DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 06-25573
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Appellant: Mark S. Zaid, Esq.

January 28, 2008

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Decision

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Preference and Foreign Influence. Clearance is granted.

History of Case

On March 21, 2006, Applicant submitted a security clearance application (SF 86).[1] On April 6, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel*

[1]GE 1 (Security Clearance Application is dated March 21, 2006 on p.1; however, the signature page is dated February 27, 2006.) For convenience, the security clearance application in this decision will be called an SF 86.

Security Clearance Review Program (Directive), dated January 2, 1992, as amended, modified and revised.[2]

The SOR alleges security concerns under AGs C (Foreign Preference) and B (Foreign Influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on April 17, 2007, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing. The case was originally assigned to another administrative judge on June 6, 2007, and due to caseload considerations was reassigned to me on August 22, 2007. On September 6, 2007, DOHA issued a notice of hearing scheduling the case to be heard on October 16, 2007. The hearing was held as scheduled.

The Government offered three documents, which were admitted without objections as Government Exhibits (GE) 1 through 3. The Applicant offered seven exhibits, which were admitted without objections as Applicant Exhibits (AE) A through G. DOHA received the transcript (Tr.) on October 29, 2007.

Procedural Rulings

Administrative Notice

Department Counsel requested administrative notice of the facts in Exhibits (Exs.) I through XI. Applicant objected to Exs. I, V, VI, VII, VIII, IX, X, and XI. After argument by counsel, I overruled Applicant's objections to these documents and took administrative notice of the documents offered by Department Counsel, which pertain to South Korea. (Tr. 18-27).

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Various facts pertaining to

[2]On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative AG to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative AGs are applicable to Applicant's case.

South Korea were derived from Exs. I through XI as indicated under subheading "South Korea" of this decision.

Findings of Fact

In his response to the SOR, Applicant admitted all of the allegations in the SOR with explanations. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 40-year-old project manager, who has worked for a defense contractor since October 2005. He successfully held an interim secret clearance from December 2005 to April 2007, when it was revoked as a result of these proceedings. During that time-frame, Applicant was never involved in a security violation. He seeks reinstatement of his clearance, which is required to successfully perform his duties required by his employer.

Apart from his wife, Applicant's immediate family members include his father, mother, two sisters and one brother. Applicant and his immediate family were all born in South Korea. Applicant's parents are retired university professors, and both parents hold Ph.D.s in chemical engineering. In 1982, Applicant's father came to the U.S. after being invited to conduct research in chemical engineering at a major U.S. university. In 1983, Applicant, his mother, two sisters and brother joined Applicant's father in the U.S. At the time Applicant joined his father, he was 16 years old.

After arriving in the U.S., Applicant, his siblings and mother remained in the U.S. for varying lengths of time, primarily for educational purposes. Throughout the years, Applicant's parents went back and forth between the U.S. and South Korea as visiting professors. Applicant's parents currently are resident citizens of South Korea. SOR ¶ 2.b. Applicant's parents lived in the U.S. for a cumulative total of 23 years before returning to South Korea. Tr. 77. Applicant communicates with his parents "a couple of time a year on the phone." Tr. 82. Applicant has three aunts, who along with their respective families live in the U.S. Tr. 89-90.

After Applicant graduated from high school, he enrolled in the university where his father was conducting research, and was awarded a bachelor of science degree in mechanical engineering in December 1989. He went on to attend graduate school at the same university, and in May 1993 was awarded a master's degree in mechanical engineering, and in July 1998 was awarded a Ph.D. in mechanical engineering. All of Applicant's post-education employment has been in the U.S. except for three years he worked in South Korea as a technical consultant and senior consultant from July 2002 to July 2005. Tr. 81-82, GE 1. After working in South Korea for this brief time, Applicant returned to the U.S. with his wife in September 2005 to begin his new position discussed *supra* and *infra.* Applicant has lived approximately 20 of his 40 years in the U.S. Tr. 82. It is his intent to permanently reside in the U.S. Tr. 82.

Like the Applicant, all of his siblings graduated from high school in the U.S. and spent a significant portion of their formative years in the U.S. All of Applicant's three siblings went on to receive their higher education, which included graduate work in the U.S. Tr. 77-78.

Applicant's three siblings are currently resident citizens of South Korea. SOR ¶ 2.c. Like his parents, Applicant communicates with his three siblings by telephone "[a] couple of times a year." Tr. 83-84. Applicant's brother is a civil engineer employed by a private firm, one his sisters works as an engineer at a private electronics company, and his other sister works at a private bank. Tr. 88.

None of Applicant's immediate family members are associated with or connected with the South Korean government. During the time Applicant's parents were employed as university professors working in South Korea, they were "technically" working for the South Korean government given they were employed at a public university. Applicant described his parent's employment as university professors in South Korea similar to employment as a professor at a state university in the U.S. Tr. 84-85.

Applicant has no reason to believe any of his family members would be susceptible to coercion, pressure or blackmail from the South Korean government as a means of extracting classified information from him. Applicant believes this to be the case because his family members are well traveled, savvy and not the type of people who would easily be intimidated. Tr. 86-87. Applicant stated if he were approached by anyone seeking classified information, he would report such contact to his supervisor and facility security officer. Tr. 87.

Applicant became a naturalized U.S. citizen in August 2001, and has held a U.S. passport since September 2001. He is not a citizen or passport holder of any other country other than the U.S. He emphatically stated he owes his loyalties to the U.S. Tr. 92.

Applicant was previously married from January 1992 to February 1997, and that marriage ended by divorce. His current wife, like him, was born in South Korea, but was residing in the U.S. with her entire family at the time they met in July 2002. They married in South Korea in January 2003, and at present do not have any children. Applicant's wife is a South Korean citizen holding permanent resident alien status and lives with Applicant in the U.S. SOR ¶ 2.a. She intends to apply for U.S. citizenship, but must first comply with the five-year waiting period to become a citizen. She will be eligible to apply in two years. Applicant's wife was a musician by profession in South Korea before emigrating to the U.S. At present, she attends school and is studying English as a second language.

Given the amount of time Applicant has lived in the U.S., he and his wife live as "very much American." He described his home as an "American environment" as opposed to a "Korean environment." Apart from work, Applicant plays golf and is a member of a city league soccer team. Tr. 89.

His wife's immediate family consists of her mother, two older sisters, and one younger brother, and they all live in the U.S. Her father passed away in 2002. Applicant's mother-in-law has lived in the U.S. since 1996. She is a citizen of South Korea residing in the U.S. as a permanent resident alien. SOR ¶ 2.d. His mother-in-law is a permanent resident and plans to apply for U.S. citizenship when eligible. Neither Applicant's wife nor her immediate family have ever had any connections with or are associated with the South Korean government. Applicant's mother-in-law is retired and his two sisters-in-law own bakery shops in the U.S. Tr. 73-74. Applicant's brother-in-law is a student.

Two of Applicant's supervisors testified on his behalf. Both supervisors hold top secret clearances. They interact daily with the Applicant and they along with their spouses socialize with Applicant and his wife. Both supervisors have a very high opinion of Applicant and consider him to be a very trusted and valuable employee. During the last performance cycle, Applicant was performing at such a superior level that he was the only employee selected from his team to receive additional stock options. Both supervisors enthusiastically and without reservation recommended Applicant for a security clearance. Tr. 35-52.

The supervisory computer engineer at the government entity where Applicant is employed submitted a reference letter. He stated in part, "my organization would be drastically hurt if [Applicant] was not granted the necessary security clearance to support [mission]." He also stated that if Applicant is not granted a security clearance and allowed to continue working at his government entity, not only would his organization suffer by losing Applicant, but also "the US Army and its warfighters would suffer the ramifications of his loss of knowledge as well." He strongly recommended Applicant for a security clearance. AE G.

Lastly, the wife of one of Applicant's supervisors who testified submitted a reference letter. She extolled on the many fine virtues Applicant and his wife have to include their values, integrity, and honesty. She stated, "I deal with many 'Americans' who have no respect for their fellow man or for our Country. In my opinion, [Applicant and his wife] truly appreciate the values and principles upon which our Country was founded and do not take these gifts for granted. . . . [Applicant and his wife] have the utmost integrity and as a natural born American, I am very pleased that individuals of this caliber want to be part of our culture and especially to be such good friends to my husband and me." AE G.

Since 1996, Applicant has traveled to South Korea six times. SOR ¶ 2.e. The first visit was in 1998 for a holiday family visit, the second time was in 2001 for a holiday family visit, the third time was in 2002 for a job interview, the fourth time was again in 2002 to work, the fifth time was in 2003 to attend a professional conference, and the sixth time was in 2005 after returning to South Korea after a job interview in the U.S. Tr. 80-81.

SOR ¶ 1.a. alleged Applicant maintains a bank account in South Korea with a balance of approximately $13,000.00. Applicant submitted documentation that established his account in South Korea was closed and the remaining balance of $15,834.27 was deposited in his U.S. bank account on June 7, 2007. Tr. 91, GE F.

Applicant has no financial interests in South Korea. All of his financial interests are in the U.S., which includes a home, mutual funds, a 401(k), a certificate of deposit, and checking and savings accounts. Tr. 91-92.

South Korea[3]

In the decades following the Korean War, South Korea experienced political turmoil that included autocratic leadership, restrictions to political freedoms, military coups, declarations of martial law, and violent confrontations.

Currently, South Korea is a stable, democratic republic.[2] The South Korean government has generally respected the human rights of its citizens, however, reported human rights problems include: societal discrimination against women, persons with disabilities and minorities; domestic violence and rape, child abuse, and trafficking in persons. The South Korean National Security Law: (a) has vague rules regarding arrest and detention; and (b) permits imprisonment for up to seven years for conduct that falls under a vague legal standard of "endangering the security of the State. The State Department has indicated it is difficult to estimate the number of political prisoners in South Korea.

Although the 1950 invasion of South Korea by North Korean forces ended in 1953 with the establishment of a Demilitarized Zone, a peace treaty never has been signed. Noting that South Korea and North Korea legally remain in a state of war, the U.S. Department of State warns "the possibility of military hostilities that could necessitate the evacuation of U.S. citizens from the Republic of Korea cannot be excluded."

For almost 20 years after the Korean War, relations between South Korea and North Korea were minimal and very strained. In 1991, relations between South Korea and North Korea improved with the South-North Basic Agreement, which acknowledged that reunification was the goal of both governments. But, divergent positions on the process of reunification, the North Korean weapons programs, and South Korea's tumultuous domestic politics have contributed to a cycle of warming and cooling of relations between South Korea and North Korea. South Korea's "Sunshine Policy," a policy of engagement with North Korea, has been cited by the U.S. Ambassador to South Korea as one of the present challenges to U.S.-South Korean relations.

[3] The contents of the South Korea section are taken from Exs. I through XI.

Under the 1953 U.S.-Republic of Korea Mutual Defense Treaty, the United States maintains a substantial military presence in South Korea. After 1998, South Korean public opinion became critical of the U.S. military presence in South Korea, and polls since January 2004 have found that more South Koreans view the United States as a bigger threat to South Korea than North Korea. There has been increasing anti-American sentiment in South Korea, including anti-American demonstrations in 2002 and 2006.

Industrial espionage is intelligence-gathering "conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining commercial secrets. This definition does not extend to activity of private entities conducted without foreign government involvement . . . ." Industrial espionage is not limited to targeting commercial secrets of a merely civilian nature, but rather can include the targeting of critical technologies and classified U.S. information. Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology, and acquisition of sensitive U.S. technology by foreign private entities does not slow its flow to foreign governments or its use in military applications.

South Korea has a history of collecting protected U.S. information. The 1996 Interagency OPSEC Support Staff, *Intelligence Threat Handbook* notes that South Korea has targeted the United States with intelligence gathering programs, and has centered its collection efforts on computer systems, aerospace technologies and nuclear technologies, and its activities have included stealing information from computerized databases maintained by U.S. government agencies.

The 2000 *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, issued by the National Counterintelligence Center, ranks Korea as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States. The most recent Annual Report, released in 2006, states that the major collectors remain active.

South Korean collection activities also are evidenced by a criminal prosecution linking espionage as directly involving the South Korean government. In May 1997, Robert Chaegon Kim, a civilian employee for the U.S. Department of Navy, Office of Naval Intelligence, pled guilty to "conspiracy to obtain national defense information." Mr. Kim had passed classified documents to an officer in the South Korean navy, serving as the South Korean naval attaché to the U.S.

The United States restricts the export of sensitive, dual-use technologies that can have civilian uses, but also can be used for military purposes or to build weapons of mass destruction. South Korea has been the unauthorized recipient of technology controlled under U.S. export control laws, including: material that could be used in missile delivery/reentry systems, encryption software, military truck parts, and night vision cameras.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative AGs for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These AGs are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these AGs in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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) 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." AG ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"[4] demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant

[4] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. 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).[5]

A person seeking access to classified or sensitive 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. 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 as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

AG C (Foreign Preference)

AG ¶ 9 explains the Government's concern "[w]hen 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 be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10(a) indicates one condition that raises a security concern and may be disqualifying in this case stating, "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member." And AG ¶ 10(a) includes two pertinent examples, "(3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country . . .

[5]"The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

[and] (5) using foreign citizenship to protect financial or business interests in another country," which apply in this case.

SOR ¶ 1.a. alleged Applicant maintains a bank account in South Korea with an approximate balance of $13,000.00, which raised a concern under this AG. AGs ¶ 11(c), "exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor" is the closest relevant mitigating circumstance, and it does not apply in this case.

Applicant took the affirmative step of closing this account and transferring the remaining balance in the amount of $15,834.17 to his U.S. bank account on June 7, 2007. This action substantially negates the underlying basis for this concern. As noted, all of Applicant's financial interests are in the U.S. The foreign preference concern will be further addressed in the whole person concept section of this decision.

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating, "if 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 AG 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, including:

> (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under AG B. However, if only one relative lives in a

foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contacts with his immediate family members, who are resident citizens of South Korea. His wife, who is a South Korean citizen, lives with him. He has contact to a lesser extent with his in-laws, who are citizens of South Korea and permanent residents of the U.S. These close relationships with his family members create a heightened risk of foreign pressure or attempted exploitation because South Korea has an active collection program.

The Government produced substantial evidence of these three disqualifying conditions primarily as it pertains to Applicant's parents, siblings, and travel to South Korea, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

> (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; 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.

AG ¶¶ 8(a) partially applies to Applicant's wife and 8(a) and 8(c) partially apply to his relationships his in-laws. They all live in and are completely vested in the U.S. His contact with his in-laws is maintained vicariously through his wife and is infrequent, and not of great substance. AG ¶ 8(b) fully applies. Considering how vested Applicant, his wife, and in-laws are in the U.S. and the nature of their business, it is unlikely Applicant will be placed in a compromising position. Also, his limited and infrequent contacts with his in-laws are not a security concern because it is unlikely Applicant will be placed in a position of having to choose between his-in laws and the interests of the United States.

Appellant, however, did not establish AG ¶¶ 8(a) or 8(c) in regard to his parents and siblings. He did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his parents and siblings] and the interests of the U.S." His frequent contacts with his family members in South Korea could potentially force him to choose between the United States and South Korea. He did not meet his burden of showing there is "little likelihood that [his relationship with his parents and siblings] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) applies because Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States 20 of his 40 years and has lived continuously in the United States since 2005. He became a U.S. citizen in 2001. His wife plans to apply for U.S., but must meet the mandatory waiting period. Applicant spent his formative years in the U.S. to include high school, college, and went on to earn two graduate degrees. His parents and siblings spent a substantial number of years in the U.S. and are familiar with the U.S. and the American way of life. Applicant's contacts and linkage to the United States are substantial and based on his decision to live in the U.S. versus South Korea and divest himself from South Korea, he has established his linkage to the U.S. is greater than his linkage to South Korea. He is heavily vested in the U.S., financially and emotionally.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative AGs related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."[6] The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[7] In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."

[6] ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

[7] *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I carefully considered Applicant's family connections and personal connections to South Korea. He lived in South Korea half of his life. His wife is a citizen of South Korea. She has frequent, non-casual conversations with her family members living in South Korea. Applicant's parents are citizen-residents of Korea. Applicant traveled to South Korea six times since 1996. Essentially all SOR allegations are established.

Substantial mitigating evidence weighs towards grant of Applicant's security clearance. Applicant has lived in the United States for 20 of his 40 years, and he has been a naturalized citizen for six years. He has long ties to the U.S., his wife and all of her immediate family members reside in the U.S. After working briefly in South Korea, he chose to live and work in the U.S. with his wife versus South Korea. When he became a U.S. citizen, he swore allegiance to the United States. His wife is a permanent resident alien and plans to apply for U.S. citizenship when eligible. All of her immediate family member live in the U.S. His ties to the United States are stronger than his ties to South Korea. He has no financial ties to South Korea in contrast to his U.S. significant financial ties. In fact, he took the affirmative step of divesting himself of all financial ties to South Korea by closing his bank account in South Korea and transferring the funds to his U.S. bank account. There is no evidence he has ever taken any action which could cause potential harm to the United States. In fact, and most notably, he has successfully held a security clearance for 16 months.

Applicant's employer confidence and trust in him is so high as to warrant recommending him for a clearance. This was clearly demonstrated by two of his supervisors testifying on his behalf. Both those supervisors hold top secret clearances. Applicant takes his loyalty to the United States very seriously, and he has worked diligently for a defense contractor for 27 months. His supervisors, family, and friends assess him as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He has an excellent reputation as a friend, family member, employee and U.S. citizen. His witnesses and documentary evidence recommend him for a security clearance. No witnesses recommended denial of his security clearance or produced any derogatory information about him.

Applicant's family members are not, and never have been, South Korean agents. South Korea is a highly developed, stable, democratic republic with a modern economy that has dispatched troops to support the war against terrorism being led by the U.S. in Iraq. South Korea is a country that has been and continues to be friendly with the U.S. for more than 50 years. Further, there is no record evidence that South Korea has ever

attempted to exploit any resident of South Korea for the purpose of compromising a security clearance holder in the U.S.[8]

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Those considerations must answer the question whether there is a legitimate concern under the facts presented that the South Korean government or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members. Or, to put it another way, is it reasonable to assume that this loyal ally of the U.S. might do in the future what there is no evidence to suggest it has ever done in the past. Applying sound judgment, mature thinking, and careful analysis, the possibility is so remote as to be speculative.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[9] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the AGs. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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 C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – e.:	For Applicant

[8] Noting the lack of record evidence that the South Korean government has ever engaged in such conduct is not to imply that the Government had any burden to present such evidence. It is intended as an observation, and nothing more. I make this observation merely to show my recognition that the record is devoid of evidence on which I could base a finding that the South Korean government has either engaged or not engaged in such conduct.

[9] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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Robert J. Tuider
Administrative Judge