



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



In the matter of:)
)
-----) ISCR Case No. 14-00885
)
Applicant for Security Clearance)

Appearances

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

10/09/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On April 29, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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; 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 DOD on September 1, 2006.

In a letter dated May 14, 2014, Applicant admitted the two SOR allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. The case was assigned to me on June 26, 2014. DOHA issued a notice of hearing on July 23, 2014, setting the hearing for August 21, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1-2 and a request for administrative notice regarding certain facts concerning the Republic of Korea

(South Korea) was offered as Hearing Exhibit (HE) 1. They were accepted without objection. Applicant offered testimony and was given until September 2, 2014, to offer any post-hearing submissions. The transcript of the proceeding (Tr.) was received on September 2, 2014, and two documents were received from Applicant, which were accepted into the record without objection as exhibits (AX) A-B. The record was then closed.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the nation of South Korea. It was accepted into evidence without objection as HE 1. HE 1 was reviewed in its entirety. Relevant facts derived from HE 1 are contained *infra* under the Findings of Fact.

Findings of Fact

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

Guideline - Foreign Influence

Applicant is a 23-year-old staff auditor who has worked for the same defense contractor for about one year. This is his first job out of college and he earns approximately \$60,000. Applicant has earned a bachelor's degree in accounting and finance. Applicant, who was born in the United States, is single and has no children. His younger brother is also a United States citizen. Their father worked for the South Korean government at the time of Applicant's birth. Applicant lived in South Korea with his mother from infancy until age five, then again from ages 10 to 12.

By 2005, when Applicant was about 15, his parents had separated. His mother brought him and his brother to the United States to live permanently. She was born a United States citizen and she owns the house in which they live. Applicant believes that she is divorced from his father under state law. (Tr. 25) His father has made no social trips to the United States. Applicant knows that his father works for a South Korean governmental entity, but is unsure of his father's title or position. (Tr. 25)

Because his father was a South Korean citizen, Applicant is considered a dual-citizen. He considers himself to be solely a citizen of the United States. He relinquished a foreign passport obtained on his behalf in his youth that has since expired. He maintains a United States passport. He is seeking assistance to formally relinquish any ties he may still have with South Korea in terms of citizenship. (Tr. 27-28, 41) Applicant has not been to South Korea in over a dozen years. He sees his father for brief periods during his father's business trips about one to three times a year. (Tr. 31) Neither father nor son discuss their work. They rarely email and only speak by telephone occasionally.

Neither Applicant, his mother, or his brother is dependent on Applicant's father financially. Applicant noted:

[W]ith my father I mean neither me, my brother and I, like we don't have a great relationship with him. He's never been the best family figure. He puts his work ahead of his family so I mean . . . it's the most basic communication that you can think of . . . It's more like he's my father but just by blood and not really any personal affection towards my father or any personal relationships. He doesn't know who my girlfriend is, who my friends re. How I spend my days. . . . [E]ver since my parents separated too, I mean, I don't have the best view of him as well. So we're a very distant relationship. (Tr. 34-35)

He also noted, "I have no sense of obligation to [my father] or South Korea because even in a sense of just countries the U.S. has done much more for me than what South Korea has done for me. . . . [In addition,] all my friends and who I consider family, besides my grandparents, are here." (Tr. 50) "I have zero friends in Korea. . . ." (Tr. 51) It is his intent to stay in the United States. (Tr. 54)

Applicant maintains contact with his maternal grandparents, who are citizens and residents of South Korea. At one point, including the time of Applicant's mother's birth, they lived in the United States. Applicant does not know what circumstances brought them to the United States or why they returned to South Korea. Both grandparents are retired and in their 70s. Applicant believes his grandfather worked for a bank and that his grandmother was a homemaker. They visit Applicant and his family in the United States every few years. They speak by telephone once or twice a year.

Neither Applicant, his brother, nor his mother own any foreign real estate or possess any foreign financial holdings. Their home, automobiles, investments, and possessions are all in the United States. Having been in the United States since his teens, Applicant's friendships and associations are based in this country. He is in a committed relationship here. He owns his own car. Meanwhile, he is preparing for the certified public accountant (CPA) exam, a certification that he hopes will enhance his value to domestic employers. He was selected for his current position straight out of college. He is considered a valued employee.

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. 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. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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 safeguard 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).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Here, Paragraphs ¶¶ 7(a) and 7(b) are 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.*” Applicant’s father and maternal grandparents are citizens and residents of South Korea. Moreover, Applicant’s father works for the South Korean government.

These disqualifying conditions 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 relationships with his father and grandparents, Applicant has no significant nexus to South Korea. In contrast, Applicant, his mother, and brother, are citizens and residents of the United States. They live together in a home their mother owns, and they have built a life within their community. Applicant has gone from high school student to young professional within their community, where he is planning to take the CPA exam and expand his domestic career opportunities. He freely renounces all ties with South Korea and has no intention of leaving the United States. His loyalties are clearly with the United States and the life he has created here.

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). 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 the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a young professional who has built his life and started his career in the United States. His childhood connections to South Korea are limited to his relationships with his father and his maternal grandparents, with whom he maintains mostly superficial relationships. His family, work, girlfriend, friends, and planned future are all in the United States. He has no financial ties abroad. I have considered these facts with all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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.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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge