



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



In the matter of:)
)
) ISCR Case No. 18-00665
)
Applicant for Security Clearance)

Appearances

For Government: Daniel f. Crowley, Esq., Department Counsel
For Applicant: Aileen B. Xenakis, Esq.

02/26/2019

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, and testimony, I conclude that Applicant mitigated security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of the Case

On March 2, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance for her employment as a logistics specialist for a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. On April 4, 2018, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant answered the SOR on May 1, 2018, admitting the six allegations of foreign influence under Guideline B. The allegations detailed concerns about her family members who are citizens and residents of South Korea. Department Counsel was prepared to proceed on June 23, 2018, and I was assigned the case on September 10, 2018. DOD issued Applicant a notice of hearing on September 12, 2018, for a hearing on November 8, 2018. I convened the hearing as scheduled. The Government's three exhibits (GE 1, 2, and 3) were admitted into the record without objection. Applicant testified and her five exhibits (AE A through E) were admitted into the record without objection. I received the transcript of the hearing on November 26, 2018.

Procedural Issues

Department Counsel and Applicant requested that I take administrative notice of certain facts concerning South Korea, and both provided relevant documents. (GE 3; AE D and E) I will take administrative notice of facts concerning South Korea as noted in my Findings of Fact.

Findings of Fact

After a thorough review of the record, I make the following findings of fact. Applicant was born in South Korea in March 1959 and is 59 years old. She married a member of the United States military stationed in South Korea in August 1977. She entered the United States with her then husband in June 1978 at age 18, and became a United States citizen in April 1984. She and her husband divorced in November 1987. Applicant has not seen him since they divorced. They had no children.

Applicant served for 22 years on active duty in the United States Army from January 1981 until January 2003, retiring as a sergeant first class (E-7) with an honorable discharge. She served in various administrative and logistics positions while on active duty. She attended various colleges while on active duty and received a bachelor's degree in March 2012.

Applicant was employed as a DOD civil servant in various administrative and logistics positions in the United States and South Korea from January 2003 until retiring from the civil service in December 2015. She has been employed since then by a defense contractor in South Korea as a senior logistics specialist. She has always received top ratings while on active duty, as a civil servant, and as a contractor. She received recognition and spot awards as a contractor. She has held a security clearance since entering active duty, and her eligibility for access to classified information has never been challenged in the 37 years she has held a security clearance. (Tr. 19-29, 40-42; GX 1, e-QIP, dated March 2, 2016)

The SOR alleges and Applicant admits that her brother (SOR 1.a), two half-brothers (SOR 1.b), a sister (SOR 1.c), and a half-sister (SOR 1.d) are citizens and residents of South Korea. She also admits that she has two nephews who are a citizens and residents of South Korea, one currently serving in the South Korean Air Force

(SOR 1.e), and the other currently serving in the South Korean Army Reserve (SOR 1.f).

Applicant has spent half of her lifetime living and working on U.S. military bases. Even though Applicant is now stationed in South Korea, she remains close to the U.S. military and her life is centered on the U.S. military base. She participates in on-base programs, such as the library, banking, special holiday programs, and chapel services. While stationed in South Korea, she has returned each year to the United States to visit family and friends, and to sightsee. She plans to retire in the United States. She and her sister have purchased a house in the United States that they are remodeling to use in retirement. She has a 401(k) retirement plan and a thrift savings plan, as well as stocks and bonds invested with U.S. based companies. She will receive a pension from the U.S. military for both military and civilian service, she is receiving disability from the Department of Veterans Affairs (VA), and she is eligible for Social Security. All of her funds and bank accounts are in U.S. banks or credit unions. She does not receive any benefits from South Korea. She is current with all of her U.S. taxes. Her ultimate plan is to be buried at Arlington National Cemetery. She considers the United States to be her home. (Tr. 22-32)

Applicant's brother (SOR 1.a) is 62 years old, a citizen and resident of South Korea, and employed as an airport bus driver. He is married. Since he lives about two hours from Applicant, she does not visit him often. She does not provide him financial support. He has never asked her about her military work, or asked her to provide him with military information. (Tr. 32-33)

Applicant's two half-brothers (SOR 1.b) are citizens and residents of South Korea, in their late 70s to early 80s, and retired. She sees them rarely, and last saw them a few years ago when her mother was in the hospital and they came to visit. When Applicant retired from the military and left Korea in 2015, they brought their families to her farewell party. (Tr. 33-34)

Applicant's sister (SOR 1.c) is a citizen and resident of South Korea, in her mid-60s, and a caregiver for the elderly. She lives about two and a half hours away from Applicant, so Applicant does not see her often. Their contact is mainly by phone. Her sister has been to the United States because her son is on active duty in the United States Army. Her nephew brought her sister and her brother-in-law to the United States to live. Even though they had permanent resident status in the United States, they returned to South Korea because of illness and language problems. (Tr. 34-36)

Applicant's half-sister (SOR 1.d) is a citizen and resident of South Korea, and in her 70s. She lives in the countryside, so Applicant communicates with her only occasionally by phone. Applicant's half-sister has no affiliation with the South Korean government. (Tr. 36)

Applicant's nephew is a citizen and resident of South Korea, in his late 30s, and on active duty in the Korean Air Force (SOR 1.e). Applicant saw him once or twice when

he was a child. Since she returned to Korea, she has only seen him at her sister's house a few times when he came to celebrate Korean holidays. (Tr.36-37)

Applicant's other nephew (SOR 1.d) is a citizen and resident of South Korea, and in his late 30s. He served his mandatory military duty in the South Korean Army but still remains a member of the Korean Army Reserve. His civilian occupation is as an English teacher in a language institute. (Tr. 37-38)

Applicant has immediate family members who are citizens and residents of the United States. She stays with one sister when she visits the United States. Applicant also has a sister who is married to an U.S. Air Force retiree, and two nephews who are on active duty in the United States Army. (Tr. 38-40)

I have taken administrative notice of facts concerning South Korea that are common knowledge and not subject to dispute. South Korea is a stable, democratic republic. The United States and South Korea have been close allies since 1950, and have fought communism on the Korean peninsula and in Vietnam. The United States, since 1950 and currently, has thousands of U.S. military personnel stationed in South Korea, and frequently conducts joint military operation with and in South Korea. About 2.3 million Koreans live in the United States. The United States has promised over the next few years to provide about \$11 billion in force enhancements to Korea. South Korea is the United States' seventh largest trading partner. The recently signed free trade agreement between the United States and South Korea will generate billions of dollars in additional economic growth and job creation in both countries.

The South Korean government generally respects the human rights of its citizens. South Korea does not recognize dual citizenship. There have been circumstances where U.S. citizens with connections to South Korea were drafted into the South Korean Army.

In recent years, the United States and South Korea have differed in their diplomatic approaches towards North Korea. The United States position is more assertive and it attempts to curtail North Korea's development of advanced military technology, such as ballistic missiles and nuclear weapons. There has been progress in this area, and North Korea has curtailed its missile tests. The North Korean dictator and the President of the United States have met to discuss diplomatic solutions and plan to meet again. South Korea has emphasized steps towards unification of North and South Korea. Limited visits of relatives across the demilitarized zone have recently been permitted by both North and South Korea.

Industrial espionage includes seeking commercial secrets. South Korea has a history of collecting protected U.S. information. In 2000, South Korea was listed as one of the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. In 1997, a U.S. defense contractor was fined for unlicensed exports to South Korea. The same year, a civilian employee of the U.S. Navy passed classified documents to the South Korean naval attaché to the United

States. On multiple occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws. (GX 3, Request for Administrative Notice; AX F, Request for Administrative Notice; AX E, Supporting Documents for Administrative Notice)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 access to classified information will be resolved in favor of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

Analysis

Foreign Influence

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result 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 interests 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 associated with a risk of terrorism. (AG ¶ 6)

Applicant has immediate family members, a brother, two half-brothers, a sister, a half-sister, and two nephews who are citizens and residents of South Korea. Even though Applicant is stationed in South Korea, her contact with her family members is mostly by phone calls and occasional visits.

While South Korea is a stable democracy with extremely close ties to the United States, there is economic espionage targeted at the United States and danger because of the proximity to North Korea. These circumstances create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. In spite of her limited contact with her family members in South Korea, these family members are a security concern raising the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (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; and
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern 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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the U. S., especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress.

Applicant has contact with family members who are residents and citizens of South Korea. There is economic espionage targeted at the United States and the country is in close proximity to North Korea. These factors place a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

There is a rebuttable presumption that a person has ties of affection for or obligation to immediate family members. Applicant has contact with her family members in South Korea by telephone and visits. She attends family holiday celebrations and visits and calls her family members. These facts establish a close and continuing relationship between Applicant and her family members in South Korea. Her level of contact is not casual or infrequent, and indicates that Applicant's sense of loyalty to the family members is significant. It should be noted that her two nephews who are residents and citizens of South Korea are members of the South Korean military. As such, they work and serve alongside members of the United States military.

Applicant's ties and sense of loyalty to the U. S. are extensive. She has been a United States citizen for over 34 years. She served in the United States Army for over 22 years, worked as a civilian employee of the United States military for more than 13 year, and has been a defense contractor serving the U.S. military for over four years. She has been eligible for access to classified information for over 37 years with no blemishes on her security record. She lives a decidedly American lifestyle within the U.S. military. She has immediate family members who are citizens and residents of the United States, and some serving on active duty in the United States military. She plans to return to the United States in retirement and to be interred in Arlington National Cemetery. All of her funds, including retirement accounts and stocks, are in U.S. banks. While stationed overseas, she has participated in the United States military community programs rather than Korean activities. She depends on the U.S. military for her support.

Applicant's family members in South Korea can place her in a position to have to choose between the interests of the family members and the interests of the United States. Even though her family members in South Korea are ordinary citizens, the situation in South Korea can make them vulnerable to exploitation, pressure, or inducement to request Applicant to provide them protected information. However, her connection to and loyalty to the United States is so deep and longstanding that she can be expected to resolve any conflict of interest in favor of U. S. interests. Accordingly, Applicant has met her heavy burden to show that her relationships with her family members in South Korea are not a security concern. I conclude Appellant has mitigated security concerns for foreign influence.

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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information. I considered that Applicant served on active duty in the United States Army for 22 years, worked as a civilian employee for the United States military for over 13 years, and has worked and is working as a civilian employee of a defense contractor for over four years. She has been eligible for access to classified information of over 37 years with no reported security issues.

The presence of Applicant's immediate family members in South Korea creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion on Applicant. However, Applicant has shown her overwhelming connections and ties to the United States by her many years of service to the U.S. military. Even while overseas, she has fostered a connection to the U.S. military community. She has almost as many immediate family members that are citizens and residents of the United States as she has that are citizens and residents of South Korea. In fact, she established that her connection to her relatives in the United States are closer than her connection to her relatives in South Korea. Applicant's long years of service increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her. The many years of honorable service weighs heavily towards approval of her security clearance.

These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. The protection of the national security is the paramount consideration. For all these reasons, I conclude Applicant has mitigated foreign influence concerns based on her family members in South Korea. Access to classified information is granted.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge