

DATE: July 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16923

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's inconsistent statements concerning her dual citizenship and her foreign financial interests preclude a finding that it is now clearly consistent with the national interest to grant her access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on December 19, 2001, and elected to have her case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case on or about February 21, 2002. By letter dated May 23, 2002, applicant indicated that she would not be submitting any additional information. The case was assigned to me on May 28, 2002.

FINDINGS OF FACT

Applicant is forty-three years of age.

Applicant was born and raised in South Korea (FC). In 1992, she moved to the United States to attend college. That same year she married a United States citizen. She received a "green card" in 1993, and became a United States citizen in 1998. At the present time, she is still a citizen of South Korea.

Applicant is unwilling to renounce her South Korean citizenship. She has given inconsistent reasons for her

unwillingness to renounce it. In a signed, sworn statement that she gave to the Defense Security Service (DSS) in January 2001 (G-5), she stated, "I plan to maintain my dual citizenship to protect my financial interests (bank account and property) in South Korea." In her December 2001 response to the SOR, however, she stated, "My only reason for keeping my Korean citizenship was to preserve a part of my culture, not to further some political or financial goals."

Applicant has also given inconsistent information concerning the property she owns in South Korea. In G-5, she stated, "I own a house in South Korea." In her response to the SOR, however, she denied that she owned a house in South Korea. She stated that although the title to the house is in her name, it is actually owned by her oldest brother, who put the title in her name to avoid paying the higher taxes levied on people owning multiple homes. She further stated that she has not derived any "benefit from having this house in my name," and "I will have my brother remove my name from the title." The only other property she owns in South Korea is a bank account. In her December 2001 response to the SOR, she indicated that this bank account would be closed, and the title to the house would be changed, on or before May 1, 2002. Although she had the opportunity to do so, applicant submitted no credible evidence to confirm that she followed through with her stated intention and disposed of these two foreign financial interests.

Applicant's mother is a citizen of, and resides in, South Korea. Applicant maintains twice monthly contact with her, and sends her \$100 to \$200 every two to three months. The mother is in her mid-seventies, does not work, and relies upon her children for support. Applicant's sister and three brothers are citizens of South Korea, and currently reside in South Korea. Applicant maintains monthly contact with them. Applicant states that although her relationships with these family members are close, "these relationships could in no way cause me to act against the best interests of national security" (G-5).

In her response to the SOR, applicant stated the following in response to the allegation that she may have a preference for South Korea over the United States: "I do not prefer South Korea over the United States. If I did, I would still be living there. I love the United States and everything it stands for. I have gone to undergraduate and graduate school in the United States. I have struggled to learn a language that is not very easy to learn. I have worked very hard at everything I have done in America and I believe I am a good citizen." In G-5, she stated the following: "I consider myself a loyal U.S. citizen and my allegiance lies with the U.S., not South Korea. I would be willing to bear arms on behalf of only the U.S."

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern:

1. E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.
2. E2.A2.1.2.8: A substantial financial interest in a country, or in any foreign owned or operated business, that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

None.

Foreign Preference

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. E2.A3.1.2.1: The exercise of dual citizenship.
2. E2.A3.1.2.6: Using foreign citizenship to protect financial or business interests in another country.

Conditions that could mitigate security concerns:

None.

CONCLUSIONS

Applicant was born and raised in South Korea. She moved to the United States in 1992, obtained a "green card" in 1993, and became a United States citizen in 1998. She is currently a citizen of both South Korea and the United States. She is unwilling to renounce her South Korean citizenship. In a signed, sworn statement that she gave to the DSS in 2001, she stated this unwillingness is based upon her desire "to protect my financial interests (bank account and property) in South Korea."

Applicant's exercise of dual citizenship in order to protect her financial interests in South Korea raises security concerns under the Foreign Preference Guideline. Her inconsistent statements relating to (1) the reasons for her continuing dual citizenship and (2) the ownership of the house, compound these security concerns, as does her apparent failure to follow through with her stated intention to dispose of these financial interests by May 1, 2002.

The fact that at least five of applicant's immediate family members are citizens and residents of South Korea raises security concerns under the Foreign Influence Guideline, as does her substantial financial interest in South Korea. ⁽¹⁾

Once the Government presents evidence that raises reasonable doubts about an applicant's security-worthiness, the burden shifts to applicant to present evidence to overcome these doubts. Applicant has failed to meet her burden. Her inconsistent statements on at least two material issues; namely, (1) her reason for maintaining her dual citizenship, and (2) the exact nature of her foreign financial interests, together with the continuing uncertainty surrounding her financial interests in South Korea, leave far too many doubts about her current security-worthiness. Under the "clearly consistent with the national interest" standard for the issuance of a clearance, these doubts must be resolved in favor of national security.

FORMAL FINDINGS

GUIDELINE B: AGAINST THE APPLICANT

GUIDELINE C: AGAINST THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. There is no evidence concerning the actual dollar value of the bank account or the house. However, based upon applicant's statement that she is maintaining her South Korean citizenship in order to protect these financial interests, they must be deemed "substantial" within the meaning of Guideline B.