

KEYWORD: Foreign Influence

DIGEST: This 59-year-old senior engineer was born in South Korea and moved to the United States (U.S.) 30years go. He has worked in the defense industry and held a security clearance for 20 years. His wife and children are all U.S. citizens and one child is attending a U.S. Military Academy. His only tie to South Korea is his 86-year-old mother, who is ailing and unable to move to the U.S. His long and deep U.S. ties far outweigh those with South Korea. Mitigation has been shown. Clearance is granted.

CASENO: 05-11526.h1

DATE: 08/22/2007

DATE: August 22, 2007

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In Re: )	
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----- )	ISCR Case No. 05-11526
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

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

**APPEARANCES**

**FOR GOVERNMENT**  
Candace Le'i, Esquire, Department Counsel

**FOR APPLICANT**  
*Pro Se*

## SYNOPSIS

\_\_\_\_\_ This 59-year-old senior engineer was born in South Korea and moved to the United States (U.S.) 30 years ago. He has worked in the defense industry and held a security clearance for 20 years. His wife and children are all U.S. citizens and one child is attending a U.S. Military Academy. His only tie to South Korea is his 86-year-old mother, who is ailing and unable to move to the U.S. His long and deep U.S. ties far outweigh those with South Korea. Mitigation has been shown. Clearance is granted.

## STATEMENT OF THE CASE

On November 27, 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 December 11, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on May 15, 2007. A Notice of Hearing was issued on July 15, 2007, setting the hearing for July 30, 2007. The Government introduced one (1) exhibit (Government's Exhibits (GX) 1). Applicant testified, and introduced one (1) exhibit (Applicant's Exhibit (AX) A). The Government also offered ten (10) Official Notice documents (ONI-X). The transcript was received on August 8, 2007.

## FINDINGS OF FACT

Applicant is a 59-year-old Systems Test Engineer for a defense contractor. The November 27, 2006 SOR contains three (3) allegations under Guideline B (Foreign Influence). Applicant admits all allegations, which 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.

### ***Guideline B (Foreign Influence)***

1.a. - Applicant's mother (86) is ethnic Japanese and considers herself to be a citizen of Japan, but long resident in South Korea, where she moved long ago with the South Korean man who was Applicant's father, although his parents were never married "as a record" (Tr at 21). The father died in 1977. His mother stayed in South Korea because of her family, but she never felt like she was Korean (Tr at 27). She "is proud about Japan" (Tr at 48). She lives in her own home. For some years, she taught Japanese in Korean schools. Applicant sends her about \$300.00 per month

1.b. - In 2002, Applicant purchased an apartment in South Korea for his mother. It is worth

about \$120,000, but his share in it is about \$50,000, which he what he put down on the purchase. Under South Korean law, the tenant owns the rest (Tr at 24). His mother never moved in and the property has been for sale since 2006. It is currently being rented to a third party (Tr at 16). His mother continues to live in the same house she has had for many years. It is worth about \$150,000, and Applicant has no idea what part of that might come to him when she does pass away (Tr at 31).

1.c. - Applicant traveled to South Korea in August 2000, to introduce his new wife to his mother, December 2001, May 2002, and May 2005, when he took his new granddaughter to meet her great-grandmother (Tr at 26).

Applicant was born in South Korea in March 1948 to a Korean father and a Japanese mother. Applicant attended college in South Korea from 1968-1974, during which period he also served in the South Korean Air Force (1971-1973). He then moved to the United States (U.S.) in 1977, 30 years ago (Tr at 28). He became a U.S. citizen in 1986 and holds a U.S. passport. He considers himself to be a U.S. citizen only. His second (current) wife is also South Korean born, and became a U.S. citizen in 2006. His surviving brother is also a naturalized U.S. citizen and works for an American state government (Tr at 28). His adult daughter is married to an American, and one of his stepsons is attending a U.S. Military Academy (Tr at 60). Applicant owns a vacation home in State A. His mother is his only non-American family member (Tr at 60) and, although she resides in South Korea, she does not consider herself to be Korean, nor does she have any emotional or other ties to that country. As noted above, she considers herself to be Japanese (Tr at 61). She has asked that when she dies, she be cremated and her ashes returned to Japan (Tr at 61)

Applicant has worked for his present employer since November 1986 and has held a DoD security clearance for most of that time, with no reported problems. One of his company's Deputy Directors, who has known Applicant for more than 20 years, states the following:

I have had the pleasure of working with [Applicant] on 3 different government programs over that time span. [Applicant] has always presented himself in a professional and ethical manner. He has exhibited extreme . . . dedication and integrity in his work. He is always striving for excellence and has been a key individual in every product team he has been part of. [Applicant] holds his citizenship in the highest regard and, in my many years working with him, I have seen no evidence otherwise. He is one of the best engineers I have had the pleasure of working with and is a model citizen (AX A).

According to Applicant, he already held a DoD Secret level clearance, and the present matter arose when his employer requested a Top Secret clearance for him (Tr at 19).

## **POLICIES**

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 Statement of Reasons.

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." Viewed in an overall context, under E2.2.3. of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*. Explained further below (emphasis added):

*The Whole Person Concept:* Under E2.2.1., the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following 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 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. Under the section of the Directive, the totality of the evidence compels a decision favorable to Applicant.

## CONCLUSIONS

The SOR in this case was issued on October 27, 2006. Therefore, the present version of the Directive, applicable to cases where the SOR was issued after September 1, 2006, is controlling.

The SOR alleges concerns only under Guideline B and, as the allegations are worded, the Government's concerns focus on the presence in South Korea of Applicant's 87 year old mother. The SOR, at 1.a., cites the mother as being a resident of South Korea, although a citizen of Japan. I note that the substance of all 10 Official Notice (ON) documents focus on South Korea, with Japan being mentioned only peripherally in ON V. Although Department Counsel mentions the mother's

Japanese citizenship, it is clearly the mother's residence in South Korea that is of primary concern (Tr at 62). Considering the totality of the evidence, this focus is misplaced, since the elderly and ailing mother does not consider herself to be South Korean, is clearly not dedicated to the interests of that country, and is not likely to ask Applicant do anything to help that country. She clearly considers herself to be Japanese, yet that relationship is not cited or argued to be of security concern.

Applicant has described his mother in the strongest possible terms as a woman of honor, who would kill herself rather than ask her son to act dishonorably. Moreover, even assuming that she might ask Applicant to act in some way against U.S. security interests, the evidence is both overwhelming and compelling that Applicant would instinctively act to protect his adopted country and appropriately refuse to do so. Instead, he would immediately report the contact to his company security officer.

In contrast to the Government's real but abstract concerns that Applicant might be asked and might agree to act improperly, the overwhelming bulk of the evidence establishes Applicant as a man of honor and dedication to the United States. He has definitively made himself a part of American society over a period of 30 years, and has contributed significantly to the U.S. defense effort for some 20 years, during most of which time he has held a DoD security. I give considerable weight to the high praise he has received from his company leadership superior for his character and contributions. Nothing appears to have changed in his history of exemplary conduct over many years. He is not involved in the DOHA adjudication process because of anything he has said or done that might suggest there is any risk he would betray what he has stood for over so many years (Tr at 64-66). America is his home. "South Korea is a foreign country" (Tr at 67).

The situation of Applicant's relationship with his elderly mother, and her self identification with Japan, rather than South Korea, makes this a unique case. Applicant has only one relative in South Korea, and that relationship is certainly a close one. At the same time, his personal, emotional, and professional ties to the United States are massive and of long standing.

The only reference in the SOR to a relative living in South Korea is to his 87 year old and ailing mother (Tr at 19-21). As Applicant points out, if his mother passed away, he probably would not be in his present predicament, but since she has lived longer, there is a problem (Tr at 20). His mother is "very high pride lady" and a "highly educated lady" (Tr at 20), but is now "acting more like a child" (Tr at 22). As he describes his mother, she would kill herself rather than embarrass or cause problems for her son (Tr at 22, 49, 54, 55). Applicant also points out the historical reality that "Koreans don't like the Japanese, yes, and the Japanese kind of [look down] on Koreans (*Id.*)"

Applicant owns a home in the United States, about \$400,000.00 in savings and investments (Tr at 51-53), a pension program from his employer and yearly earnings of about \$130,00.00 (Tr at 52). I have also considered the fact of Applicant's ownership of an apartment in South Korea, which he is actively seeking to sell, since his mother refuses to move there. I regard this factor to be of limited significance considering the scale and scope of Applicant's assets in the United States. His net worth in the U.S. exceeds \$1 million (Tr at 58). He clearly understands his responsibility to report any contacts to his facility security officer (Tr at 53, 54).

As Department Counsel sees it, the "issue here is the fact that Applicant may be exploited through his contact with his mom and his property ownership in South Korea because of the concerns

the Government has with South Korea” (Tr at 63). Department Counsel fairly represents the Government’s concerns, but viewed in the context of the entire record and the language of the Directive applicable in this case, I am compelled to reach a different conclusion.

Disqualifying Conditions include: 7.(a) contact with a foreign family member . . . who is a citizen of or resident in foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. As I read the current language, a “heightened risk” can exist based (1) on the identity of the foreign country, (2) the possibility that the foreign relative may be an agent of a foreign power or susceptible to some form of undue influence, and (3) the nature of the personal relationship. At the same time, the language of Mitigating Condition (MC) 8.(a) has been changed to find evidence mitigating if, despite evidence supporting DC 7.(a), the evidence nevertheless supports the conclusion “*it is unlikely the individual [Applicant] will be placed in a position of having to choose between the interests of the foreign individual, group, organization, or government and the interest of the U.S.*” (Emphasis added).

As I understand the term “unlikely,” I conclude that DOHA Administrative Judges are being instructed to consider evidence on how the applicant is likely to respond to pressure or persuasion of any kind, and whether he would be “forced to choose.” Nothing Applicant has said or done suggests he would feel forced to choose between his mother and his country. I conclude he would respond immediately and correctly to protect his country’s interests.

Overall, I find Applicants dedication to the United States to be deep and strong enough to make the right decisions when it comes to protecting classified information. I conclude he has demonstrated the requisite judgment, reliability, and trustworthiness and is therefore eligible to be trusted with 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:

<i>Guideline B (Foreign Influence)</i>	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX**  
**ADMINISTRATIVE JUDGE**