



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



In the matter of: )  
)  
) ISCR Case No. 14-00245  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

09/23/2014

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 16, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 27, 2014, detailing security concerns under Guideline B, foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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* (AG), implemented on September 1, 2006.

Applicant received the SOR on June 30, 2014. He submitted a notarized, written response to the SOR allegations dated April 8, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 20, 2014. Applicant received the FORM on June 30, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on June 11, 2014. The Government submitted six exhibits, which have been marked as Items 1-6 and admitted into the record. Applicant's response to the SOR has been marked as Item 3, and the SOR has been marked as Item 1.

### **Request for Administrative Notice**

Department Counsel submitted a request that I take administrative notice of certain facts relating to South Korea. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.b of the SOR. His admission is incorporated herein as a finding of fact. He denied the factual allegations in ¶ 1.a of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 44 years old, works as a software engineer with a DOD contractor. Applicant began his current employment in July 2006. The record lacks any evidence of disciplinary actions or problems with mishandling classified documents.<sup>2</sup>

Applicant was born and raised in the Republic of South Korea. He graduated from high school in South Korea in 1988. He received a bachelor's and a master's degree from a South Korean university in 1996 and 1998 respectively. He emigrated to the United States in August 2002 to attend a major United States university. Applicant

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 4; Item 5.

received his Doctor of Philosophy (Ph.D.) in July 2006. He remained in the United States after completing his graduate studies and became a naturalized United States citizen in May 2013.<sup>3</sup>

Applicant and his wife married in March 2000 in South Korea. His wife was born and raised in South Korea. She is now a naturalized United States citizen. They have two children, ages 7 and 3, who are United States citizens by birth and are residents of the United States.<sup>4</sup>

Applicant's father is deceased. His mother, a citizen and resident of South Korea, is a retired real estate agent. Applicant's sister is a resident and citizen of South Korea. She works as a university professor in South Korea. Applicant's father-in-law is a citizen and resident of South Korea, and he operates a restaurant in South Korea. His mother-in-law, a citizen and resident of South Korea, is a housewife. His brother-in-law, a citizen and resident of South Korea, works for a communications company. His sister-in-law is a citizen and resident of South Korea, and she is a housewife.<sup>5</sup>

Applicant denied that any of his family members had any affiliation with a foreign government, military, security, defense industry, or intelligence service. The record lacks any evidence of such a connection. Applicant talks with his mother by telephone once a week. He communicates with his sister by electronic mail quarterly. He talks monthly by telephone with his father-in-law, mother-in-law, and brother-in-law. He talks weekly with his sister-in-law by telephone and electronic mail. He does not provide financial support to his family members in South Korea.<sup>6</sup>

Applicant traveled to South Korea and China to visit family and friends in 2008 and 2011. Before he became a United States citizen, Applicant voted in the 2002 South Korean presidential election. As a young man, he served in the South Korean Army from January 1991 until March 1993. His South Korean military service was mandatory.<sup>7</sup>

Applicant has not been arrested for criminal activity, alcohol-related offenses, or drug-related offenses. He does not have financial problems. He owns his home, and his assets are located in the United States. He relinquished his South Korean passport to his facility security officer. At the time, he completed the e-QIP, he did not have a passport from the United States.<sup>8</sup>

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<sup>3</sup>Item 4.

<sup>4</sup>Item 4.

<sup>5</sup>Item 4.

<sup>6</sup>Item 3; Item 4.

<sup>7</sup>Item 4; Item 5.

<sup>8</sup>Item 4; Item 5; Item 6.

## **South Korea**

I take administrative notice of the following facts related to South Korea. South Korea is currently a stable, democratic republic. The United States and South Korea have been close allies since 1950, and they 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 it frequently conducts joint military operations with South Korea. South Korea is the United States' seventh largest trading partner.

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

South Korea does not recognize dual citizenship. All South Korean males between the ages of 18 and 35 are subject to compulsory military service. Dual citizens may avoid military service by renouncing their South Korean citizenship by March 31 of the year when they become 18 years old. There have been circumstances where U.S. citizens of South Korean descent were drafted into the South Korean Army when they visited South Korea.

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. On several occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching 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.

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

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:

(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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife and children are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's mother, sister, father-in-law, mother-in-law, father-in-law, sister-in-law, and brother-in-law are citizens and residents of South Korea. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members in South Korea must be considered in deciding whether to grant Applicant a clearance.<sup>9</sup> Applicant's family members may create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by other entities or could create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members. These factors must be considered when determining if a heightened risk exists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his extended family, as well as the activities of the Government of South Korea and of other entities within South Korea. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his extended family in South Korea raise a heightened risk and a security concern because of the economic espionage by the South Korean government or other entities in South Korea. The evidence of record fails to show that the South Korean Government targets U.S. citizens in the United States or in South Korea by pressuring, or coercing them to obtain protected information. Thus, the concern that the South Korean Government will seek classified U.S. information is less than it would be with some other nations. The same cannot be said about the South Korean government and other organizations, whose

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<sup>9</sup>ISCR Case No. 09-06457 (App. Bd., May 16, 2011).

goals are to obtain economic information and technology from companies in the United States.<sup>10</sup>

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in South Korea cause security concerns, I considered that South Korea and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the South Korean Government targets U.S. citizens using pressure or coercion for protected classified information. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in South Korea. Based on all these factors, Applicant's contacts raise a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(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; and

(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.

Applicant's weekly and monthly telephone contacts with his family members in South Korea is sufficient to establish more than minimal contacts. AG ¶ 8(c) does not apply. His mother is a retired real estate agent. His father-in-law operates a restaurant. His mother-in-law and sister-in-law are housewives. His brother-in-law works in communications. None of these family members have any connections to the South Korean government or terrorist organizations. His sister is a university professor, whose focus is on education, not to undermine the United States. These family members are not likely to place Applicant in a position of having to choose between the interests of the

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<sup>10</sup>*Id.*

United States and of South Korea. None of these family members, have direct contact with the South Korean government.

Applicant has lived in the United States for more than 14 years. He chose to relinquish his South Korean citizenship and become a United States citizen. His closest family members live in the United States. He has contacts with his family members in South Korea, but they are not dependent upon him for support. These family members are not likely to place Applicant in a position of having to choose between the interests of the United States and of South Korea because the United States is now his country and because of the close ties between the United States and South Korea. His foreign contacts are not likely to create a risk of foreign influence or exploitation. There is no evidence that his family members are involved with the Government of South Korea. Rather, they live and work quietly. Applicant recognizes the obligations he has to the United States. In reviewing the record evidence, I find that Applicant can be expected to resolve any conflicts of interest in favor of the United States. He has mitigated the Guideline B security concerns under AG ¶¶ 8(a)-(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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial.



Although Applicant and his wife were born, raised, and educated in South Korea, they chose to come to the United States in 2002. They decided to remain in the United States and to become United States citizens. They are raising their United States born children in the United States. They have no plans to return to South Korea, although they occasionally visit their family in South Korea. Their decisions over the last 12 years reflect active choices to support their new homeland, the United States. In reviewing the evidence of record as a whole, there is little likelihood that Applicant can be coerced or pressured to reveal classified information or mishandle sensitive materials.

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 foreign influence under Guideline B.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.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.

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MARY E. HENRY  
Administrative Judge