



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



In the matter of:)
)
-----) ISCR Case No. 20-01046
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated foreign influence concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On August 18, 2020, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated), and elected to have her case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on November 5, 2020, and interposed no objections to the materials in the FORM. She did not respond to the FORM.

Summary of Pleadings

Under Guideline B, Applicant allegedly has a mother and father who are citizens and residents of South Korea. Allegedly, she also has a friend who is a citizen and resident of South Korea who currently serves as an intern for the South Korean government.

In her response to the SOR, Applicant admitted the allegations of the SOR with explanations. She claimed she communicates with her parents via text almost daily, but is always careful to avoid discussions over her job or security clearance. She claimed that most of her conversations with her parents are about their personal lives, such as weekend or evening plans and updates on other family members.

Applicant provided background information about how she met her friend and how her friend's job as an intern for the South Korea government is a temporary one. Applicant further claimed that she exchanges texts with her friend several times a week, but rarely talks about their respective jobs.

Applicant further claimed that her friend is more familiar with English than Korean and will likely pursue a job in the United States. And, she claimed that she would never permit her family's South Korean citizenship status to have any influence on her ability to remove herself from any conversations regarding her job or ability to report anyone's attempts to elicit information from her.

Findings of Fact

Applicant is a 24-year-old software engineer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born in the United States and holds U.S. citizenship by birth. (Items 4 and 6) She moved to South Korea in January 2004 and lived with her parents there until August 2014. While residing in South Korea, she earned a high school diploma in May 2014, but never acquired citizenship from South Korea. (Items 4 and 6)

Applicant returned to the United States in August 2014 to attend a respected U.S. university and earned a bachelor's degree in August 2018. She reported no military service in either the United States or South Korea. (Items 4 and 6) She has never married and has no children. Since July 2020, Applicant has been employed by her current employer as a software engineer. (Items 4 and 6)

Applicant's parents are both citizens and residents of South Korea. (Items 3-4 and 6) She exchanges texts with her family almost daily, but never discusses her job or security clearance application with them. (Items 3-4 and 6) Applicant assured that she would never permit her family and their South Korean citizenship status to affect or have any influence on her ability to remove herself from any conversations regarding her job or ability to report anyone's attempts to elicit information from her. Applicant has one sibling, a sister, who is a dual citizen of the United States and South Korea. She resides in the United States. (Items 3-4 and 6)

Addressing her relationship with her friend (a citizen and resident of South Korea), who currently is an intern with the South Korean government, Applicant explained that she and her friend text each other several times a week, but rarely talk about their work due to differences in their backgrounds and occupations. (Items 3 and 6)

Most of her conversations with her South Korean friend involve updates of how they are managing their personal lives, their hobbies, and news about their personal friends. Applicant does not believe her friend has any specific plans about her future (especially in light of the ongoing pandemic), but strongly believes her friend will pursue a job in the United States. (Items 3 and 6)

Country status of South Korea

South Korea is a stable democratic republic and U.S. ally. The United States and South Korea, aka the Republic of Korea (RoK), established diplomatic relations under the 1882 Treaty of Peace, Commerce, and Navigation. See *U.S. Relations with the Republic of South Korea, Bilateral Relations Fact Sheet*, U.S. Dept. of State (September 2020). U.S.-South Korean bilateral relations continued until 1905 when Japan assumed direction over South Korea's foreign affairs. (*id.*) Beginning in 1910, Japan began a 35-year period of colonial rule over South Korea.

Following Japan's surrender in 1945, the Korean peninsula was divided at the 38th parallel into two occupation zones: one with the United States in the South and another with the Democratic People's Republic of Korea in the North. See *U.S. Relations with the Republic of South Korea, Bilateral Relations Fact Sheet, supra*; *U.S. Department of State: Diplomacy in Action, South Korea*, at 2-5, U.S., Dept. of State (April 2012) On June 25, 1950, North Korean forces invaded the RoK.

Responding to the North Korean invasion, a UN coalition of 16 countries mounted a defense. See *id.*, at 2-3. China, in turn, entered the conflict on behalf of North Korea later in the year. With a stalemate ensuing between principals of each side, an armistice was concluded in July 1953. While a peace treaty has never been signed, the United States and the RoK signed a mutual defense treaty the same year, which has served as the foundation of the enduring alliance that the United States and the RoK enjoy today.

In the decades after the war, the RoK experienced political turmoil while developing a vocal civil society in responding to authoritarian ruling authority. See *U.S. Relations with the Republic of South Korea, Bilateral Relations Fact Sheet, supra, U.S. Department of State: Diplomacy in Action, South Korea*, at 2-5, *supra*. Pro-democracy activities intensified in the 1980s, fueled by the rising Gwangju Democratization Movement in May 1980. (*id.*) This movement contributed to the RoK's transition to the strengthened democracy the RoK enjoys today. See *the World Factbook: South Korea*, Central Intelligence Agency (May 2020).

Human rights are generally respected by the RoK government. See *Republic of Korea 2019 Human rights Report*, U.S. Dept. of State (March 2020) Significant human rights issues extant in the RoK include the existence of criminal libel laws; laws criminalizing consensual same-sex conduct between adults in the military; corruption; and other laws limiting freedom of expression and internet access. See *id.* Addressing government corruption problems, the RoK government has taken steps to prosecute officials who committed abuses. (*id.*) There have no published reports that the government or its agents committed arbitrary or unlawful killings.

While the United States and the RoK share a long history of cooperation based on mutual trust, shared values of democracy, human rights, the rule of law, common strategic interests, and an enduring friendship, the two countries have encountered differences in recent years in their diplomatic approaches towards North Korea. See *U.S. Relations with the Republic of Korea, Bilateral Relations Fact Sheet, supra*, at 2-4. For instance, the United States has been more assertive in its attempts to curtail North Korea's development of advanced military technology, such as ballistic missiles and nuclear weapons. By contrast, the RoK has placed more emphasis on the unification of North and South Korea, despite its being victimized by North Korean attacks

Still, the United States continues to maintain substantial military personnel in the RoK in support of its commitment to the RoK under the U.S.-RoK Mutual Defense Treaty of 1953 for the purpose of helping the RoK defend itself against external aggression. (*id.*, at 2) And, in 2020, the two countries commemorated the 67th anniversary of the U.S.-RoK Alliance and the 70th anniversary of the outbreak of the Korean War. See *U.S. Relations with the Republic of South Korea, Bilateral Relations Fact Sheet, supra, U.S. Department of State: Diplomacy in Action, South Korea*, at 2-5, *supra*.

Industrial espionage remains a high-profile concern relating to RoK and RoK companies. See Request for Administrative Notice, *supra*, at 2-5 (citing numerous industrial espionage cases pursued by the U.S. Department of Justice (DoJ) between 2010 and 2016, grounded in the national security interests of both countries). The RoK has a lengthy history of collecting protected U.S. information from Government and industrial proprietary sources. Recurrently over the years, the RoK has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws.

Most importantly, though, there are no case examples of RoK officials or entities in the RoK coercing U.S. citizens through contacts or friends that reside in the RoK to

commit crimes against the United States. And, based on the historically close bilateral relationship between the United States and the RoK covering interests vital to both countries, risks that the RoK would do anything to jeopardize this relationship by coercing an applicant to obtain classified or sensitive information from the DoD are minimal.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern 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 protected classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over the status of Applicant's parents, who are citizens and residents of the RoK, a country historically an ally of the United States with strong bilateral military and economic ties to the United States. While an economic and military ally of the United States, the RoK also has the reputation of being one of the most aggressive collectors of economic information and technology in the United States.

Department Counsel urges security concerns over risks that the citizenship/residence status of Applicant's parents and friend in the RoK might be subject to undue influence by RoK government authorities. Because of the status of her parents and friend in the RoK, these individuals present potentially potential heightened security risks covered by disqualifying conditions (DCs) ¶¶ 7(a) of the AGs for foreign influence: "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 DC 7(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," apply to Applicant's situation.

Little is known about the backgrounds of Applicant's parents. All that is known about these immediate family members is that they are citizens and residents of the RoK and that Applicant communicates with them regularly without discussing her work or security clearance status. Nothing material is known about whether either or both of these family members have any associations or ties to RoK government officials interested in collecting classified or sensitive government information or proprietary materials in the United States.

While more is known about Applicant's friend who is currently an intern for the RoK, this information is still very limited. Past reported collection activities by RoK government officials historically have been a major source of security concern about the exposure of relatives and friends holding citizenship and residence status in the RoK to

pressure, coercion, or influence by RoK officials interested in acquiring sensitive technology from U.S. applicants or holders of U.S. security clearances.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens and residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. The geopolitical aims and policies of the particular foreign regime involved do matter. See ISCR Case No. 08-02864 at 5 (App. Bd. May 19, 2004) Further, even friendly nations can have profound disagreements with the United States over major policy initiatives vital to the security interests of the respective countries, especially in the economic, scientific, and technical fields. See, *e.g.*, ISCR Case No. 02-22461 at 11-12 (App. Bd. Oct. 27, 2005)(citing ISCR Case no. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)(discussing Taiwan).

While there is no evidence of record that intelligence operatives, criminals or even terrorists from the RoK seek or have sought classified or economic information from or through Applicant, such attempts cannot be ruled out *pro forma*. Before discounting any material risks of foreign influence being brought to bear on Applicant, either directly or indirectly through her South Korean parents and friend, considerations must take account of the RoK's human rights record, its intelligence-gathering history, and the nature of the RoK's government relationship with the United States. See ISCR Case No. 16-02435 at 3 (App. Bd. May 15, 2018)(citing ISCR Case No. 15-00528 at 3 March 13, 2017)

Mere close ties with a foreign national residing in a foreign country is not enough, as a matter of law, however, to disqualify an applicant from holding a security clearance. Nonetheless, the presence of close family members and friends residing in a foreign country with citizenship status in that country can create the potential for foreign influence, depending on the circumstances affecting the status of that family member and friend, that could potentially result in the compromise of classified or sensitive information. See ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Mitigation is available to Applicant. Because of her demonstrated deep understandings and loyalties to the United States through her educational achievements at a respected U.S. university and established professional relationship with her U.S. employer, she can be expected to prioritize her responsibilities for protecting classified and sensitive information in her possession or under her control over any private interest she shares with her parents and friend should a potential conflict ever emerge. MC ¶ 8(b), "there is no conflict of interests, 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," of the mitigating conditions covered by Guideline B applies to the developed facts of record.

Taking account of all of the circumstances surrounding Applicant's evidenced relationships with her parents and friend (an RoK citizen and resident who is an intern

with the RoK government), conclusions are warranted that Applicant's relationships with foreign nationals from the RoK, while close and frequent, are far less significant than her connections to the United States. Her U.S. citizenship by birth, her U.S. residence, her advanced U.S. schooling, and her current U.S. employment conflate to provide a sound basis for making safe assessments that any heightened risks Applicant might face in the foreseeable future as the result of her relationships with her parents and friend are minimal.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her relationships with her parents and friend, all citizens and residents of the RoK, are fully compatible with minimum standards for holding a security clearance. In Applicant's case, she has provided good probative evidence of her strong U.S. ties and devotion to the United States. With her demonstrated loyalty to the United States, she can be expected to prioritize U.S. national security interests should she ever be confronted by RoK government officials seeking to exert pressure, coercion, or influence on her, or through her parents or friend, to obtain classified or sensitive information from her.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated. Eligibility for 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:

Guideline B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 1.a-1-b:	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.

Roger C. Wesley
Administrative Judge