

KEYWORD: Foreign Influence

DIGEST: The Applicant's wife, who has permanent resident status in the U.S., lives with the Applicant in Korea (South Korea). He works for the U.S. Air Force there, and has the complete support of his chain of command. His wife is an elementary school teacher. The Applicant's 69 year old father-in-law, has been retired for 24 years. He worked as a clerk at Korea's intelligence agency. He has "very limited knowledge of . . . [his] son-in-law's occupation." The Applicant's mother-in-law has always "been a housewife." The Applicant has no dealings with two brother-in-laws, but also has four sister-in-laws. One sister-in-law is an elementary school teacher, and the other three are "housewives." As the Applicant has "longstanding relationships and loyalties in the U.S.," he is not subject to coercion vis-a-vis his Korean relatives. Mitigation is shown. Clearance is granted.

CASENO: 06-23357.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-23357
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's wife, who has permanent resident status in the U.S., lives with the Applicant in Korea (South Korea). He works for the U.S. Air Force there, and has the complete support of his chain of command. His wife is an elementary school teacher. The Applicant's 69 year old father-in-law, has been retired for 24 years. He worked as a clerk at Korea's intelligence agency. He has "very limited knowledge of . . . [his] son-in-law's occupation." The Applicant's mother-in-law has always "been a housewife." The Applicant has no dealings with two brother-in-laws, but also has four sister-in-laws. One sister-in-law is an elementary school teacher, and the other three are "housewives." As the Applicant has "longstanding relationships and loyalties in the U.S.," he is not subject to coercion vis-a-vis his Korean relatives. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 2007, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on January 29, 2007.

The case was received by the undersigned on April 25, 2007. A notice of hearing was issued on May 1, 2007, and the case was heard on May 23, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on June 5, 2007. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 35 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline B - Foreign Influence

The Applicant came to the U.S. with his family at the age of 14 (TR at page 45 lines 4~5, and Government Exhibit (GX) 1 at page 5). He was naturalized as a U.S. citizen in January of 1992, more than 15 years ago (TR at page 28 lines 10~18, and GX 1 at page 1). He currently works for the U.S. Air force in Korea (GX 1 at page 2). In five years he intends to return to the U.S. with his

family, where he owns property worth about \$350,000 (TR at page 47 lines 5~9, and at page 49 line 22 to page 50 line 4).

1.a. The Applicant's wife, who has permanent resident status in the U.S., lives with the Applicant in Korea (TR at page 47 line 15 to page 50 line 4, and Applicant's Exhibit (AppX) B at pages 7~8). She is an elementary school teacher (*Id*).

1.b. and 1.c. The Applicant's 69 year old father-in-law, has been retired for 24 years (TR at page 50 line 15 to page 51 line 15, and AppX B at pages 9~10). He worked as a clerk at Korea's intelligence agency (*Id*). He has "very limited knowledge of . . . [his] son-in-law's occupation" (AppX B at pages 9~10). He has limited contact with his son-in-law (*Id*). The Applicant's mother-in-law has always "been a housewife" (TR at page 50 lines 6~14). She also avers as to their limited contact with their son-in-law (AppX B at pages 11~12) The Applicant has no dealings with two brother-in-laws, who are only step brothers to the Applicant's wife (TR at page 37 lines 23~24, and at page 51 lines 20~25). However, the Applicant also has four sister-in-laws (TR at page 41 line 25 to page 42 line 6, and at page 52 lines 1~25). One sister-in-law is an elementary school teacher, and the other three are "housewives" (*Id*).

As the Applicant's wife and in-laws are citizens of and reside in South Korea, Korea must also be considered. South Korea is a highly developed, stable, democratic republic. Its government has generally respected the human rights of its citizens. In the past 30 years, Korea has experienced extraordinary economic growth and possesses the eleventh-largest economy in the world. Despite Korea's prominence as the seventh largest trading partner with the U.S., some Koreans are critical of U.S. policies and the presence of the U.S. military in their country. Korea also has a long, ongoing history of collecting protected U.S. information. South Korean collection activities are evidenced by criminal prosecution linking espionage as directly involving the Korean government.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant's wife, and in-laws reside in Korea.. The first and second disqualifying conditions are arguably applicable as this contact “creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and creates “a potential conflict of interests between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person . . . by providing that information.” Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant’s relationship with his Korean relatives is “such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S.” Also, the Applicant “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.”

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. The Applicant’s U.S. Air Force chain of command aver that he is trustworthy (Appellant’s Exhibit B at pages 1~6). The totality of the Applicant’s conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the “whole person concept.” Mitigation is shown. Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his

perceived Foreign Influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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 the Applicant.

Richard A. Cefola
Administrative Judge