



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



In the matter of:)	
)	
)	ISCR Case No. 21-02336
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Brian A. Pristera, Esquire

December 20, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on July 25, 2018. On April 1, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence) and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense (DOD) after June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 25, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 16, 2022. The case was assigned to me on September 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on October 11, 2022. The case was heard on November 3, 2022. DOHA received the transcript (Tr.) of the hearing on November 10, 2022.

The Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. I marked as Applicant's Exhibits (AE) A and B the two documents Applicant attached to his Answer, and I marked as AE C an additional document his attorney submitted during the hearing. (Tr. at 9-13, 61,)

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the Republic of Korea (South Korea). Department Counsel provided a five-page summary of those facts, supported by nine U.S. Government documents pertaining to South Korea, identified as Administrative Notice - I (AN - I). The documents provide elaboration and context for the factual summary. I take administrative notice of the facts included in the Government reports. These facts are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. at 11.)

Findings of Fact

Applicant is 59 years old and was born in South Korea. He was adopted by relatives in the United States when he was four years old and became a naturalized U.S. citizen at age eight. His adoptive father was a member of the U.S. Army, and Applicant moved with his family to various locations around the world. He received his high school diploma in 1981 at an American high school in Germany. Applicant enlisted in the U.S. Army in 1984 at the age of 21. He honorably retired in 2006 with the rank of sergeant first class. (Answer at 3; Tr. at 17-23, 40; GE 1 at 1-2, 17-20, 21-25; GE 2 at 9, 16; GE 3 at 8-10.)

Applicant married in 1984, but that marriage ended in divorce in 2007. Later the same year he married his current wife. Both wives were born in South Korea. His first wife became a naturalized U.S. citizen. Applicant and his first wife had one child, who is now 27 years old. His second wife is a citizen of South Korea. Applicant asserts that his wife is in the process of obtaining resident alien status in the U.S., though as of the hearing date, she has not completed the process. Applicant has two children with his second wife, ages 12 and 14. All three of his children were born in South Korea and are U.S. citizens. His two youngest children are also South Korean citizens by operation of South Korean law. They reside with their parents in South Korea, and they attend DOD schools. His

oldest child received a college degree in the United States and presently lives and works in the U.S. Applicant intends on having his two youngest children attend college in the United States, specifically in the State of Texas. He and his wife plan to retire in Texas as well. He is also considering moving to Texas earlier and working at his current job remotely from Texas. (Answer at 3; Tr. at 17-23, 43-44; GE 1 at 1-2, 17-20, 21-25, 43; GE 2 at 9, 16; GE 3 at 8-10.)

Applicant first received a Secret security clearance in 1984 in connection with his military service. His most recent reinvestigation was in 2011. He has worked in South Korea for two U.S. defense contractors since his discharge from the Army (2006-2017 and 2017 to present). He is currently working as a manager. He seeks to receive eligibility for a Top Secret security clearance in connection with his employment. He has resided in South Korea since at least 2006. (Tr. at 29-31; GE 1 at 12-13; GE 2 at 10-11; GE 3 at 8-9.)

Paragraph 1 (Guideline B, Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign connections that may create a security concern. The SOR alleges in three subparagraphs that Applicant's wife and her parents are citizens and residents of South Korea. In his Answer Applicant admitted these factual allegations, denied that the facts raise security concerns, and provided detailed explanations.

Applicant's wife was born in South Korea in 1975. Her father and mother were born in South Korea in 1945. Her father served in the South Korean Army for 25 years and retired with the rank of lieutenant colonel. He then worked for the Korean Institute for Defense Analysis, or KIDA, for about ten years until his retirement in 2006. Applicant described the KIDA as a think tank for the South Korean Army. Applicant's father-in-law is presently 77 years old. His mother-in-law is a retired nurse. For a period during the Vietnam War, she served as a nurse in the South Korean Army and was deployed to Vietnam. She later worked as a nurse in a civilian hospital in South Korea. Applicant has regular contact with his wife's parents over the phone, and his family visits his in-laws every couple of months and during Korean holidays. His parents-in-law live about three hours from Applicant's residence in South Korea. (Answer at 6; Tr. at 23-29, 58-59; GE 3 at 11.)

Applicant owns no property in South Korea and has no expectation that his wife will inherit anything from her parents. Applicant's sole sources of income are his salary from his U.S. DOD contractor, his U.S. military retirement payments, and his Veteran's Administration disability benefits. He is financially secure. His parents-in-law are financially independent. He provides no financial support to them. (Tr. at 27-32.)

South Korea

Applicant has contacts with South Korea. Accordingly, it is appropriate to look at the current conditions in that country. South Korea is a constitutional democracy; whose authorities generally respect the human rights of its citizens. Human rights concerns exist, particularly in the areas of restrictions of freedom of expression and the government's responses to violence against women. Civilian authorities maintain effective control over the country's security forces, and the government utilizes effective mechanisms to investigate and punish any abuses of power. South Korea and companies in South Korea are active collectors of U.S. industrial information and engage in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the South Korean government seeks to exert pressure on U.S. citizens to collect sensitive information. Finally, a U.S. Government website describes the close and continuing relationship between the U.S. military and South Korea and its military. Large numbers of U.S. ground, air, sea, and special operations forces cooperate jointly with the South Korean military under a common command to protect the security of South Korea. (AN-I; www.usfk.mil.)

Paragraph 2 (Guideline F, Financial Considerations)

The SOR alleges that Applicant failed to file his Federal income tax returns for tax years (TY) 2017, 2018, and 2019, as required. In his Answer Applicant denies the allegations though he admits that he failed to request extensions of time to file. He provided IRS tax account transcripts for the three years in dispute. The evidence reflects that Applicant filed his TY 2017 tax return on April 22, 2019, over one year late. The Government issued a refund of \$4,200 to Applicant. In October 2020 the IRS prepared a substitute tax return due to Applicant's failure to file his TY 2018 return on time. He ultimately filed a return in about February 2021. Applicant had a negative balance of \$1,416 for this tax year, indicating that he owed no additional taxes. Applicant also filed his TY 2019 tax return late. The account transcript reflects a filing date of June 2021. The IRS issued a refund to Applicant for that tax year in the amount of \$2,468. (AE A through AE C.)

At the hearing Applicant blamed his untimely filing of his Federal tax returns on his ignorance and neglect. He also said that he experienced difficulties receiving the requisite paperwork from his employer after he changed employers in 2017 and with his wife's tax identification number (TIN), which had expired. The renewal of her TIN required documentation and he had difficulty communicating with the IRS. Also, his job change required that he relocate his family within South Korea, and he had to withdraw funds from his 401k account to finance the relocation. That withdrawal further complicated his tax returns and delayed his preparation of the returns. Based upon his past experience with his taxes, he knew that he did not owe the IRS any additional taxes, so he did not believe a delay in filing would be a problem. He admitted that he was ignorant of the legal requirements relating to the timely filing of tax returns. He had no intention not to file his returns, and in fact, he did file his returns. (Tr. at 33-39, 62.)

In late Spring 2022, Applicant retained counsel in connection with the instant security clearance proceeding. His counsel advised him of the importance of timely filing of his tax returns, especially as a holder of a security clearance. Applicant now fully appreciates the importance of timely filing his tax returns. He intends to file his future tax returns as required by law. As of the close of the record, Applicant had filed all the required Federal income tax returns and did not owe any Federal taxes. (Tr. at 49-57, 59-60.)

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as

to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline B, Foreign Influence)

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

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. Three are arguably 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; and

(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.

Applicant lives with his wife in South Korea. His wife's parents are also citizens and residents of South Korea. Applicant's father-in-law served as an officer in the South Korean Army and worked for a South Korean national security institute thereafter until his retirement in 2006. Applicant has daily contact with his wife and regular contact with his wife's parents. The evidence is sufficient to raise the above disqualifying conditions.

South Korea and South Korean companies are active collectors of U.S. technology. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See, e.g.,* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(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 is a U.S. citizen who was raised by U.S. parents following his adoption as a young child. His three children are also American citizens. His oldest child resides and works in the United States. Applicant intends to have his two younger children attend college in the U.S. Applicant and his wife also intend to retire in the United States. Applicant served in the Army for about 22 years and has worked for DOD contractors since his discharge from the military in 2006. He has successfully held a security clearance since 1984. AG ¶ 8(c) is not established because Applicant's foreign contacts are frequent and are not casual. On the other hand, Applicant's personal, professional, and family connections in the United States strongly outweigh his connections to South

Korea. There is no conflict of interest. AG ¶¶ 8(a) and (b) apply and fully mitigate the security concerns raised by the facts of this case. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to file his Federal income tax returns, as required, for TYs 2017 through 2019. These facts establish the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's delay in filing his TY 2017 through 2019 tax returns was caused by his lack of understanding of his legal obligations. He believed that he had overpaid his taxes

and was due refunds in each year, which proved to be correct. He also encountered some practical difficulties in receiving the necessary documentation and the renewal of his wife's TIN. He has received counseling for the problem from his attorney, a legitimate and credible source. Applicant has filed all his Federal income tax returns and owed no Federal taxes through TY 2021. There are clear indications that Applicant will timely file his tax returns in the future. The above Guideline F mitigating conditions fully apply. Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns raised by his wife's citizenship and residency in South Korea as well as the citizenship and residency of her parents in that country. Applicant's lifelong commitment to and experiences with the U.S. military, even as a child living overseas as an Army dependent, demonstrate his strong ties and interests in the United States. Also, he has learned that his casual attitude about complying with the Federal tax-filing requirements was inappropriate and will not be repeated. Overall, the record evidence does not create any questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge