



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



In the matter of:)
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SSN: -----)
)
Applicant for Security Clearance)

ISCR Case No. 06-12309

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

April 8, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant left South Korea when he was nine and never returned. Applicant, his siblings, his spouse, his two children and his father all live in the United States. The security concern pertains to his relationship with his father, who frequently meets with high-level South Korean officials and acts as an unofficial liaison between South Korean officials and U.S. citizens and officials. Applicant has significantly greater contacts with the United States than with South Korea. He can be expected to resolve any conflict of interest in favor of U.S. interests. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 4, 2005, Applicant submitted a Standard Form 86, Security Clearance Application (EPSQ version) (SF 86) (Government Exhibit (GE) 1). On December 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (Foreign Influence) (GE 5). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of

Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 16, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 6). Department Counsel was prepared to proceed on February 12, 2009. The case was assigned to me on February 17, 2009. On February 24, 2009, DOHA issued a hearing notice (GE 4). The hearing was held on March 25, 2009. At the hearing, Department Counsel offered three exhibits (GEs 1-3) (Transcript (Tr.) 22-23), and Applicant offered 23 exhibits (Tr. 25-35; AE A-W). There were no objections, and I admitted GEs 1-3 (Tr. 23), and AEs A-W (Tr. 35). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 4-6). I received the transcript on April 2, 2009.

Procedural Ruling

Department Counsel requested administrative notice (AN) of facts concerning a South Korean/North Korean Committee (AN Ex. I and II) and relating to South Korea (AN Ex. III) (Tr. 23-24). Department Counsel provided supporting documents to show detail and context for these facts. Applicant did not object, and I took administrative notice of all of the facts in all of the documents (Tr. 23-24; AN I-III). See the South Korean/North Korean Committee and South Korea sections of the Findings of Fact of this decision, *infra* (AN Ex. I to III).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings, is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted the SOR allegations in his response to the SOR (GE 6). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹The facts in this decision do not specifically describe employment, names of witnesses, names of committees or other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant is 37 years old (Tr. 6, 36). He graduated from a U.S. high school in 1990 and received his bachelors degree in 1995 from a U.S. college (Tr. 7, 37, 38). His bachelors degree was in business administration with a major in accounting (Tr. 7). He also has a masters of science degree from a U.S. educational institution (Tr. 7). Applicant's interim security clearance was revoked, and he does not currently hold a security clearance (Tr. 8).

Applicant, his father and siblings moved to the United States in 1981, when Applicant was nine years old (Tr. 37). Applicant's mother died before Applicant immigrated to the United States (GE 3). Since his arrival in the United States, Applicant has not had any contact with his mother's family (GE 3). He has not returned to South Korea after leaving in 1981 (Tr. 45, 51). Two of Applicant's South Korean family members (uncles) visit the United States from South Korea every two years or so, and Applicant might meet with them on these visits (GE 3). Applicant's contact with these relatives occurs when they visit the United States (GE 3). Applicant received his green card in August 1998 (Tr. 40). He became a naturalized U.S. citizen in October 2004 (Tr. 36).

From 2003 to 2007, Applicant worked for a government contractor first as a proposal manager and later as a business director (Tr. 42-43). From 2007 to the present, Applicant has been employed by another government contractor as a vice president of a corporate division that focuses on business development (Tr. 43-44).

Applicant owns two houses in the United States (Tr. 51). He has two U.S. 401K accounts with a total value of about \$70,000 (AE B, E) and his spouse has a U.S. 401K account valued at \$153,000 (AE C). He has two children, who were born in the United States (Tr. 51). He does not have any foreign property or bank accounts (GE 2). He does not intend to live permanently in South Korea (Tr. 51). He has never been arrested for a felony, or a drug or alcohol-related offense (Tr. 52; GE 1). He has not had financial problems (Tr. 52). He has not served in the U.S. or South Korean military (GE 1).

Applicant is not involved in any South Korea-related leagues, organizations or political committees (Tr. 87). Applicant offered to renounce his South Korean citizenship (Tr. 47, 52); however, Applicant has not taken any action to renounce his South Korean citizenship (Tr. 45). He was not aware of a process for ending his South Korean citizenship (Tr. 52). Applicant's father informed the South Korean government that Applicant would not be returning to South Korea for military service for an indefinite period (Tr. 46). Applicant did not know about the Korean Family Relations Certificate or Korean Family Census Register (Tr. 54-55). Applicant renewed his South Korean passport in 1995; however, it is now expired (Tr. 45, 47; GE 1, 3).² Applicant does not intend to renew his South Korean passport (Tr. 50). His most recent use of his South Korean passport was when he went to Japan in 1999 (Tr. 48).

²Department counsel stated that it was the position of the Chief Department Counsel that turning in an expired passport to a security manager or taking other actions to invalidate it was unnecessary (Tr. 50).

Applicant married in 2001 (GE 1). His wife was born in Japan, and her parents live in Japan (Tr. 48). She does not own any property in Japan (Tr. 49). She has a cousin and an aunt and uncle living in the United States (Tr. 49). She has a green card (GE 2). Applicant does not communicate with her family in Japan because he does not speak Japanese.

Applicant obtained a U.S. passport in 2007 (Tr. 49). He has not used his U.S. passport to travel (Tr. 49).

The gist of the security concern in this case is that until 2007 Applicant's father (F) had an active role in a South Korean/North Korean Committee with the goal of unification of South and North Korea (SOR ¶¶ 1.a-1.c; GE 5).

Applicant's father

Applicant's father (F) was born in South Korea 66 years ago (Tr. 58-59). F came to the United States in 1981 on a student visa (GE 2). F's mother is 92 years old and lives in South Korea (Tr. 63). F has nine siblings (Tr. 61). Three siblings live in the United States and three siblings live in South Korea (Tr. 61-62). Three siblings, who lived in South Korea, are deceased (Tr. 63). Although F's brothers served in the South Korean Army, none of F's siblings or brothers-in-law worked for the South Korean government (Tr. 63-64). One of F's brothers retired from the South Korean Army as a lieutenant (Tr. 65). F's other brothers and brothers-in-law were enlisted soldiers (Tr. 65). F was in the South Korean Army for three years and rose to the rank of sergeant (Tr. 64). F served with U.S. airmen in Vietnam during the Vietnam war (Tr. 64, 89, 90). F has three sons and all three sons live in the United States (Tr. 60). In 1981, F brought his family to the United States from South Korea (Tr. 60). F's first wife, Applicant's mother, passed away (Tr. 60). F remarried; however, he is now divorced (Tr. 60).

In 1996, F became a U.S. citizen (Tr. 39). F has been in the residential construction business since 1986 (Tr. 68, 88). F has renovated houses and military barracks (Tr. 88). Applicant worked for his father until 1999 (Tr. 41). F owns two houses in the United States (Tr. 51; AE G). F has a U.S. money market account valued in March 2009 at about \$177,000 (AE G). F uses a U.S. passport to travel, and does not have a currently valid South Korean passport (Tr. 53, 79).

In 1975 or 1976, F tried to become elected to a special committee for peaceful reunification of North and South Korea (SC/NC committee); however, he lost his initial bid to be on the SC/NC committee (Tr. 66-69). In June 1980, a high-level official in the South Korean government appointed F as an advisory member to the SC/NC committee (Tr. 70, 72-73; GE 3). In 1981, F resigned from his SC/NC committee position because he was moving to the United States (GE 3). In 1996, F became an honorary member of the same committee; however, F ended his honorary committee membership two years ago (Tr. 73-74; GE 3).

In 1996 and 1997 at F's behest, Applicant attended three meetings of the SC/NC committee (GE 3). The SC/NC committee meetings were attended by South Korean

officials as well as American political officials (GE 3). Applicant has not attended any SC/NC committee meetings after 1997 (GE 3). Applicant is not interested in attending future SC/NC committee meetings (GE 3).

In 1992, F joined and has thereafter been active in a local Korean-American association (KAA) (Tr. 73; GE 3). In 1993, he was the vice president of KAA (GE 3).

F also had a leadership position in a Korean-American citizenship league (KACL) (Tr. 74; GE 3). The KACL's goal is to register Korean Americans to vote and to assist South Korean immigrants to the United States with becoming better, more successful Americans (Tr. 84; AE F). The KACL has received citations and/or letters of appreciation/commendation from President Bush (AE K), the White House (AE J), and two U.S. state governors (Tr. 85; AE I, L, M, T, U). In connection with a KACL function, F provided photographs of himself with the U.S. Secretary of Defense (AE O, P), the U.S. Secretary of Labor (AE Q) and two U.S. state governors (AE R, S). The KACL gave F a certificate of appreciation/recognition in 2005 for his leadership (AE V). The KACL's 2003 national conference program features letters from various U.S. political leaders, including President Bush and several other high-level U.S. political and retired U.S. military leaders (AE W). The KACL has held fund raisers for U.S. projects, such as repair to a fire station or for a 9-11 memorial at the Pentagon (Tr. 86). The KACL provides volunteers to help at U.S. events (Tr. 86-87).

F has attended a social affair at the South Korean embassy and had dinner with a South Korean diplomatic official in the last year (Tr. 75-77). F travels to South Korea once or twice a year (Tr. 77). He usually visits his mother and siblings in South Korea; but also sometimes meets with South Korean government officials (Tr. 78). He also meets with representatives in the U.S. Congress, who are interested in South Korean issues (Tr. 78). F is a U.S. citizen, not a South Korean citizen (Tr. 79). F's name has been removed from the South Korean register of citizens (Tr. 79). F loves the United States and is loyal to the United States (Tr. 88). F does not plan on serving in the South Korean government (Tr. 88). F often focuses on the duty of U.S. citizens to defend their country (Tr. 90, 91).

F believed that Applicant automatically lost his South Korean citizenship, when Applicant became a U.S. citizen (Tr. 80-81). F does not own any property in South Korea (Tr. 81). F and Applicant live about 30 or 35 miles apart, and they see each other about once a month (Tr. 82). F and Applicant talk about twice a month (Tr. 82).

South Korean/North Korean Committee (SC/NC committee)³

The goal of the SC/NC committee is peaceful unification of North and South Korea. The SC/NC committee monitors political developments, and encourages greater communication and cooperation between North and South Korea. It also offers advice and suggestions about unification. The SC/NC committee communicates with the

³The facts in the section concerning the SC/NC committee are from documents Department Counsel submitted at the hearing (AN I to II).

highest levels of the South Korean government. High-level South Korean government officials are members of the SC/NC committee.

South Korea⁴

South Korea is currently a stable, democratic republic. The United States and South Korea have been close allies since 1950, and have fought communism on the Korean peninsula and in Vietnam. The United States, since 1950 and currently, has thousands of U.S. military personnel stationed in South Korea, and frequently conducts joint military operations with South Korea. About 2.3 million Koreans live in the United States. The United States has promised over the next four years to provide \$11 billion in force enhancements in Korea. South Korea is the United States' seventh largest trading partner. The recently signed free trade agreement between the United States and South Korea will generate billions of dollars in additional economic growth and job creation in both countries.

The South Korean government generally respects the human rights of its citizens. Criminals violate the human rights of some South Korean citizens. South Korea has some political prisoners, and some rules regarding arrest and detention are vague.

South Korea does not recognize dual citizenship. There have been circumstances where U.S. citizens with connections to South Korea were drafted into the South Korean army (Applicant at age 37 is beyond the South Korean draft age limit of 35).

In recent years, the United States and South Korea have differed in their diplomatic approaches towards North Korea. The United States' position is more assertive in its attempts to curtail North Korea's development of advanced military technology, such as ballistic missiles and nuclear weapons. South Korea has emphasized steps towards unification of North and South Korea.

Industrial espionage includes seeking commercial secrets. South Korea has a history of collecting protected U.S. information. In 2000, South Korea was listed as one of the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. In 1997, Lockheed Martin was fined for unlicensed export to South Korea and that same year a civilian employee of the U.S. Navy passed classified documents to the South Korean naval attaché to the United States. On multiple occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws.

⁴The facts in the section concerning South Korea are from Department Counsel's factual summary (AN III), except for some comments in the first paragraph about the relationship between the United States and South Korea, which are from the U.S. Department of State, *Background Note: South Korea*, Oct. 2008 (AN III, enclosure I) and U.S. Department of State, *Country Specific Information: Republic of Korea*, January 2, 2009 (AN III, enclosure II).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only 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 and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). 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 over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 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 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 [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude Guideline B (Foreign Influence) is the relevant security concerns with respect to the allegations set forth in the SOR.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact 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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant and his father were both born in South Korea. Applicant has a close connection to his father, F, who has contacts with high-level South Korean diplomats and political figures. Applicant communicates frequently with his father, and his father

communicates frequently with South Korean political and diplomatic leaders about South Korea/North Korea unification and/or other issues of Korean/U.S. interest. Applicant's father frequently travels to South Korea. Applicant's relationship with F is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Applicant's relationship with his father creates a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his father assist South Korea.

The mere possession of close family ties with a person such as F, is not, as a matter of law, disqualifying under Guideline B. However, if only one relative has a relationship with political or diplomatic leaders of a foreign country, and an Applicant has close 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 *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of South Korea with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with F, who has a relationship with his siblings living in South Korea as well as South Korean government and diplomatic officials do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist F.⁵ South Korea was listed as one of the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. On multiple occasions, South Korea has been the unauthorized recipient of technology controlled under U.S. export control laws. It is conceivable that Applicant might be targeted through F in an attempt to gather information from the United States.

While there is no evidence that intelligence operatives from South Korea seek or have sought classified or economic information from or through F, nevertheless, his relationship with F creates a potential conflict of interest because his relationship with F is sufficiently close to raise a security concern about his desire to assist F by providing sensitive or classified information. Department Counsel produced substantial evidence

⁵ An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in South Korea. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See *also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (listing numerous recent cases involving U.S. citizens with Iranian connections whose clearances were denied, and citing no recent cases where the Appeal Board affirmed the grant of a clearance for someone with immediate family members living in Iran).

of Applicant's contacts with F and F's relationship with South Korean officials to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶ 8(a) partially applies; however, AG ¶¶ 8(c), 8(d), and 8(e) do not apply because the U.S. government has not encouraged Applicant's involvement with F, or F's involvement with South Korean officials. Applicant has frequent contact with his father, and his father has frequent contact with South Korean government officials. F frequently travels to South Korea. F is interested in South Korean political developments. F has siblings and siblings-in-law, as well as his mother, living in South Korea. F's contacts in South Korea are sufficiently frequent to raise the possibility of F being influenced to ask Applicant for sensitive or classified information. AG ¶ 8(a) has some partial applicability because it is his father, and not Applicant, who has the extensive contacts with South Korean officials. Because of F's connections to South Korea, Applicant is not able to fully meet his burden of showing there is "little likelihood

that [her relationships with his relatives who are South Korean citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has established that “[he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant was born in the United States and moved to South Korea when he was nine years old. He spent the next 28 years in the United States and he has never returned to South Korea after immigrating to the United States in 1981. Applicant graduated from a U.S. high school, a U.S. college, and a U.S. graduate school. Applicant and his spouse reside in the United States. His two children were born in the United States. Applicant’s siblings live in the United States. Applicant does not have frequent contacts with any South Korean residents and citizens. Applicant and his spouse have substantial U.S. property and investments and they do not have any property or investments in South Korea.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his father’s relationships with South Korean government officials. F frequently meets with South Korean government officials in the United States and South Korea. South Korea is an aggressive collector of sensitive economic and technological information. There is no evidence; however, that terrorists, criminals, the South Korean government, those conducting industrial espionage or his father have approached or threatened Applicant or that South Korean officials have asked F for classified or sensitive information. As such, there is a reduced possibility that F or Applicant himself would be targets for improper South Korean coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

AG ¶ 8(f) partially applies because Applicant has no interest in property or bank accounts in South Korea. This mitigating condition can only fully mitigate AG ¶ 7(e), which provides, “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.”

In sum, Applicant’s connections through F to South Korea are less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

A Guideline B decision concerning South Korea must take into consideration the geopolitical situation in South Korea, as well as the dangers existing in South Korea.⁶ South Korea is a known collector of U.S. intelligence and sensitive economic information; however, South Korea has been a close military ally of the United States since the Korean war began in 1950. South Korea and the United States have close relationships in diplomacy and trade. About 2.3 million Koreans live in the United States.

The only security concern here is Applicant's relationship with F, who was active in the movement to reunify North and South Korea until 2007. F was a member of the SC/NC Committee until 2007, and is currently a member of the KACL and a local Korean-American Association. His father continues to have frequent meetings and communications with high-level South Korean political and diplomatic officials. F acts as an informal liaison between South Korean officials and U.S. political figures. His father frequently communicates with his relatives living in South Korea. Applicant's frequent communications and visits with F establish his ties of affection to his father. South Korea has a history of targeting U.S. industries for sensitive information and firms have engaged in export violations, sending sensitive, technologically advanced equipment to South Korea and other economic espionage. There is some possibility that Applicant or F could 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. It is possible that South Korean intelligence agents could attempt to pressure Applicant or F to gain some kind of advantage over Applicant to obtain classified or sensitive information.

The circumstances militating towards approval of a clearance for Applicant are more significant. Applicant left South Korea in 1981 at the age of nine years and has never returned. He has infrequent contacts with his relatives living in South Korea. He does not own property in South Korea, and has not manifested any direct connections with South Korea. His siblings and father all live in the United States. He received his

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

education and all of his employment in the United States. He is a U.S. citizen and swore allegiance to the United States. His father is also U.S. citizen, and professes a primary loyalty to the United States. His father does not own property or have bank accounts in South Korea. Applicant's wife is a green card holder, and both of his children are U.S. born citizens. Applicant's involvement with any South Korea-related organizations was limited to three meetings in the late 1990s. The South Korea league's goal is to encourage Korean immigrants to the United States to become U.S. citizens and to participate in U.S. elections. It emphasizes U.S. civic responsibility. Until 2007, Applicant's father's communications with high-level South Korean political and diplomatic officials were primarily designed to facilitate peaceful reunification of North and South Korea. There is no evidence that Applicant's father has participated in any organization that has acted or would act against U.S. interests. Recently, his father's communications with South Korean officials are related to encouraging Korean-Americans and Korean immigrants to participate in the U.S. political process and raising funds for charitable projects, such as a monument to the victims of the 9/11 attack at the Pentagon. Applicant's father has very strong connections to the United States and it is unlikely he would cooperate with any attempt to compromise U.S. interests through the exploitation of his son. Although the possibility of attempted exploitation of Applicant is very low, Applicant's strong connections to the United States and especially to his U.S. family, community and employment establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest."

After weighing the evidence of her connections to South Korea and to the United States, and all the facts in this decision, I conclude Applicant has carried his burden of mitigating the foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark W. Harvey
Administrative Judge