



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01072
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Corey Williams, Esquire

May 14, 2014

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 14, 2012. On November 15, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 2, 2013. He answered the SOR in writing on December 23, 2013, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on March 17, 2014. DOHA issued a notice of hearing on April 4, 2014, and I convened the hearing as scheduled on April 16, 2014. The Government offered Exhibits (GXs) 1 through 5 and an Appellate Exhibit, which were received

without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through EE, which were received without objection. DOHA received the transcript of the hearing (TR) on April 29, 2014. I granted Applicant's request to keep the record open until April 30, 2014, to submit additional matters. On April 21, 2014, he submitted Exhibits FF and GG, which were received without objection. The record closed on April 30, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel moved to amend Subparagraph 1.b. of the SOR by deleting the word "three" before "brothers," substituting therefore the word "two." (TR at page 97 line 8 to page 98 line 3.)

### **Administrative Notice**

Department Counsel also submitted documents regarding the Republic of Korea for the purpose of Administrative Notice. It will be discussed further in my Findings of Fact.

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a., 1.b., and 1.d. of the SOR, with explanations. He denied the factual allegations in Subparagraph 1.c. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

### **Guideline - Foreign Influence**

Applicant is a 54-year old Air Force retiree who works for a government contractor in South Korea. (TR at page 31 line 8 to page 43 line 11.) He married his wife in 1985, while stationed in South Korea. (*Id.*) He has held a security clearance since "1978 or 1979 . . . when . . . [he] entered active duty into the Air Force." (TR at page 34 lines 4~8.)

1.a. Applicant's wife of nearly 30 years is a citizen and resident of South Korea. (TR at page 44 line 3 to page 45 line 22.) She is a resident alien of the United States as evidenced by her "green card." (AppX B.) Her South Korean passport affirms that she is a resident alien of "THE U.S.A." (AppX FF.) Once Applicant's current contract is over, they plan to return to the United States, and she will apply for U.S. citizenship. (TR at page 49 line 23 to page 51 line 6.)

1.b. Applicant's 84-year old mother-in-law is a citizen and resident of South Korea. (TR at page 93 line 23 to page 94 line 15.) She has no connection with the

South Korean government and her deceased spouse, Applicant's father-in-law, worked for the U.S. Air Force. (*Id.*) His mother-in-law speaks no English, and he last visited her in about 2006. (TR at page 56 lines 1~11.)

Applicant's two brothers-in-law are citizens and residents of South Korea. They speak no English; and as a result, he has little contact with them. (TR at page 54 line 7 to page 55 line 12.) He last saw his brothers-in-law in "December of 2009." (*Id.*) "They are day laborers doing construction," and have no connection with the South Korean government. (TR at page 94 line 16 to page 95 line 4.)

Applicant's sister-in-law is a citizen and resident of South Korea. (TR at page 95 lines 5~11.) "She is a housewife." (*Id.*)

Applicant avers credibly that he would not be subject to coercion vis-a-vis his South Korean relatives. (TR at page 49 lines 10~22, at page 88 line 15 to page 89 line 11, and at page 93 line 10.)

1.c. and 1.d. As of April of 2014, Applicant and his wife have assets totaling \$63,000 in South Korea. (AppX H.) He has divested himself of the alleged South Korean "certificate deposits," and lives in an apartment he owns valued at approximately \$60,000. (*Id.*, TR at page 57 line 8 to page 62 line 14, at page 70 lines 13~16, and at page 72 line 3 to page 75 line 14.) His net worth in the United States is about \$1,129,876, or 94.72% of his total net worth. (AppX H.) He and his wife divested the "approximately \$200,000" invested in "her brother-in-law[s]" construction business in 2005, about nine years ago. (TR at page 35 lines 14~21, and at page 63 line 16 to page 64 line 24.)

South Korea has a history of collecting protected U.S. information. It ranks as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable

information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraphs 7(a) and 7(b) are arguably applicable: 7(a) “*contacts with a foreign family member . . . 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 7(b) “*connections to a foreign person . . . 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 . . . by providing that information.*” The Applicant’s wife, her mother and her three siblings are citizens and residents of South Korea. These are clearly countered, however, by the first and second mitigating conditions, as 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*”; and 8(b) “*there is no conflict of interest [as] 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.*” Apart from his wife, Applicant has little contact with his Korean in-laws. His wife is a U.S. resident alien, who intends to obtain U.S. citizenship once they return to the United States at the conclusion of his current employment contract in South Korea.

Paragraph 7(e) is also arguably applicable, as there is “a substantial property interest,” a \$60,000 apartment, in South Korea, “which could subject the individual to heightened risk of foreign influence or exploitation.” This is clearly countered by Paragraph 8(f) as the “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.” Applicant’s property interest in South Korea pales in comparison to his more than one million dollars of net worth in the United States.

### **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. 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.

The Administrative Judge should also 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.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant is most highly regarded by those who work with him in South Korea. (AppX I at pages 6~18, AppXs M and O.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence.

### **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.~1.d.	For Applicant

### **Conclusion**

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

Richard A. Cefola  
Administrative Judge