



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01180
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2020

Decision

MASON, Paul J., Administrative Judge:

Applicant has provided sufficient mitigating evidence that overcomes the foreign influence security concerns emanating from his in-laws' citizenship and residence in South Korea. Eligibility for access to classified information is granted.

Statement of the Case

On November 8, 2017, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. On November 28, 2018, Applicant provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). Following a preliminary review of Applicant's security clearance eligibility, the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated May 3, 2019, detailing security concerns under the guideline for foreign influence (Guideline B). The action was taken under Executive Order (E.O.) 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 revised adjudicative guidelines (AG) effective June 8, 2017.

Applicant provided his notarized answer on May 16, 2019. The case was assigned to me on August 2, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 30, 2019, for a hearing on November 15, 2019. The hearing was held as scheduled. The Government's two exhibits, (GE) 1 and 2, were entered into evidence without objection. Applicant's exhibits (AE), which were originally admitted without objection as AE A, have been divided into 16 separate exhibits marked as AE A through AE P. One hearing exhibit (HE) 1 (administrative notice) was marked. DOHA received the transcript (Tr.) and the record closed on December 3, 2019.

Administrative Notice

I have taken administrative notice of certain relevant facts related to the Republic of Korea. These facts come from source material published by the Department of State and Department of Justice. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

Rulings on Procedure

In an early portion of the hearing, Applicant was advised that he could object to the entire PSI (GE 2) and the exhibit would not be admitted into evidence. Or he could call a recess and review the exhibit for inaccuracies then testify regarding modifications he sought to make to the exhibit. Applicant chose to make minor modifications in those areas that contained inaccuracies. GE 2 was entered into evidence. During the hearing, Applicant was given an opportunity to address changes he wanted to make to the PSI. (Tr. 13-14, 50)

Findings of Fact

In his May 2019 answer to the SOR, Applicant admitted SOR 1.a and 1.b and denied SOR 1.c, with explanations.

Applicant, 35 years old, was born in the United States (US). In August 2007, he earned a bachelor's degree in economics from an American university. Following a short period of unemployment, he worked six months for an investment bank as a financial services representative, but left after finding the position uninteresting. He was unemployed for a few months before working for a telecommunications company for five months in 2009 until early 2010. He was unemployed for about three months before March 2010, when he began teaching in South Korea. After moving back to the US in February 2017, his South Korean wife gave birth to a daughter in August 2017. Applicant obtained a master's degree in accounting in May 2018. He has been working full time as a staff auditor for an

accounting firm since September 2018. (GE 1 at 13, 15-16, 20-24, 44; GE 2 at 5; Tr. 5-6)

Applicant did not intentionally select South Korea to launch his teaching career in March 2010. He explained that he simply wanted to go to Asia, after studying abroad in one European country and working as an intern in another European country. Shortly after he began teaching in March 2010, he met his South Korean wife who was waitressing part time at a restaurant while attending undergraduate school. In October 2011, they married in South Korea. Attending the wedding were Applicant's parents and his wife's parents, and other family members. (GE 1 at 31; Tr. 31-35)

SOR 1.a – In February 2012, while residing and teaching in South Korea, Applicant was introduced to the Royal Asiatic Society – Korean Branch (RAS), a non-profit organization designed to inform non-Koreans about Korean culture. The organization has never been associated with any government, but has been legally registered by the South Korean Foreign Registry since 2004. From September 2013 to February 2017, Applicant participated voluntarily on the advisory board of the organization. His primary job responsibility was to increase exposure of the RAS to a younger pool of English teachers from the United States, Canada, and the United Kingdom (UK). After he resigned from the advisory board in February 2017, Applicant voluntarily continued to help the president of RAS publish a monthly newsletter about events planned by the organization. These events included lectures, music, and arts and crafts displays. Currently, Applicant has no connection with any activity of the RAS. (GE 1 at 15; GE 2 at 2; Tr. 22, 35-40; May 2019 answer at 3; AE J, K, L, M)

SOR 1.b – Applicant's mother-in-law and father-in-law are citizens and residents of South Korea. His mother-in-law is 58 years old and was a part-time music teacher. For the past 35 years, she has been a housewife. She has no connection to the South Korean government or military. Applicant's mother and father-in-law own and live at an apartment, but occasionally spend time at a rice farm they also own. (GE 1 at 32-34; Tr. 24; May 2019 answer at 2)

Applicant's father-in-law is 58 years old. He is a civil servant, having worked for 25 years as the head of academic affairs of the local office of the juvenile crime prevention bureau. He advises juvenile delinquents and has worked in past with prosecutors on crimes committed by or against juveniles. Applicant's father-in-law has no connection to the South Korean military. (GE 1 at 32-34; Tr. 24, 45)

Applicant and his wife contact their in-laws about once a month on social media platforms. The topics of discussion range from the health to the welfare of family members. Applicant's mother-in-law came to the US in July 2017 to help Applicant's wife prepare for the birth of their daughter the next month. Applicant and his wife visited their in-laws in South Korea for about a month in May 2018. They have not returned since. The in-laws know Applicant is applying for a security clearance and they know he is an accountant. (GE 1 at 32-34; Tr. 29-30, 43-44)

Though unalleged in the SOR, Applicant's wife is a citizen of South Korea. She was born in South Korea in January 1990. While living and working in the country between 2010 and February 2017, Applicant had limited association with his wife's friends because he did not speak the South Korean language very well. His primary interactions were with his coworkers at the public schools where he taught. After his wife immigrated to the US with Applicant in February 2017, she obtained her permanent resident card within six months. She has not found a job in the US, but intends to apply for US citizenship in 2020. (Tr. 41-42)

Applicant's wife has two brothers (unalleged in the SOR) who are citizens and residents of South Korea. One is a chef for a private employer, and the other is a banker. They served in the South Korean military for two years as required by law. One or both of the brothers-in-law came to the US for sightseeing purposes in February 2018 and stayed in a hotel for about three days; they did not lodge with Applicant because he had no extra space to accommodate them. He contacts them about once every six months on social media. They know he is applying for a security clearance, but they have never asked about his job. He provides no financial support to his in-laws. The in-laws may provide some type of present to Applicant's daughter. Applicant's mother, father, and twin brothers are US citizens born in the United States. In the Analysis section below, I intend to consider the unalleged contacts of Applicant to his wife and his two brothers-in-law along with the alleged items in the SOR. (Tr. 28-31, 46-47, 49)

SOR 1.c – When Applicant certified his e-QIP in November 2017, the cited monetary amounts were located in two South Korean bank accounts where Applicant's wife deposited her earnings from her job as a dental hygienist. Applicant explained that the foreign exchange rates were too high to transfer the money at that time. Applicant testified that his wife left the money in the foreign bank accounts because he was funding all the cost of living expenses after their return to the US. She eventually transferred the money to a US bank. Neither Applicant nor his wife have any open bank accounts in South Korea. The only potential financial interest is the farm his in-laws own and occasionally reside. Applicant is unaware of what the inheritance issues will be for the farm. Applicant's US assets are in cash, stocks, or securities. The total cash value of those assets is \$79,333. (GE 1 at 35-40; GE 2 at 4; Tr. 52-56; May 2019 answer to SOR; AE A, B, E, H, O, P)

Character Evidence

During his seven-year teaching career in South Korea from 2010 to February 2017, Applicant earned an annual salary of about \$31,000. He reported this foreign earned income annually to the Internal Revenue Service (IRS) and the state tax authority. Applicant provided extensive details about his foreign and domestic job positions in his November 2017 e-QIP. He readily sought the advice from his current company security officer for guidance before answering several foreign contact and foreign financial interest questions on the security form. Having carefully observed Applicant's demeanor at the hearing, I found his testimony credible and worthy of belief. (AE A at 4; AE A1; AE B; AE D)

Administrative Notice – Republic of Korea

South Korea is a democratic republic governed by a president and one legislative body. The current president was elected in May 2017 in fair and free elections. Since 1950, the United States and South Korea have enjoyed close ties in fighting communism in North Korea and Vietnam. The United States has thousands of military troops stationed in the country and conducts periodic joint-exercises with South Korea. In recent years, the President of the United States and the Supreme Leader of North Korea and have had meetings to improve relations between the two countries. The President of South Korea has made diplomatic overtures to unify the two Koreas.

South Korean espionage and collection activities have resulted in criminal prosecutions. In 1997, a US civilian employee pled guilty to passing classified information to a South Korean naval officer. In 2011, a US federal agency employee pled guilty to exporting US information to South Korea without authorization. In July 2013, an individual from a Middle Eastern country pled guilty to exporting helicopter component parts from the United States to a Middle Eastern country, via South Korea.

South Korea generally respects the human rights of its citizens. However, in 2018, conscientious objectors to military service were detained. Furthermore, some instances of violence and mistreatment of South Korean soldiers were uncovered despite efforts of the government human rights commission to curb such misbehavior.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

- (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 or technology; 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.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. Under AG ¶ 7(b), connections are only disqualifying if they create a potential conflict of interest between Applicant's security duties and his desire to assist his foreign family members. As the guideline indicates, the country in question must be considered.

Even though the record contains no evidence that South Korean government operatives, terrorists, or extremists have attempted to extract sensitive

information from or through Applicant or his foreign in-laws, there is a chance that foreign coercion could be exerted against or through him in the future.

Applicant's family ties to his parents-in-law is sufficient to establish AG ¶ 7(a). AG ¶ 7(b) is applicable because Applicant's connections to his foreign family members create a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help that his family members by providing that information. AG ¶ 7(f) no longer applies as Applicant has closed all South Korean bank accounts and all of Applicant's assets are located in the US.

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's father-in-law is the only family member with a connection to the South Korean government. His job as the head of academic affairs of the juvenile crime prevention bureau presents a potential opportunity for a South Korean government official or intelligence operative to exert pressure through him to Applicant. AG ¶ 8(a) is not established.

Applicant has "deep and longstanding relationships and loyalties in the US." He, his parents and brothers are US citizens. His two-year old daughter was born in the US. He earned his undergraduate and master's degree in the US. He has lived in the US for 28 years of his life. He has been a full-time staff auditor for a US accounting firm since September 2018. In 2020, his wife intends to commence the naturalization process to become a US citizen. All of Applicant's financial interests are located in the US. AG ¶ 8(b) applies.

Applicant's communication with his parents-in-law is once a month on social media. The last time he saw both in-laws face-to-face was in May 2018. Applicant's communication with his two brothers-in-law is twice a year. The last time he saw either of them was in February 2018. Security concerns under AG ¶ 8(c) may be mitigated when the communication with foreign family members is so casual and infrequent that it does not create a risk of foreign influence. However, there is a rebuttable presumption that contacts with a foreign family member are not casual. AG ¶ 8 (c) does not apply to either his parents-in-law. Applicant's past involvement in RAS raises no current security concerns because he has severed all connections to the organization.

Whole-Person Concept

I have examined the evidence under the foreign influence guideline in the context of the nine general factors of the whole-person concept 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 classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant and his daughter are US citizens. His wife plans to become a US citizen in 2020. Applicant obtained his undergraduate degree in 2007 and master's degree in accounting in May 2018. Both degrees were earned from US universities. He has been employed full time as a licensed CPA for a reputable US accounting firm. Considering the evidence from an overall commonsense point of view, specifically his favorable demeanor and honesty demonstrated at the hearing, Applicant has met his burden of mitigating the security concerns based on the foreign influence guideline.

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.c:	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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge