



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



In the matter of:)
)
) ISCR Case No. 18-01704
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of the Case

On August 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 1, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM) containing six Items, and it was received by Applicant on May 3, 2019. The FORM notified Applicant that he had an opportunity to

file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant provided a response and documentary evidence that are marked as AE A (five pages) and B (four pages). There were no objections to any of the evidence and it was admitted into the record. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on June 24, 2019.

Request for Administrative Notice

In the FORM, Department Counsel requested that I take administrative notice of certain facts about South Korea contained in Item 6. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant partially admitted and denied the SOR allegation in ¶ 1.a. He admitted the SOR allegations in ¶¶ 1.b and 1.c. He denied the SOR allegation in ¶ 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He married in 1990 and divorced in 1998. He has a 29-year old son from this marriage. He remarried in 2002 and divorced in 2010. He remarried in 2013. He and his wife have a seven-year-old son. He served in the U.S. Air Force from 1990 to 1992 and received a General Discharge under Honorable Conditions. He served in the Army National Guard for one year and received an Honorable Discharge. He served in the Army from 2003 to 2011 and received a General Discharge under Honorable Conditions. Applicant has worked for a federal contractor since January 2016. He currently works in South Korea. (Item 4)

Applicant's wife is a citizen and resident of South Korea. His younger son was born in South Korea and is dual citizen of South Korea and the United States. Applicant met his wife while serving in the military in South Korea. Applicant, his wife, and son presently live in South Korea. He and his wife intend to relocate to the United States after he completes his employment in South Korea. They also intend on her applying for U.S. citizenship status once they relocate. During his February 2017 background interview, he disclosed that his wife was unemployed. He noted that she had no affiliation with the South Korean government, military, security, defense industry, foreign movement, or intelligence service. (Item 5)

Applicant's mother-in-law and father-in-law are citizens and residents of South Korea. His wife's two sisters and brother are citizens and residents of South Korea. He stated his contact with his wife's parents is about once a month when they come to visit them. His contact with his wife's siblings is about every three months. His mother-in-law has never been employed outside of the home. His father-in-law works for a corporation.

His brother-in-law works on a U.S. military base. The occupations of the two sisters-in-law is unknown. (Items 3, 5)

Applicant's wife formerly owned an apartment in South Korea that she had purchased before she married. Her parents and brother lived in the apartment. The loan for the apartment was transferred to her brother. Her brother is now the primary person responsible for the loan, and Applicant's wife no longer has any responsibility or ownership rights in the apartment. (Item 3; AE A, B, C).

The Republic of Korea (South Korea)

South Korea is a constitutional democracy governed by a president and unicameral legislature. Recent presidential elections were considered free and fair. Civilian authorities maintain effective control over security forces. The most significant human rights issues were the government's interpretation and application of National Security Law, libel laws, and other laws that limited freedom of expression and restricted Internet access; corruption, and domestic violence.

The United States Department of State has assessed the cities of Seoul and Busan as being low-threat locations for terrorist activity directed at or affecting official U.S. government interests. It noted that while Americans are subject to worldwide threats of international terrorism, there is no specific information to suggest any specific terrorist threats directed at Americans or American interests in South Korea. In addition, South Korea is the host to approximately 28,500 U.S. troops.

South Korea has made significant strides in terms of its protection of intellectual property rights. It cooperates with U.S. law enforcement to aggressively pursue criminal investigations and to seize counterfeit goods, including luxury items. Industrial espionage, however, remains a high-profile concern. There are reported criminal cases in the past of industrial espionage and violations of export control laws. South Korea has been the unauthorized recipient of technology controlled under the U.S. export control laws.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 are used in evaluating an applicant's eligibility for access to classified information.

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

information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

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

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

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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

whether it is known to target U.S. citizens to obtain classified or sensitive information or is it associated with a risk of terrorism.

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

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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;

(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.

Applicant's wife, her parents, two sisters and a brother are citizens and residents of South Korea. Applicant obviously has regular contact with his wife, and has some contact with his in-laws because he is currently living and working in South Korea. Applicant's wife no longer owns property in South Korea.

There is a minimal threat of terrorism and some human rights problems in South Korea. I have considered the long-term friendly relationship between the United States and South Korea and do not find a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I find AG ¶¶ 7(a), 7(e), and 7(f) do not apply. Because Applicant's wife is a citizen and resident of South Korea, and her relatives are also, there is always a potential conflict of interest between Applicant's obligation to protect classified or sensitive information and his desire to help his foreign family members. AG ¶ 7(b) has some application.

After the Government produced evidence of the disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in

that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests.

The risk of terrorism and potential for exploitation by the South Korean government is unlikely. Applicant's wife is unemployed and her family does not work for its government. It is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and those of family members. AG ¶ 8(a) applies.

I considered the totality of Applicant's ties to South Korea. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. None of these factors are present when analyzing South Korea's threat. There is some evidence of industrial espionage, but none that is orchestrated by the South Korean government. I find in the unlikely event that Applicant had to choose between a sense of loyalty to his foreign family members and those of the U.S. interest, he would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

Whole-Person Concept

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

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

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

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

Applicant is 51 years old. His wife is a citizen and resident of South Korea. Applicant currently works in South Korea. He and his wife intend to move to the United States when his employment has ceased, and she intends to become a United States citizen when eligible. Applicant provided evidence to meet his burden of persuasion. The record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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

Subparagraph 1.a-1.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge