DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

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

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him a security clearance to work in the defense industry. He resolved an unpaid judgment of more than $10,000 in 2013. He did not present sufficient evidence to rebut, explain, extenuate, or mitigate the foreign influence concern based on his family ties to South Korea. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on April 10, 2012.[1] After reviewing the application and information gathered during a background investigation, the Department of Defense

[1] Exhibit 2 (this document is commonly known as a security clearance application).

(DOD),[2] on June 12, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.[3] The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline F for financial considerations.

Applicant answered the SOR in a July 20, 2015 response wherein he admitted the SOR allegations, and he provided reliable, documentary proof that the unpaid judgment of $10,678, which was obtained in 2007, was settled and then released in December 2013. Because the unpaid judgment is the sole matter under Guideline F, the financial considerations concern is decided in Applicant's favor, without further discussion, based on Applicant's resolution of this debt about 18 months before the SOR was issued.

Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.[4] On September 2, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.[5] This so-called file of relevant material (FORM) was mailed to Applicant, who received it on September 29, 2015. Applicant did not reply within 30 days from receipt of the FORM. The case was assigned to me on December 1, 2015.

Rulings on Evidence and Procedural Matters

Exhibit 3 is a set of interrogatories, answered by Applicant, that includes a report of investigation (ROI) from Applicant's background investigation. That document is a summary of an interview of Applicant conducted on July 3, 2012. An ROI may be received and considered as evidence when it is authenticated by a witness.[6] Here, the ROI appears to be properly authenticated based on Applicant's answers to the interrogatories, the ROI is admissible, and I have considered it.

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[2] The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

[3] This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

[4] Directive, Enclosure 3, ¶ E3.1.7.

[5] The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

[6] Directive, Enclosure 3, ¶ E3.1.20; *see* ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

Exhibit 4 is Department Counsel's request to take administrative or official notice of certain facts concerning the country of South Korea. The request is in good order, Applicant has not responded to it, the request is granted, and the relevant facts are discussed below.

In addition, I am *sua sponte* taking notice of certain easily verifiable, indisputable facts about U.S.–South Korean relations, which is an important aspect in a Guideline B case. The facts are uncontroversial and should come as no surprise to a reasonably well informed person. Doing so at this point in the proceeding without notice to the parties does not result in undue surprise or unfairness, because the facts are so indisputably settled. Doing so is also consistent with the requirement to make an overall commonsense judgment.[7] Those facts are discussed below.

Findings of Fact[8]

Applicant is a 52-year-old employee who is seeking to obtain a security clearance for the first time. His educational background includes earning a doctorate's degree from a U.S. university in 1996. He is employed as a senior scientist for a technology company doing business in aerospace and defense.

1. Applicant's background in South Korea and immigration to the United States

Applicant was born and raised in South Korea. He attended and completed a South Korean high school during 1979–1982. He attended and completed a bachelor's degree at a South Korean university during 1982–1986. He then attended and completed a master's degree at a South Korean university during 1986–1988. He completed mandatory military service as a second lieutenant in the South Korean Army during 1988–1989.

Applicant married his South Korean spouse in May 1990. A few months later in August 1990, he immigrated to the United States to pursue his doctorate's degree at a U.S. university. He completed the doctorate program in 1996, and he has worked for his current employer since then.

2. Applicant's family ties to the United States and South Korea

Applicant became a naturalized U.S. citizen in 2009, and he obtained a U.S. passport that same year. His spouse remains a South Korean citizen, but she resides in the United States as a permanent resident alien. His spouse is a homemaker and is not otherwise employed. As far as Applicant knows, his spouse does not intend to become

[7] Directive, Enclosure 2, ¶ 2(c).

[8] The findings of fact are based on information found in Exhibits 2, 3, and 4.

a U.S. citizen. They have two children who are native-born U.S. citizens, both of whom are less than 18 years of age.

Applicant has no ongoing contact with any person in South Korea except for his immediate family members who are all citizens of and residents in South Korea. Applicant's father has been deceased for many years, but his mother is a homemaker. He also has a brother, sister, and mother-in-law in South Korea. Like Applicant, his brother performed mandatory military service in the South Korean Army. His brother is employed as a high school teacher. His sister is employed as a part-time meter reader. Like his mother, his mother-in-law is a homemaker.

I am unable to determine the frequency or nature of the contact Applicant has with his family members in South Korea, because he indicated in his response to the interrogatories that particular information was not correct.[9] Applicant did not provide any additional or amplifying information about his family members when he answered the SOR or in response to the FORM. According to his security clearance application, his last trip to South Korea to visit his family was in 2007, which was before he became a U.S. citizen.[10]

3. Applicant's financial interests in the United States and South Korea

Applicant has no financial, business, real estate, or pecuniary interests in South Korea, and all such interests are in the United States.[11] He has a net worth of about $150,000.[12]

4. Background information on South Korea

Relations between South Korea (officially the Republic of Korea) and the United States have been extensive since about 1950, when the United States fought on South Korea's side in the Korean War during 1950–1953. Since then, the two nations have developed strong economic, diplomatic, and military ties. The two countries have had a military alliance since 1953. More than 25,000 soldiers, sailors, airmen, and Marines are now stationed in South Korea as part of United States Forces Korea, and act as a forward presence in the region. In 1989, President George H. W. Bush designated South Korea as a major non-NATO ally. It is a designation given by the U.S. Government to close allies who have strategic working relationships with the U.S. armed forces but are not members of the North Atlantic Treaty Organization (NATO).[13]

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[9] Exhibit 3 at 3.

[10] Exhibit 2.

[11] Exhibit 3 (financial interrogatories).

[12] Exhibit 3.

[13] This paragraph contains the facts that I *sua sponte* took notice of.

South Korea has a history of collecting protected U.S. information. In the past, it has been ranked as one of the seven counties most actively engaged in foreign economic collection and industrial espionage against the United States. Those activities have resulted in several U.S. criminal prosecutions. The South Korean government generally respects the human rights of its citizens. But reported human-rights problems include: (1) the government's interpretation of national security and other laws limiting freedom of expression and restricting access to the Internet; (2) official corruption; (3) the lack of a comprehensive anti-discrimination law; (4) sexual and domestic violence; (5) child prostitution; and (6) trafficking in persons.[14]

Law and Policies

It is well-established law that no one has a right to a security clearance.[15] As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[16] Under *Egan,* Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.[17] An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[18]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[19] The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.[20] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[21] In addition, an applicant has the ultimate

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[14] This paragraph contains the facts that I took notice of per Department Counsel's written request.

[15] *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[16] 484 U.S. at 531.

[17] Directive, ¶ 3.2.

[18] Directive, ¶ 3.2.

[19] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[20] Directive, Enclosure 3, ¶ E3.1.14.

[21] Directive, Enclosure 3, ¶ E3.1.15.

burden of persuasion to obtain a favorable clearance decision.[22] In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.[23] The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[24]

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.[25] Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's ties to South Korea disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,[26] the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.[27]

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[22] Directive, Enclosure 3, ¶ E3.1.15.

[23] *Egan*, 484 U.S. at 531.

[24] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

[25] Executive Order 10865, § 7.

[26] AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

[27] AG ¶ 6.

I have considered the following disqualifying conditions and mitigating conditions in my analysis of Applicant's family ties to South Korea:

> AG ¶ 7(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;
>
> AG ¶ 7(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 information or technology and the individual's desire to help a foreign person, group, or country by providing that information;
>
> AG ¶ 8(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
>
> AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

In addition, although South Korea is a close ally and great friend of the United States, based on concerns about (1) industrial and economic espionage, and (2) reported human-rights problems, South Korea meets the heightened-risk standard in AG ¶ 7(a).

Applicant's family ties to South Korea are sufficient to raise a potential vulnerability to foreign influence. Although his wife and two children (both of whom are native-born U.S. citizens) live in the United States, Applicant's mother, two siblings, and mother-in-law are citizens of and residents in South Korea. None of his family members or in-laws in South Korea have a job or position that is particularly troubling, but his family ties to South Korea are sufficient to justify further review.

Applicant is a senior scientist for a U.S. technology company. He has lived, studied, and worked in the United States since 1990, a period of about 25 years. He has been a U.S. citizen since 2009, a period of less than seven. His spouse is a U.S. permanent resident alien, but she does not intend to become a U.S. citizen. He and his spouse have two children who are native-born U.S. citizens. His financial interests are in the United States. The strength or weakness of his ties or connections to his family members in South Korea is difficult to determine given the available information. But I presume that Applicant has bonds of affection or obligation or both toward his

immediate family members in South Korea. Taken together, his family, employment, and financial ties to the United States are reasonably strong.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties to South Korea. Those circumstances cannot be dismissed or overlooked as fanciful or unrealistic, especially considering the matters the United States views of concern in South Korea. On balance, I am not satisfied that a security concern or potential conflict of interest presented by his family ties to South Korea is outweighed and overcome by his ties to the United States. The record evidence is not strong enough to allow me to have confidence that Applicant can be expected to resolve any such concern or potential conflict of interest in favor of the U.S. interest. His family ties to South Korea preclude a conclusion that he has the necessary freedom from foreign influence required to have access to classified information.

Because Applicant chose to have his case decided without a hearing, I am unable to evaluate his demeanor. Limited to the written record, I am unable to assess his sincerity, candor, or truthfulness. He also chose not to respond to the FORM with relevant and material facts about his circumstances, which may have helped to rebut, explain, extenuate, or mitigate the security concern.

Applicant's potential vulnerability to foreign influence, due to his family ties to South Korea, creates doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa.* I also gave due consideration to the whole-person concept.[28] Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	Against Applicant
Subparagraphs 1.a, b, c, e:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraph 2.a:	For Applicant

[28] AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge