



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01889
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Tara Karoian, Esquire, Department Counsel

For Applicant:  
*Pro se*

October 6, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

The Government did not establish that Applicant deliberately falsified his security clearance application. Applicant did not mitigate the for foreign influence security concerns. National security eligibility for access to classified or sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on September 27, 2021. On January 13, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B and E. The DCSA CAS acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 6, 2023, (Answer) and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was ready to proceed on April 26, 2023. The case was assigned to me on May 1, 2023. DOHA issued a Notice of Hearing on June 21, 2023, scheduling the case to be heard via video teleconference on July 24, 2023.

I convened the hearing as scheduled. Department Counsel offered Government Exhibits (GE) 1 and 2, which were admitted without objection. She also provided a Request for Administrative Notice (AN), which is discussed below. Applicant and three character witnesses testified. Applicant offered no documentary evidence. (Tr. at 17-20, 93-94.)

I kept the record open until August 4, 2023, to give Department Counsel the opportunity to brief the issue of whether the country conditions of South Korea raise a heightened risk security concern. On July 25, 2023, Department Counsel submitted the Government's position on the heightened-risk issue summarizing certain facts set forth in AN. I marked her submission as Hearing Exhibit I. On the same day, Applicant submitted a reply in which he restated his position regarding his employment for a DoD contractor and his ties to the United States. I marked his submission as Hearing Exhibit II. DOHA received the transcript of the hearing (Tr.) on July 31, 2023.

### **Procedural Ruling**

Department Counsel requested in its AN that I take administrative notice of certain facts relating to the Republic of Korea (South Korea). She provided a six-page summary of those facts, supported by three U.S. Government documents pertaining to South Korea. The documents elaborate upon and provide context for the factual summary set forth in the AN. I take administrative notice of certain facts included in the Government documents attached to AN. These facts are limited to matters of general knowledge, not subject to reasonable dispute. They are set forth in the Findings of Fact, below. (Tr. at 14; AN.)

### **Findings of Fact**

Applicant was born in the South Korea in 1972. His parents, now deceased, were South Korean citizens. He graduated from high school in 1990 in South Korea. He met his future wife in 1990, while in high school. He has had no further formal education in South Korea, but he took some college courses in the United States. Applicant's father immigrated to the United States and initiated Applicant's immigration papers. He entered the United States in 1992, and he promised his wife that he would return to South Korea to be with her. He enlisted in the U.S. Army in January 1994. His MOS was aviation. He served in the United States until November 1995 when he was reassigned to a position

he requested in South Korea. He explained that the Army needed him to serve in South Korea. In 1996, he married his high school girlfriend, a South Korean citizen and resident, in South Korea. They have three children who were born in South Korea in 1999 and 2004 (twins). Applicant wrote in the e-QIP that his children are U.S. citizens. In April 2001, Applicant was honorably discharged from the Army. He has lived in South Korea since then. In 2011 he began working as an aircraft mechanic for a DoD contractor in South Korea. He has not previously held a security clearance. He is seeking national security eligibility in connection with his employment. (Tr. at 24-26, 32-35, 43-45, 50-51, 56; 79; GE 1 at 7-19, 24-27, 35.)

For a period, Applicant returned to the United States for an Army Medical Board due to a back injury, but then he returned to continue his service in South Korea in about 1998 to be with his wife. Applicant became a U.S. citizen in 2000. He claimed in the e-QIP that he is not a dual citizen of the U.S. and South Korea, but rather is only a U.S citizen. He claimed that he signed a paper to renounce his South Korean citizenship. He and his wife has traveled to the United States for three short periods so that she may qualify for a resident alien card. (Tr. at 46-49; GE 1 at 8-9.)

Applicant's work commute takes about 90 minutes to two hours each way. He gets up at 4:30 am and returns home at 6:30 or 7:00 pm. He describes himself as "just a normal daddy, 51 years old, overweight, and losing hair." As a result of his work and commuting schedule, he does not socialize with anyone at work. He admitted that, with English as his secondary language, he has difficulty with certain words and struggles sometimes with an English dictionary. (Tr. at 26-27.)

Applicant commented that one reason he would be reluctant to leave South Korea and reside in the United States is that there is no gun violence in South Korea, whereas he believes that the United States has significant safety issues with guns. He also noted that he has no family other than his oldest son in the United States. He testified that at his age, it would be difficult for him to adjust to living in a different country. (Tr. at 85.)

### **Paragraph 1 - Guideline B, Foreign Influence**

In his Answer, Applicant admitted without explanation each of the allegations in this paragraph of the SOR. His testimony regarding the allegations was as follows:

SOR ¶ 1.a. Applicant, Resident of South Korea Since at least 2001. Applicant has only returned to the United States since 1995 on four brief occasions. (Tr. at 43-49.)

SOR ¶ 1.b. Applicant's Wife, Citizen and Resident of South Korea. Applicant's wife is from a rural part of South Korea. She is a housewife and has never worked outside of the home. (Tr. at 26, 55; GE 1 at 9-12, 17-19.)

SOR ¶ 1.c. Applicant's Children, Residents of South Korea. Applicant's oldest child was educated in South Korean and now resides and is employed in the United States.

His twins are students in a university in South Korea, and they reside with Applicant and his wife. (Tr. at 52-55; GE 1 at 24-27.)

SOR ¶ 1.d Applicant's Mother-in-Law, a Citizen and Resident of South Korea. Applicant's mother-in-law is 85 years old and lives by herself. His father-in-law is deceased. Applicant speaks with his mother-in-law by telephone every other month and sees her in person once a year. His wife speaks with her mother almost daily. His mother-in-law lives about a four-hour drive from Applicant's home. (Tr. at 26, 55, 91-92; GE 1 at 27-29.)

SOR ¶ 1.e South Korean Bank Account of Applicant's Wife. Applicant has two U.S. bank accounts. He has one account in the United States. He has a second bank account through DoD, which is overseas. His paycheck is deposited in the DoD bank account as U.S. dollars. He withdraws the deposit as cash. His wife then converts the U.S. dollars to South Korea's currency and deposits the cash in her South Korean bank account. His wife also manages their household finances. The funds in his wife's account represent almost all of their assets. (Tr. at 57-59, 63.)

Applicant also has a South Korean bank account, but he has limited funds in that account and intends to close it. He opened this account before he became a U.S. citizen. He has no retirement accounts, but he does pay U.S. Social Security taxes. He does not own his home in South Korea. (Tr. at 59-62.)

## **Paragraph 2 – Guideline E, Personal Conduct**

SOR ¶ 2.a Falsification in e-QIP for Failure to Disclose South Korean Bank Account of Applicant's Wife. Section 20A of the e-QIP asks, "Have you, your spouse, or legally recognized civil union/domestic partner, cohabitant, or dependent children **EVER** had any foreign financial interests that someone controlled on your behalf?" (Emphasis in original.) Applicant incorrectly answered "No" to this question. The Government alleged in the SOR that his negative response was a deliberate falsification. In the Answer, Applicant admitted this allegation with an explanation. He wrote that he did not answer the e-QIP question correctly because he did not read the question carefully. He further explained that a South Korean bank account was necessary in his country because U.S. credit cards and U.S. dollars are not acceptable forms of payments for any transaction in the country. (Answer at 3.)

At the hearing, Applicant testified that he did not intend to omit the information about the bank account. He believes that he did not read the entire question and misunderstood what the question was seeking. When the investigator who conducted Applicant's background interview explained the question to Applicant, he understood and voluntarily disclosed his wife's South Korean bank account. (Tr. at 76-79, 84.)

## **Character Evidence**

Three of Applicant's long-time colleagues, including two supervisors, testified as character witnesses. Applicant's immediate supervisor has known Applicant for about 15 years. They have a professional and a personal relationship. He believes that Applicant is trustworthy and reliable. He does not believe that Applicant has any conflicting loyalties between the United States and South Korea. Applicant's higher-level supervisor testified that he has known Applicant for about 15 years. They also have a professional and a personal relationship. He testified that, although Applicant lives in South Korea, his allegiance is to the United States. A third witness, a work colleague, stated that he has known Applicant for about 15 years. He testified that Applicant is "an outstanding guy" and is dedicated and trustworthy. (Tr. at 35-42, 65-69, 79-83.)

## **South Korea**

Applicant and his wife have significant contact with South Korea. Accordingly, it is appropriate to look at the current conditions in that country. North Korea and South Korea remain technically at war following a 1953 armistice agreement. Bilateral tensions remain moderately high and have escalated to limited confrontations in the past. In the last decade, provocations by North Korea have included ballistic missile tests, nuclear tests, and attacks on South Korea-held territory. In 2022 North Korea has test-launched almost 40 missiles. Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies. North Korean actors have increased their cyber capabilities and efforts in targeting South Korea in recent years.

South Korea is overwhelmingly pro-United States. There are approximately 28,500 U.S. troops stationed in the country. Nevertheless, there have been periods of increased anti-U.S. sentiment due to high-profile accidents and crimes committed by U.S. service members. Some incidents have resulted in anti-U.S. protest activity.

## **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.

Guideline B sets forth nine conditions in AG ¶ 7 that could raise security concerns and may be disqualifying in this case. The following four conditions 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;
- (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;
- (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.

I note that 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 is a citizen of 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 at 3 (App. Bd. Feb. 8, 2001).

In this case, Applicant not only has a wife and mother-in-law who are citizens and residents of South Korea, he also has resided there for most of his life. He also has twin children who are U.S. citizens, but who reside in South Korea with Applicant and his wife. His wife also has a South Korean bank account that holds most of Applicant's assets. In addition, the facts of which I have taken administrative notice regarding the country conditions in South Korea also establish that Applicant's foreign contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. This evidence is sufficient to establish the above potentially disqualifying conditions and shifts the burden of persuasion to Applicant to mitigate the security concerns.

AG ¶ 8 provides six conditions that could mitigate security concerns under Guideline B, including the following four conditions, which 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; and

(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;

(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; 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.

None of the above conditions have been established. Applicant currently faces a realistic risk of being placed in a position of having to choose between foreign individuals and government and the interests of the United States. His loyalties to his wife and family in South Korea are significant and his ties to the United States are limited by the brief periods of time he has lived in the United States and had the opportunity to develop relationships and loyalties there. It is not established that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant's contacts and communications with foreign citizens are neither casual nor infrequent. Applicant's wife's South Korean bank account is routine in nature; however, it represents the nearly the entirety of their funds, such that it could be used effectively to influence, manipulate, or pressure Applicant.

## **Paragraph 2 - Guideline E, Personal Contact**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect



classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes the following condition that may raise security concerns and potentially be disqualifying in this case.

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The Government has not met its burden to prove that Applicant's omission in the e-QIP of his wife's South Korean bank account in his response to a question about his family's foreign financial interests was deliberate. Applicant convincingly established that he misunderstood the question due to his poor English language skills, particularly his inability to carefully read and comprehend the lengthy form in English. Most of his education was in South Korean schools and his use of the English language is limited to his work activities. The Guideline E SOR allegation is resolved in favor of 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. I have given significant weight to Applicant's desire as a 20-year-old to immigrate to the United States and to enlist and serve in the U.S. Army. I have also weighed his many years of service working for a DoD

contractor using his skills as an aviation mechanic in service of the U.S. military. I have also considered the highly supportive testimony of his superiors and a co-worker. However, Applicant's connections to South Korea are extensive. He admitted that he promised his then-girlfriend when he immigrated to the U.S. seeking his U.S. citizenship that he would return to be with her. Fortunately for him and his future wife, the U.S. Army had a need for his skills in South Korea, and he was able to return to South Korea as a soldier. At this time, his only connection with the United States is his oldest son, who lives and works there. Applicant has not carried his burden of persuasion to mitigate the security concerns raised by his personal and family connections to South Korea. Overall, the record evidence raises significant questions and doubts as to Applicant's suitability for national security eligibility.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge