

DATE: December 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10378

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esquire

McKenna, Long & Aldridge,

SYNOPSIS

The Applicant is not a dual citizen of the Republic of Korea and the United States. His Korean citizenship was revoked when he became an American citizen in 1984. In addition, the Applicant has voluntarily renounced his Korean citizenship. All of the Applicant's living close relatives are also citizens of the United States. They are not agents of Korea or in a position to be influenced by a foreign power. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On February 5, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 4, 2003, and requested a hearing. The case was received by the undersigned on June 26, 2003, and a Notice of Hearing was issued on July 9, 2003.

A hearing was held on July 29, 2003, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who also submitted 12 exhibits. The transcript was received on August 6, 2003.

FINDINGS OF FACT

The Applicant is 45, married, and has a Master's Degree in Chemical Engineering and a Master's Degree in Business Administration. He is employed by a defense contractor as a Senior Manager, and he seeks to retain a Top Secret-level

DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is a dual citizen of the United States and the Republic of Korea (Korea).

The Applicant was born in Korea in 1958. He moved to the United States with his family in approximately 1976. The Applicant has never traveled to Korea since immigrating to the United States. He had a valid Korean passport when he immigrated. Since becoming an American citizen he has never held a Korean passport.

In 1984, the Applicant became a naturalized American citizen. The Korean Nationality Law states, "When a Korean citizen willfully obtains foreign citizenship, he or she shall forfeit his or her Korean citizenship." (Applicant's Exhibit L. *See*, also "Adjudicator's Desk Reference." Available online at <http://www.dss.mil/trainin/adr/forpref/country7.htm>.)

Korean law also allows for a voluntary renunciation of citizenship. The Applicant has submitted such an application to the Korean government, which was completed on May 16, 2003. (Applicant's Exhibit H.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant has relatives who are not American citizens or may be subject to duress.

The Applicant's entire surviving family lives in the United States and are American citizens. They were naturalized in the 1980s. In addition, his wife and in-laws are also naturalized American citizens. None of his immediate family live in Korea. Since they all voluntarily obtained American citizenship, by operation of Korean law they lost their Korean citizenship. His father is a retired small business owner, his in-laws currently own a small business, his sister works for an American company and his brother works for a large American city.

None of the Applicant's relatives work for, or in the past have worked for, the Korean government. (Transcript at 22.) They all live and work in the United States and have close ties to the community.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline C (Foreign preference)

Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns include:

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (4) Individual has expressed a willingness to renounce dual citizenship.

Guideline B (Foreign influence)

Conditions that could raise a security concern:

(1) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that demonstrates untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has not met its burden with regards to Guideline C. The Applicant was a Korean citizen when he came to the United States in 1976. By operation of Korean law, the Applicant's Korean citizenship was lost when he voluntarily became an American citizen in 1984. However, even assuming for the sake of argument that he was still a dual citizen when the SOR was issued, he has successfully mitigated the security significance of his alleged dual citizenship by voluntarily renouncing his Korean citizenship, as allowed under their law. The Applicant is a proud American citizen, and has done everything within his power to confirm that fact. Paragraph 1 is found for the Applicant.

Turning to Guideline B, the Government has also not met its burden. Since the Applicant's Korean citizenship was automatically revoked when he became an American citizen, it stands to reason that the Korean citizenship of his relatives would also have been revoked. However, due to the fact that they were Korean citizens, and have not voluntarily renounced their citizenship as the Applicant has, it is arguable that Disqualifying Condition 1 applies. I have reviewed the evidence and find that the Applicant's relatives are not agents of a foreign power or in a position to be influenced by a foreign power. Accordingly, the Applicant has mitigated any possible adverse influence of his family's Korean ancestry. Paragraph 2 is also found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge