

KEYWORD: Foreign Influence

DIGEST: This 30-year-old software designer retains significant close ties to family members in his native South Korea. Applicant came to the U.S. in the early 1990s, and became a U.S. citizen in October 2002. Despite his long residence in the U.S., he retains close ties to South Korea, specifically close family members. On balance, he has not adequately mitigated the risks indicated by the Government's evidence. Clearance is denied.

CASENO: 04-04419.h1

DATE: 01/05/2007

DATE: January 5, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 04-04419
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT
D. Michael Lyles, Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

This 30-year-old software designer retains significant close ties to family members in his native South Korea. Applicant came to the U.S. in the early 1990s, and became a U.S. citizen in October 2002. Despite his long residence in the U.S., he retains close ties to South Korea, specifically close family members. On balance, he has not adequately mitigated the risks indicated by the Government's evidence. Clearance is denied.

STATEMENT OF THE CASE

On January 26, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On February 23, 2006 and March 23, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record; i.e., without a hearing. On August 11, 2006, Department Counsel issued a File of Relevant Material (FORM). Applicant was instructed that any response to the FORM was due within 30 days of receipt. In this case any response was due by September 16, 2006. Applicant filed a timely response. The matter was assigned to me for decision on September 20, 2006.

FINDINGS OF FACT

Applicant is a 29-year-old software engineer for a defense contractor. The SOR contains seven (7) allegations under Guideline B (Foreign Influence). Applicant admits all seven allegations. All admissions are accepted and incorporated herein as Findings of Fact. After considering the totality of the evidence, I make the following FINDINGS OF FACT as to the status of each SOR allegation.

Applicant came to the United States in 1991, at age 14, to live with his mother, who had come in 1987. Applicant considers himself to be assimilated into American society and has no cultural ties to South Korea.

1.a. Applicant's father is a citizen and resident of South Korea. Applicant calls him about once a month. He works for a moving company.

1.b. As of January 2004, his sister was a citizen and resident of South Korea. She was completing school and he expected her to return to the U.S., and become a citizen.

1.c. His grandmother is a citizen and resident of South Korea.

1.d. His aunt and uncle are citizens and residents of South Korea. As of January 2004, she was in the U.S., learning English, and accompanied by her two children (Item 7 at page 3). She intended to return to South Korea, but there is no evidence she had done so.

1.e. His cousin is a citizen and resident of South Korea. As of January 2004, he was a student. They were in contact once or twice a month by internet.

1.f. Applicant no longer maintains a relationship with his with three friends who are all citizens and residents of South Korea.

1.g. Applicant traveled to South Korea in at least 1999/2000, 2001, and 2003. The first trip was to visit an ill grandmother in Seoul (18 days). The second was a visit to his family in Seoul (three weeks), and the last trip (three weeks) was with his South Korean-born, naturalized American fiancée. They visited with both their families in the Seoul area. They also visited friends and his family's cemetery. The first two trips were paid for by his parents and he paid for the third trip. Applicant does not consider himself close to his father or other foreign relatives and friends (Item 7). He "rarely communicates with his father and grandmother in South Korea" (Response to FORM). Overall, however, the evidence compels the conclusion that Applicant does have close ties of affection and obligation to individuals who are citizens of and reside in a foreign country, to wit, South Korea.

Applicant does not consider himself to be a dual citizen with South Korea and has taken steps to formally renounce his South Korean citizenship and surrender his South Korean passport. He has no personal foreign financial assets, investments, or interests.

Applicant's wife is a South Korean-born, naturalized U.S. citizens. She, too, has family in South Korea.

Applicant understands his security obligations to the United States, He avers he is not susceptible to improper contacts by any source (Item 4).

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security

clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the SOR.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is a 29-year-old employee of a defense contractor. In his response to the SOR, Applicant admits all of the allegations. In his response to the FORM, Applicant adds what he considers to be mitigating information.

Applicant came to the United States at age 14 and is now 29. He grew up in American society and considers himself to be an American only. There is nothing in the record to suggest otherwise. At the same time, as the FORM documents, Applicant has longstanding and close ties to South Korea through a variety of relatives, both his and his fiancée's and those in the U.S. and South Korea. There is no question of Applicant's loyalty to the United States, but there is also no question that the potential exists that Applicant may be placed in a position where he may be forced to choose between his affection for the United States and his affection for his relatives, if not directly for South Korea.

Disqualifying and Mitigating Conditions - *The Concern*: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by ties of affection, influence or obligation, are not citizens of the United States, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contact with citizens of other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition (DC): (1) An immediate family member, or a person to whom the individual has close ties of affection, is a citizen of, or resident or present in, a foreign country; DC 2 Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

Mitigating Conditions (MC): None are clearly established by the evidence of record. Under

MC (1) It has not been clearly shown that all of the immediate family member(s), (spouse, father, mother, brothers, sisters, cohabitant, or associate(s) in question), are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. Under MC 3 contact with some of the individuals in the foreign country remain close, while others have become casual and infrequent. His relationship with his family remains “close,” as that term is used in the Directive.

South Korea is generally recognized as an ally and friend of the United States (Items I, II, and III). At the same time, the U.S. Government is concerned about South Korea’s significant involvement in economic espionage in the U.S. (Item IV).

Pleadings from a 1997 criminal case, *U.S. v. Kim* [not related] (Item V) show that such espionage has occurred. That case does not mean that Applicant *will* act improperly, but it does suggest that a higher risk exists that he may be asked to act improperly than if the other country was one that was not recognized as an active collector of economic espionage. DOHA’s Appeal Board, in ISCR Case No. 98-0592 at 3 (May 4, 1999), recognizes that “even countries friendly to the United States can attempt to gain access to classified information.”

I have carefully considered the Government’s evaluation of the evidence and the application of that evidence to the disqualifying and mitigating conditions found in the Foreign Influence guidelines (FORM at 5-10). Based on the totality of the evidence, I conclude that “Applicant’s contact with foreign nationals is regular, sustained, and bolstered by affection” (FORM at 12). As with all applicants for a security clearance, the burden is on Applicant to demonstrate the absence of significant risk. He has not done so and, accordingly, I am unable to conclude that Applicant has demonstrated that he possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation’s secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence)

Against the Applicant

Subparagraph 1.a.
Subparagraph 1.b.
Subparagraph 1.c.
Subparagraph 1.d.
Subparagraph 1.e.
Subparagraph 1.f.
Subparagraph 1.g.

Against the Applicant
Against the Applicant
Against the Applicant
Against the Applicant
Against the Applicant
For the Applicant
Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent

with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX
ADMINISTRATIVE JUDGE