character traits. However, for security clearance purposes, those same connections with relatives living in foreign countries negate the possibility of full mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are living in foreign countries] could create a risk for foreign influence or exploitation."

Applicant has "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Bangladesh.

There is no evidence that terrorists, criminals, any foreign government, or those conducting espionage have approached or threatened Applicant, his spouse, or his

family to coerce Applicant for classified or sensitive information.<sup>5</sup> As such, there is a reduced possibility that Applicant or his family living in a foreign country would be targeted for improper coercion or exploitation. While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in Bangladesh. Applicant's family living in Bangladesh could become potential targets of terrorists or intelligence agents because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in that foreign country.

Applicant has significant connections to the United States and limited connections to Bangladesh. Applicant immigrated to the United States 27 years ago when he was 18 years old, and in 2002, Applicant was naturalized as a U.S. citizen. His spouse and four children are U.S. citizens and residents of the United States. His parents, parents-in-law, and brother, are permanent residents of the United States. He earned his bachelor's degree and CPA in the United States. His employment is with a DOD contractor. Over the past 20 years, he has worked for the federal Government as a contractor and accountant. His employment is a manifestation of his patriotism, loyalty, and fidelity to the United States.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in foreign countries. Applicant is not required to report his ongoing contacts with citizens or residents of foreign countries. AG ¶ 8(f) does not fully apply because it is primarily used to balance against property interests in foreign countries, and Applicant has no property interests in Bangladesh.

In sum, Applicant's connection to S1 living in Bangladesh is limited; however, Applicant is close enough to S1 to raise a security concern. In 2010 and 2011, he visited S1 in Bangladesh, and she visited him when she came to the United States in 2014 to visit her children. S1 holds a high-level elected office in Bangladesh and he communicates with her.

The Appeal Board has repeatedly underscored the security concern arising when there is a connection between an applicant and a high-ranking official in a foreign government:

An applicant's ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. See, e.g., ISCR Case No. 13-00397 at 4 (App. Bd. May 22, 2014) (Applicant's father had been a high-ranking military officer in a foreign country); ISCR Case No. 11-04980 at 2 (App. Bd. Sep.

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<sup>5</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

21, 2012) (Applicant's sister-in-law was married to a retired high-ranking official of the Russian army).

ISCR Case No. 11-12623 at 5 (App. Bd. Feb. 2, 2015) (reversing grant of security clearance to applicant whose niece was employed by the Israeli government working for a high-level Israeli official); See *also* ISCR Case No. 09-06457 (App. Bd. May 26, 2011) (reversing grant of security clearance and noting that applicant's connections to his father, who was a high-level Afghan official); ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009) (reversing grant of security clearance and commenting that applicant's brother was a high-level Nigerian official).

Security concerns are not analyzed in a piecemeal assessment, and the overall situation must be considered. Applicant's 27 years of U.S. residence and his family living in the United States constitute strong connections to the United States; however, based on the jurisprudence of the Appeal Board, his relationship to S1 outweighs that connection. Foreign influence security concerns under Guideline B are mitigated.

### **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 relevant circumstances. The 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.

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

Applicant provided some important mitigating evidence; however, the weight of this evidence is insufficient to overcome the evidence against grant or continuation of Applicant's access to classified information. Applicant has strong connections to the United States. He immigrated to the United States 27 years ago when he was 18 years old, and in 2002, Applicant was naturalized as a U.S. citizen. His spouse and four children are U.S. citizens and residents of the United States. His parents, parents-in-law, and brother, are permanent residents of the United States. Two written statements laud his reliability, trustworthiness, and patriotism, and they support approval of his

security clearance. He earned his bachelor's degree and CPA in the United States. For 20 years he has been entrusted with sensitive Federal employment as an accountant.

There is no derogatory information concerning Applicant's police or financial records or evidence of record showing any illegal drug possession or use, or alcohol-related incidents. He considers the United States to be his home. Applicant's demeanor, sincerity, honesty, and statements about his connections to the United States and limited connections to Bangladesh at his hearing are important factors militating towards approval or continuation of his access to classified information.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from criminal elements, terrorists, and intelligence agents.<sup>6</sup> The danger of coercion from the Bangladesh Government is less likely than in many other countries. Bangladesh and the United States have a friendly relationship with the United States being Bangladesh's most significant export partner. There is no evidence that Bangladesh has a history of espionage targeting U.S. military and industrial secrets.

The weight of the evidence supports denial or revocation of Applicant's access to classified information. Applicant's sisters S1 and S2 are citizens and residents of Bangladesh. Applicant is not very close to S1 and S2 as he left Bangladesh 27 years ago; however, he "frequently" communicates with S1, see note 3, *supra*, and S1 is an elected official in Bangladesh. See Discussion of high-level officials in pages 11-12, *supra*. In 2010 and 2011, he visited Bangladesh. S1 visits Applicant every year or so in the United States.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not mitigated the foreign influence security concerns.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.e:	For Applicant

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<sup>6</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

## **Conclusion**

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

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Mark Harvey  
Administrative Judge