



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



In the matter of: )  
)  
) ISCR Case No. 18-02259  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany M. White, Esq., Department Counsel  
For Applicant: *Pro se*

06/17/2019

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on December 12, 2016. On October 24, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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's) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR, 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) on February 27, 2019. Applicant received the FORM on March 28, 2019. The Government's evidence, included in the file, and identified as

Items 1 through 5, was admitted without objection. Applicant did not respond to the FORM. I was assigned the case on June 6, 2019.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about South Korea. The request and the attached source documents were not admitted into evidence but were included in the record. All of the documents referenced in the Request for Administrative Notice and the facts asserted therein, are from open sources and are dated. South Korea, officially the Republic of Korea, is a self-governing state located in the southern part of the peninsula of Korea. The United States and South Korea share a long history of friendship and cooperation based on shared values and interests. The two countries work together to combat regional and global threats and to strengthen their economies. South Korea is now the United State's sixth largest trading partner with a trillion-dollar economy. The longstanding relationship has brought positive rewards to the U.S. economy including more job opportunities for Americans.

South Korea is one of the seven countries most actively engaged in foreign economic collection and industrial espionage against the United States. Although South Korea is considered an ally, it 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, optics and prism data and infrared detectors and camera engines. Industrial espionage remains a high profile concern relating to South Korea and South Korean companies. In July 2014, a South Korean chemical company agreed to pay a criminal penalty of over two million dollars to resolve an investigation into the company's attempted theft of a U.S. company's trade secrets regarding a meta-aramid fiber used in protective fabrics, electrical insulation, and lightweight structural support for aircraft. Sources have also reported that South Korea may have attempted to compromise protected technology of U.S. F-15 fighters that it purchased. (Item 5)

### **Findings of Fact**

The SOR alleged under Guideline B that (1.a) that Applicant's grandmother is a citizen and resident of South Korea; (1.b) that he owns a home in South Korea with an approximate value of \$270,000; (1.c) that he maintains a bank account in South Korea with an approximate value of \$15,000; and (1.d) that Applicant maintains contact with two friends who are citizens and residents of South Korea, both of whom have completed or are currently serving mandatory service in the South Korean military. Applicant admitted all the allegations, but noted that the bank account has been transferred to his father's account in South Korea. (Item 1, 2)

Applicant is a 31-year-old, who was born in the United States to South Korean parents. He lived in South Korea prior to the age of 12. (Item 4) At the age of 15, he renounced his South Korean citizenship at the advice of his father so that he could avoid the mandatory military requirement in South Korea. (Item 3) He attended a university in South Korea in 2009 as an exchange student. (Item 3) He attended high school in the United States. Applicant obtained an undergraduate degree from an American university in May 2010. He received his master's degree from another American university in 2016.

Applicant was married in late 2016 to a citizen of South Korea and is sponsoring her for a green card. (Item 4) She lives with Applicant. From September 2011 until September 2012, he resided in South Korea. Applicant noted on his 2016 security clearance application that he worked in South Korea from about 2010 until 2013. One employer was an IT company. (Item 3) His last reported visit to South Korea was in 2017. Applicant is not employed but is sponsored for a security clearance by a defense contractor. He is taking courses for a certification in cyber security.

Applicant's grandmother is 90 years old and has never worked outside the home. There is no information in the file concerning contact with Applicant's grandmother.

Applicant owns a home in South Korea valued at about \$270,000. He stated in his interview that he has owned the home since 2012. He also noted that it was a gift, but he maintains ownership of it and rents the home. He does not own any other property in South Korea. He does not know if he will keep the property in his name. (Item 4)

The bank account in South Korea was closed after his investigative interview. The money was transferred to his father's account in South Korea. (Item 4) He opened the account in 2010, when he lived in South Korea. The amount in the account in 2012 was \$27,184. However, in the 2018 investigative interview, Applicant stated that he intended to close the account, but he had to physically be in South Korea to do so. Applicant also stated that perhaps his father could close the account on his next trip to South Korea.

Applicant maintains contact with two friends in South Korea .He explained during his investigative interview that he participates in an electronic chat with the two friends he met while living or studying in South Korea. He has several foreign national friends in the chat group, and has had weekly or daily contact with them. One friend is a South Korean citizen but lives in the United States. Applicant keeps in touch with another South Korean citizen who lives in Australia. He has daily to weekly electronic contact with him. (Item 4) The friends served mandatory service in the Korean military. Applicant feels allied with South Korea since he lived there as a child. (Item 4)

Applicant did not respond to the FORM to provide any additional information. Applicant expressed he has loyalty to the United States, he clearly stated that he will continue to have contact with his foreign national friends. (Item 4) Also, he has property in South Korea and provided no information that would mitigate the

importance. He is unemployed and lives with his family. Thus, financial interests cannot be weighed because he did not sufficiently explain his future intentions concerning the property. In addition, he is now married to a South Korean citizen.

## **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(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."

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 EO 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* EO 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 that is 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, such considerations as whether the foreign country is known to target United States 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;
- (c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country; 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 heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's grandmother and various friends are citizens and residents of South Korea. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been raised by the evidence. In addition, Applicant has property in South Korea. He provided

no information about his own finances, except that he is unemployed. AG 7(f) raises another security concern due to financial interests.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's foreign contacts and interests. Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.<sup>1</sup>

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

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<sup>1</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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.

Applicant was born in the United States and renounced his South Korean citizenship. However, his grandmother still lives in South Korea. There is no information as to the contact, but family ties are presumed. He noted in his interview that he feels allied with South Korea since he lived there as a child. He now has a wife from South Korea who he is sponsoring for a green card. He provided no updated information in response to the FORM. He still maintains property in South Korea. He has worked in South Korea for an IT company. He maintains his group chats with his friends in South Korea. None of the mitigating conditions are applicable.

### **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 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 and in my whole-person analysis. Some of the factors in AG ¶ 2(d)

were addressed under those guidelines. Applicant has not provided sufficient information to meet his burden of proof.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated foreign influence security concerns.

**Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST Applicant |
| Subparagraphs 1.a –b:     | Against Applicant |
| Subparagraphs 1.c-d:      | For Applicant     |

**Conclusion**

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

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Noreen A. Lynch  
Administrative Judge