



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01359
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: William Savarino, Esquire

01/09/2015

**Decision**

WHITE, David M., Administrative Judge:

Applicant’s decisions concerning her visit to China, and possibly North Korea, on a nine-day church-sponsored 2008 trip entailed some risk. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on July 24, 2012. On February 5, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on March 25, 2014 (AR), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 5, 2014. The case was assigned to me on September 12, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on October 2, 2014, and I convened the hearing, as scheduled, on October 16, 2014.<sup>1</sup> Applicant, her counsel, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection; and Hearing Exhibits (HE) I through III, a Government exhibit list and two requests for administrative notice concerning South Korea and China. Applicant had no objection to my taking administrative notice of the facts set forth in HE II and HE III. I granted those requests, and the facts set forth therein concerning the countries involved are hereby incorporated as findings of fact by reference. Applicant offered Exhibits (AE) A through D, which were also admitted without objection, and testified on her own behalf. I granted Applicant's request to leave the record open until October 23, 2014, to permit submission of additional evidence. Applicant timely submitted AE E, which was also admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 27, 2014.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor, and former employee of other U.S. Government contractors. She is recently married and has a young child. She earned a bachelor's degree in Computer Science in 2004, and has taken additional postgraduate engineering classes. She has never served in the armed forces, and was first granted a security clearance in 2005 while working for a different employer. In 2011, another Government agency found her to be ineligible for access to classified information based on some of the facts discussed below. (GE 1; GE 2; GE 9; Tr. 43-44.)

In her response to the SOR, Applicant admitted the truth of some factual allegations in the SOR and denied others, with explanations. Applicant's admissions, including her statements in response to DOHA interrogatories (GE 2), are incorporated in the following findings.

Applicant was born in South Korea and moved to the United States with her parents and two sisters in late 1992 at age 13. She attended high school and college here. Applicant became a naturalized U.S. citizen in December 2004, as did her parents and sisters during 2005 or 2006. She surrendered her foreign passport and formally renounced her South Korean citizenship after becoming a U.S. citizen, because she was applying for jobs that required a security clearance. She reported that none of her

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<sup>1</sup>Applicant and her counsel affirmatively waived the right to 15-days formal notice afforded by the Directive, having been involved in earlier negotiation with Department Counsel to arrange a mutually agreeable date, and expressed that they had sufficient time to be prepared for the hearing as scheduled. See Tr. 9-10.

immediate family members retain their former South Korean citizenship either. Her husband and son are both natural-born U.S. citizens. (GE 1; GE 2; Tr. 42-46, 61-63.)

Applicant's cousin, who is alleged to be a citizen and resident of South Korea in SOR ¶ 1.a, now lives in a major U.S. city with his wife and two children. Applicant said that he is presently in the United States on a non-resident visa, but hopes to obtain permanent resident status and ultimately U.S. citizenship. This cousin is an architect/designer with no connection to the Korean government. He was in a volunteer faculty status at the Chinese university to which Applicant traveled in 2008. They have not met in person since one brief meeting during that visit, and have subsequently communicated only a few times when Applicant contacted him to obtain information about his status so she could complete security inquiries accurately. She did not consider inviting him to her recent wedding, and has only casual and infrequent contact with him. (AR; Tr. 46-52, 60-61, 64-66, 117-118.)

Applicant joined a church group on a 2008 visit to an international science and technology university in China. The leader of this group was someone she met when he came to give a training session to personnel at her previous employer. The visit to China lasted nine days, a week of which was spent at the university, and involved teaching several technical classes to university students. Her travel was 90% funded by her and 10% funded by the sponsoring church. The university is located in a city near North Korea that has a mixed Chinese and Korean ethnic population. Contrary to the allegation in SOR ¶ 1.b, she did not live with or have close personal interaction with Chinese nationals while there. Instead she stayed in a private room on a floor of a dormitory designated for visiting faculty, as did the other members of her group with whom she socialized almost exclusively. She had no contact with Chinese citizens other than providing lectures and casual interactions around the campus, with the exception of the brief visit to another technical school described below. She has had no subsequent contact or communication with any students or faculty from China or Korea whom she met during that trip. She did not take a computer with her to China, and did not discuss either her work or possession of a security clearance with anyone during the trip. (AR; GE 2; GE 3 through 5; GE 9; AE A through AE D; Tr. 68-73, 82-88, 101-106.)

When the trip to the Chinese university was first described to Applicant, the group leader anticipated that they might make a day trip to North Korea to attend the scheduled opening of an affiliated science and technology university in Pyongyang. In order to permit attendance at that event, Applicant applied for and received a double-entry visa from China, which would permit her entrance from the United States and again upon returning from North Korea. Although she knew the nature of the North Korean regime and that the trip might be dangerous, she was willing to participate in this visit. At some point before the trip to China commenced, the possible day trip to North Korea was cancelled and she never applied for a visa to enter North Korea. Since she held a security clearance at the time, she informed her Facility Security Officer (FSO) about the pending foreign travel. She was advised that she had no further reporting obligations unless someone attempted to obtain information from her. She thinks that she informed the FSO about the potential side trip to North Korea, but is not

certain about the timing of the trip's cancellation in relation to her discussions with the FSO and may not have told her about it. Applicant sent the FSO an email to confirm her proposed travel, but neither of them had a copy of that communication anymore. Applicant did not intentionally conceal the potential visit to North Korea from her FSO while the possibility existed that she might go there. (AR; GE 2; GE 9; Tr. 76-82, 129-130, 138-142.)

Applicant was aware that proselytizing, or otherwise attempting to convert people to join her religion, was forbidden in China. She was fully informed about that, and the Chinese university had policies prohibiting such activity by visiting faculty members. She understood there to be a distinction between such activities and merely discussing her own religious views and experiences with someone else when asked to do so. Nevertheless, she recognized that discussing religion was potentially risky. During her week in China, she went on an evening visit to a vocational academy for Chinese Christian students. She was not aware of whether the Chinese government knew of this school's religious affiliation, but suspected that it was "underground." During the evening, she and four other U.S. citizens from her group each spoke about their personal religious experiences and faith with a group of students from the school. The visit lasted about a half hour, but she was concerned that it could cause legal problems for her if the Chinese government became aware of it. Nothing further happened as a direct result of this visit, but Applicant reported this as being potentially risky conduct while in a foreign country during subsequent security investigations. Combined with several statements in 2010 that she then was interested in returning to China and possibly North Korea to visit, and that practicing her religion was at least as important to her as obtaining a security clearance, another Government agency denied her security clearance and access in 2011. Due to her changed life circumstances, Applicant's present intention is never to travel to China or Korea again. (AR; GE 2; GE 9; Tr. 73-76, 88-104, 121-122, 125-128, 131-137.)

Applicant submitted letters from a university official and a fellow guest lecturer involved with her 2008 visit to China confirming many of the foregoing facts and expressing their confidence that she did not proselytize or engage in any other improper or illegal behavior during that trip. (AE A; AE B.) Her supervisor also wrote to express his high opinion of her character, integrity, dependability, and accountability. He said that she works well with other team members and always follows important company rules and procedures, including those concerning protection of sensitive information. (AE E.) Applicant has no financial interests, property, or income source in any foreign country, and listed her net worth as approximately \$150,000 in U.S. assets in November 2013. (GE 2.)

South Korea has a history of collecting protected U.S. information, and has been ranked among the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. The People's Republic of China has an authoritarian government pursuing comprehensive modernization of its armed forces. The Chinese are the world's most active perpetrators of economic espionage and other intelligence activities against the United States in support of their military

procurement and modernization. China's government engages in repression, coercion, and human rights abuses against its citizens, and often places foreign visitors under surveillance. The other facts set forth in HE II and HE III are incorporated herein by administrative notice. (Tr. 29-33.)

## **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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR allegations and evidence in this case raised potential security concerns under three foreign influence DCs:

- (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;
- (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; and
- (i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has many friends and associates of Korean descent in the United States, but no ongoing contact with anyone in Korea. The SOR alleged that her cousin is a resident citizen of Korea, which was true in the past. He remains a Korean citizen, but now lives in a major U.S. city and intends to obtain permanent U.S. residence and, ultimately, U.S. citizenship. He is an architect/designer with no demonstrated interest in anything related to Applicant's professional work or connection to the Korean government. Applicant visited China for nine days in 2008 and had casual academic contact with students and faculty of Chinese and Korean ethnicity while there. She has

had no subsequent contact or communication with any of them, except briefly with her cousin, since then. I do not find substantial evidence to support security concerns under either AG ¶¶ 7(a) or (b). Applicant's conduct in connection with her 2008 China trip raises security concerns under AG ¶ 7(i), which will be discussed below in connection with parallel concerns under Guideline E.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), or (i) security concerns in this case are:

(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; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure the individual.

Applicant's relationship with her cousin, combined with his present location and intentions, clearly establish mitigation under AG ¶¶ 8(a) and (c), with respect to that relationship. Her family, social, and financial connections are entirely within the United States, not in Korea or China, so AG ¶¶ 8(b) and (f) provide further mitigation of any potential security concerns under AG ¶¶ 7(a) or (b). Mitigation of concerns under AG ¶ 7(i) will be discussed below.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying with relation to the allegations in this case:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country, or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

With respect to AG ¶ 16(b), the SOR alleged failure to disclose Applicant's possible contemplated travel to North Korea during her group trip to China in 2008 to her security officer. Applicant never said that she deliberately provided false or misleading information concerning this potential visit, but rather candidly admitted that she could not remember or prove whether she had done so. There would be no rational reason for her to disclose the China trip but not the North Korean visit to her FSO, if the potential visit to North Korea had not yet been cancelled by the time she reported her intended foreign travel. Accordingly, I conclude that security concerns under AG ¶ 16(b) were not substantiated by the evidence.

Applicant freely admits that her decision to visit the Christian vocational academy in China could have adversely affected her personal standing and safety in China and, whether or not technically illegal, subjected her to potential exploitation or pressure by Chinese officials. Furthermore, she acknowledged similar risks involved in the potential visit to North Korea in connection with her missionary trip. She obtained a double-entry visa to China to facilitate that potential visit, and would have participated in it had it not been cancelled for reasons beyond her control. She acknowledged that these decisions reflected bad judgment, but was willing to undertake the risks in pursuit of what she considered religious purposes when only her own well-being was at risk. She did not contemplate these risks in context of her security responsibilities, however, and took all appropriate measures to avoid security compromise during her travels. Nevertheless, these decisions implicate questionable judgment and exposure to exploitation or duress, raising security concerns under AG ¶¶ 7(i) and 16(e).

AG ¶ 17 provides conditions that could mitigate these judgment-based security concerns. Four have potential applicability to the security concerns raised by the facts in this case:



(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

To the extent uncertainty about Applicant's disclosure of the potential visit to North Korea may support security concerns, AG ¶ 17(a) provides mitigation because the only reason this issue became known was her voluntary disclosure of the information during subsequent security interviews. She has been frank and candid about these facts, and about her inability to positively remember having told her FSO about the possible trip or whether it had already been canceled.

Applicant's potentially risky choices in 2008 were not "offenses," but in the spirit of this guideline the questionable conduct was minor, occurred one time more than six years ago, and took place before she had family responsibilities. She has been forthright in providing information about the choices she made in 2008, eliminating any ongoing potential for exploitation or duress. She persuasively declared her current intention not to travel to foreign locations involving any personal risk in the future. Her previously declared willingness to undertake such risks in pursuit of world knowledge or religious pursuits has been changed by family responsibilities, in addition to her enhanced understanding of resulting security concerns. Thus, sufficient mitigation was established under AG ¶¶ 17(c), 17(d), and 17(e) to be confident in her current reliability, trustworthiness, and good judgment and conclude the recurrence is unlikely.

### **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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant testified in a sincere and honest manner. Her decisions of security significance occurred more than six years ago, in connection with a church-sponsored trip to China and possibly North Korea. She had sufficient confidence in the institutions involved to consider the risks as being outweighed by the potential for achieving good works. She complied with related security procedures to the best of her knowledge at the time.

Applicant is an educated and mature individual. Her conduct of security concern was voluntary, and she honestly considers herself to be accountable for her decisions and actions. She convincingly demonstrated changes in both her personal attitudes and family circumstances that support findings of permanent behavioral change, and that recurrence of questionable judgment is unlikely. Her voluntary disclosure of these matters eliminated susceptibility to resulting coercion or duress. Overall, the record evidence creates no question or doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

DAVID M. WHITE  
Administrative Judge