



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



In the matter of: )  
)  
) ISCR Case No. 18-01652  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

06/27/2019

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Department Counsel withdrew the sole financial considerations security concern, and Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 31, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 2, 2018, and requested a hearing before an administrative judge. The case was assigned to an administrative judge on January 24, 2018, and reassigned to me on March 25, 2019. The Defense Office of

Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2019, scheduling the hearing for May 14, 2019.

I convened the hearing as scheduled. The Government's discovery letter, exhibit list, and administrative notice request, as well as Applicant's exhibit list and administrative notice request, were appended to the record as Hearing Exhibits (HE) I through IV. I admitted Government Exhibits (GE) 1 and 2 in evidence without objection. I sustained Applicant's objection to GE 3, consisting of a report of investigation (ROI) summarizing background interviews conducted on June 30, 2008 and July 26, 2016, and GE 3 was not admitted in evidence. Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through O, which I admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 3, 2019.

On June 5, 2019, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Department Counsel had ten days from receipt of my e-mail to object to my issuance of a summary disposition. She did so on June 6, 2019.

## **Procedural Ruling**

### **Requests for Administrative Notice**

Department Counsel's and Applicant's requests that I take administrative notice of certain facts about the Republic of Korea (South Korea) were included in the record as HE II and HE IV, as referenced above. Neither party objected to the other's request. I have taken administrative notice of the facts contained in HE II and HE IV. The facts administratively noticed are summarized in the Findings of Fact, below.

## **Findings of Fact**

Applicant denied the allegation in SOR 1.a. He admitted in part and denied in part SOR 2.a, and he denied SOR 2.b, 2.c, and 2.d. At the hearing, Department Counsel withdrew SOR 1.a. (Applicant's response to the SOR; Tr. at 48-52).

Applicant is a 58-year-old, native-born U.S. citizen. After he graduated from high school, he attended college but did not earn a degree. He enlisted in the U.S. military and honorably served from 1981 until he retired in 2001. He has worked for various DOD contractors since 2002. He worked for a DOD contractor in Iraq from 2009 to 2011. He has worked in South Korea for his current employer, a DOD contractor, since late 2015. He has held a security clearance since 2008. (Tr. at 52-109; GE 1-2; AE A-O).

Applicant married in 1986, divorced in 1989, and remarried in 1994. His spouse was born in South Korea. She became a naturalized U.S. citizen in 2004. He met her in South Korea when he was stationed there in 1992. He obtained permission from the U.S. military to marry her, since she was foreign-born. They have resided in South Korea since 2002 and do not have any children. (Tr. at 52-109; GE 1-2; AE A-O).

Applicant's two sisters-in-law, their spouses, and their children, are citizens and residents of South Korea. His third sister-in-law passed away in 2017. Applicant does not communicate with his in-laws because he does not speak Korean and they do not speak English. His wife maintains regular telephonic communication with her sisters, and they see each other in person at family gatherings once every three to six months. None of Applicant's in-laws are affiliated with the South Korean government or military. Applicant's nephew performed mandatory service in the South Korean military for 21 months. He completed that service in August 2017 and has since worked as an internet model selling clothes. (Tr. at 52-109; GE 1-2; AE A-O).

Applicant's spouse owns an apartment in South Korea that is their primary residence. She purchased it in 2010 for \$256,000 USD, and its current approximate value is \$280,000 USD. He does not own any property in South Korea. When he completed his security application (SCA) in 2016, he thought his spouse had opened a bank account in South Korea when they moved there in 2002. In fact, his spouse had not done so and they do not have any bank accounts in South Korea. Their assets in the United States total approximately \$500,000. (Tr. at 48-49, 52-109; GE 1-2; AE A-O).

Applicant's numerous character witnesses attested to his loyalty to the United States, trustworthiness, honesty, and integrity. (Tr. at 22-46, 109-126; AE E).

## **South Korea**

The signing of the Treaty of Peace on May 22, 1882 marked the first official diplomatic interaction between the United States and South Korea. Following the end of World War II in 1945, the United States has only maintained diplomatic relations with South Korea, and has had no formal diplomatic relations with North Korea. South Korea is one of the United States' most important strategic and economic partners in Asia.

South Korean government espionage and collection activities have resulted in criminal prosecutions by the U.S. Government. Industrial espionage remains a high profile concern relating to South Korea and South Korean companies. South Korea has also been the unauthorized recipient of technology controlled under U.S. export control laws, including material that could be used in encryption software, optics and prism data, and infrared detectors and camera engines. The U.S. Department of Justice has highlighted numerous efforts by South Korean persons and corporations to secure proprietary and/or export-controlled information in contravention of U.S. law.

In 2017, the most significant human rights issues in South Korea included government interpretation and application of the national security law, libel laws, and other laws that limited freedom of expression and restricted internet access; corruption; and domestic violence.

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(a), 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 extrapolation of potential, rather than actual, risk of compromise of classified information.

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

## Analysis

### Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG 6:

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 interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the

United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). AG 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant’s third sister-in-law in South Korea passed away in 2017. His one nephew, who performed mandatory service in the South Korean military for 21 months, completed that service in August 2017 and has since worked as an internet model selling clothes. None of the remaining family members in South Korea are affiliated with the South Korean government or military. Neither Applicant nor his spouse have any bank accounts in South Korea. AG 7(a), 7(b), 7(e), and 7(f) are not established for SOR 2.b and 2.d, and I find those allegations in Applicant’s favor.

However, Applicant’s two sisters-in-law, their spouses, and their children are citizens and residents of South Korea. Applicant’s wife maintains regular telephonic and in person contact with her sisters. Applicant’s spouse owns an apartment in South Korea that is their primary residence. Its current value is approximately \$280,000 USD. South Korean government espionage and collection activities have resulted in criminal prosecutions by the U.S. Government, and industrial espionage remains a high profile concern relating to South Korea and South Korean companies. AG 7(a), 7(b), 7(e), and 7(f) are established for SOR 2.a and 2.c.

AG 8 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; 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.

Applicant's spouse maintains regular contact with her family in South Korea, as previously discussed. AG 8(c) does not apply to SOR 2.a.

I considered the totality of Applicant's ties to South Korea. While the value of his wife's apartment in South Korea is \$280,000 USD, their assets in the United States total approximately \$500,000. The concerns over Applicant's ties to South Korea, through his wife's family there and her ownership of an apartment there, do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. AG 8(a), 8(b), and 8(f) apply to SOR 2.a and 2.c.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility 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 F:	Withdrawn
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a – 2.d:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge