DATE: October 10, 2003

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-02142

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized U.S. citizen born in Korea, maintains close family ties there, and travels to Korea and other nearby countries several times each year to market the services of the small engineering firm he owns. Since 1987, he has held a DoD clearance in connection with his company's DoD contracts. He has also contracted with a private aerospace company subsidized by the South Korean government. He continues to actively pursue a variety of foreign commercial ventures. Applicant also omitted from his most recent SF-86 relevant information about his foreign business interests and prior military service. He has failed to mitigate the resulting security concerns under Guideline B (Foreign Influence), Guideline E (Personal Conduct) and Guideline L (Outside Activities). Clearance is denied.

STATEMENT OF THE CASE

On January 29, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.[(1)] The SOR alleges facts which raise security concerns under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline L (Outside Activities).

On February 26, 2003, Applicant answered the SOR (Answer), wherein he provided information about each allegation and requested a hearing. However, he failed to specifically admit or deny each SOR allegation and was asked to resubmit his Answer with the missing representations. He did so on March 28, 2003, repeating the information from his first Answer and specifically admitting to all of the SOR allegations except for the allegation in SOR subparagraph 3.b.

The case was assigned to me on May 28, 2003. On June 2, 2003, DOHA issued a Notice of Hearing setting this case to be heard on June 24, 2003. All parties appeared as scheduled and the Government presented three exhibits (GE 1 through 3), which were admitted as evidence. I granted Department Counsel's request that I take administrative notice of the information contained in GE 4 through 6, for identification only.[(2)] Applicant presented no documentary evidence, but testified in his own behalf. DOHA received the transcript (Tr) on July 2, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 55-year-old naturalized U.S. citizen. He was born in Seoul, South Korea and moved to the U.S. in 1977. He is an electrical engineer by training and obtained a doctorate in that field from a major American university in 1983.(3) After arriving in the United States, Applicant worked for a small engineering firm. In 1985, when the company he worked for was going into bankruptcy, he opened his own small business with the help of a U.S. government small business assistance program. He still operates that company, which provides engineering consulting services in several applications, most notably in the field of space-based imaging systems and ground station engineering.(4)

Applicant's company consists of 12 employees working on two U.S. government contracts. The company is managed by Applicant, his wife, a naturalized Korean-American who acts as the company's security manager, and one of Applicant's brothers, a permanent resident alien who does commercial marketing. Another naturalized Korean-American engineer also serves as a company officer for his technical expertise.(5) The company's first U.S. government contract began in 1989.(6)

Around 1991, Applicant struck up a business relationship with a firm headquartered in South Korea, and he is now doing business in South Korea in the aerospace field. More specifically, the Korean firm is engaged in engineering related to space-based imaging and other satellite sensor technologies. While Applicant's business with this firm appears limited to commercial applications, the technology involved is the same as is used for intelligence gathering and other such monitoring activities. Most of Applicant's work in this regard has been engineering consulting related to ground stations used for satellite tracking and signal / data relay functions. However, Applicant also assisted that firm in its dealings with the U.S. State Department as it was getting permission for a technology export license to transfer technologies from the U.S. to Korea. The Korean firm receives funding from the South Korean government.(7)

Applicant has also explored business opportunities with at least two other Korean firms. Between 1991 and 1999, Applicant tried to develop work with those companies, neither of which is supported by the Korean government, through lectures and seminars dealing with ground station engineering. Applicant has had on-going contact with a former employee of one of the companies who is now a professor at a Korean university. That person has invited Applicant several times to teach at that university, but Applicant only did so in 2002 citing a busy personal schedule. He taught two semesters, primarily through internet lectures and tests; but he also traveled to South Korea to give three or four lectures in person.(8)

Applicant has traveled to South Korea extensively for both business and pleasure.(9) He has also traveled to two northeast provinces of mainland China bordering the Korean peninsula. He travels to China to broker exchanges of handmade Chinese goods for western technological items, such as computers, telephones, and the like. The genus of this commercial activity appears to be in Applicant's contacts with fellow church members who are businessmen looking for new avenues of trade. These business activities have no connection to the fields with which Applicant's company is involved. Most recently, Applicant has traveled to Japan seeking to expand his company's business opportunities.(10)

Applicant's business has struggled in recent years. While it has garnered about five million dollars in revenue the past three years, as of the hearing he anticipates his revenues will decline by at least one million dollars this year. Applicant's company is in the last year of its contract with the Korean government-funded company discussed above, and he is hoping for a contract extension. He does not currently have an active contract with any other foreign businesses, but, citing limited business prospects in the U.S., he intends to continue his overseas marketing efforts while he continues to hold a DoD clearance.(11)

Applicant's mother is in her 80s and lives with Applicant's brother in Seoul. She has never worked and is now reliant on Applicant and his two siblings in Korea for support as there is no pension system in Korea. Applicant is younger than all his siblings. His oldest brother is a physician, and is a naturalized citizen living in the U.S. Another brother is an attorney in private practice in Korea. He formerly worked as a prosecutor, but it is unknown at what level of Korean government he was employed. Applicant's sister is a pharmacist who also lives in Korea. Her husband is a doctor. As noted above, Applicant's third brother is a permanent resident alien in the U.S. and works for Applicant's company. Applicant sometimes sends his mother small amounts of money, and he speaks with her by phone each week.(12)

Applicant filled out and executed an electronic Personnel Security Questionnaire (SF-86) on September 7, 2000. In response to SF-86 Question 11, Applicant omitted the fact that he served four years on active duty in the South Korean Air Force before coming to the U.S. in 1977. In his defense, Applicant alternatively asserts that he assumed the question addressed only U.S. military service, and that he had trouble inputting the information about Korean service into the electronic form.(13)

In response to SF-86 Question 12, regarding foreign property, activities and other interests, Applicant omitted any information about his foreign business interests. In his defense, Applicant claims the aforementioned contract with the Korean aerospace firm did not come about until after he filled out the SF-86. He further asserts he interpreted the question to concern only formal contracts or business holdings overseas. He thought he did not have to declare his marketing activities between 1991 and 2000.

Applicant and his wife have four children by birth and have adopted two others. He and his family have lived in the same city since 1989.[(14)]

POLICIES

The Directive sets forth adjudicative guidelines[(15)] to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline L (Outside Activities).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest[(16)] for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.[(17)] A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.[(18)]

CONCLUSIONS

Guideline B (Foreign Influence). 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.[(19)]

With the exception of subparagraph 2.i, the Government has established its case with respect to Guideline B. Subparagraph 2.i states information that, if it were of any security significance, would more properly be alleged under Guideline C. As it is, the fact that Applicant served in the South Korean Air Force pursuant to his obligatory service as a Korean citizen before he came to the U.S. and obtained U.S. citizenship is not relevant to a showing that Applicant might be subject to foreign influence.

However, as to the other allegations under Guideline B, Applicant has relatives and professional contacts who are citizens of foreign countries living both here and abroad. Guideline B Disqualifying Condition (DC) 1[(20)] applies. Applicant also has extensive foreign business contacts (discussed more fully under Guideline L, below) in Korea, as well as in Japan and the Peoples Republic of China. The evidence as a whole regarding Applicant's foreign contacts shows that his interests are divided between his personal and professional lives in the United States and those he has maintained overseas. As a result, the government is reasonably concerned about Applicant's susceptibility to influence by a foreign government through those contacts.

On the facts of this case, I have also considered Mitigating Condition (MC) 1[(21)] and MC 5[(22)] as potentially applicable. However, I cannot conclude that Applicant has presented sufficient information from which to conclude that these factors should outweigh the disqualifying information under this guideline. Applicant has provided no information to suggest that he is marketing his services domestically. Further, aside from the U.S. government contracts he has held the past six to ten years, he has sought foreign business opportunities only, and has expressed his intent to continue doing so. As to the significance of his foreign financial interests, since 1991, Applicant has derived as much as 10% of his total revenues (or about $500,000.00) from his foreign aerospace contract. This constitutes a significant interest in a foreign company which itself has financial ties to the South Korean government. I conclude Guideline B against the Applicant.

Guideline E (Personal Conduct). Under this guideline, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.[(23)] Of note in this case is the government's concerns about Applicant's honesty. The government has proven its case that Applicant omitted relevant information from his SF-86 by answering "no" to Questions 11 and 12. It is uncontroverted that Applicant did not disclose his prior foreign military service, or that he did not provide any information about his foreign business activities. As for omitting his military service, it is reasonable that one might interpret SF-86 Question 11 to address only U.S. military service. I also have no reason to doubt that he may have experienced trouble getting the electronic form to accept his information. However, his conflicting explanations about his omission under Question 11 undermine his credibility in my view. Applicant has not addressed the issue of why, if he did not believe the question applied to him in the first place, would he have tried to input his prior service information into the electronic form, resulting in the difficulties he claims to have experienced. I do not accept Applicant's explanation and can only conclude he deliberately omitted the information requested.

As to his omission of his foreign business interests and activities, Applicant relies in response on a purely semantic argument. He interprets the phrase "business connections" to mean finalized contracts and consummated business agreements rather than less formal connections. Applicant's argument is unpersuasive, because he has lived and conducted business in the United States for nearly 20 years now. It is apparent he understands the value of marketing and ongoing discussions with the companies with whom he has been dealing. Even accepting that the only foreign contract he has actually formalized may have come to fruition after he submitted the SF-86, he has failed to show how nearly 10 years of active marketing to foreign companies does not equate to a business connection. A plain reading of SF-86 Question 12 makes clear that the government wants to know about the full extent of an Applicant's foreign financial and business interests. Applicant's position implies that throughout his extensive dealings with the Korean firms - including several trips annually to South Korea and through lectures and seminars he delivered in various settings, sometimes at the request of the company with whom he sought to do business - he did not establish any sort of connection or relationship with those companies. This simply does not make sense.

I conclude that Applicant has deliberately sought to conceal the full extent of his foreign business interests from DoD to avoid jeopardizing his ongoing contracts with U.S. government agencies. Guideline E DC 2[(24)] applies here. By contrast, Applicant has provided no indication that he understands or accepts the government's concerns in this regard. None of the mitigation available under Guideline E is available to Applicant on these facts. I conclude Guideline E against the Applicant.

Guideline L (Outside Activities). A security concern arises because involvement in certain types of outside employment or activities may pose a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.[(25)] In this case, Applicant has a DoD clearance so that he and his company may perform work for DoD and other federal agencies, primarily in the field of satellite imaging and related ground station support. As alleged in subparagraphs 1.a and 1.b, he also has a contract with a foreign company engaged in commercial applications of the same engineering technology. That company receives funding from the government of South Korea, thus creating at the very least the appearance of a conflict of interests between Applicant's obligations to the U.S. government and those of South Korea. Further, his extensive contacts with other Korean, Japanese and Chinese business entities, and his stated intent to continue to pursue such business opportunities only serves to strengthen the government's concerns about possible conflicts of interest between those business activities and his access to classified information. His contracted business with a Korean-subsidized company constitutes employment with a representative of a foreign interest within the meaning of Guideline L DC 3.[(26)] Because his business with that firm is ongoing and he is still actively pursuing other foreign business opportunities that could pose similar conflicts in the future, neither of the Guideline L Mitigating Conditions is available to Applicant.

The companies listed in subparagraphs 1.c and 1.d, with whom Applicant has been discussing business opportunities, both work in fields related to the work he does for the company listed in subparagraphs 1.a and 1.b. However, there is no information to suggest that the companies in 1.c and 1.d are representatives of a foreign government or that they receive funding from a foreign government. Further, the business activities alleged in subparagraph 1.e do not appear to pose a conflict with his current work for the U.S. government. While this does not diminish the security significance of Applicant's foreign contacts in general, the government has not shown that the activities alleged in subparagraphs 1.c, 1.d, and 1.e are disqualifying under Guideline L. Nonetheless, I conclude Guideline L against the Applicant due to both his conflicting outside activities as alleged in subparagraphs 1.a and 1.b., and his continued overseas marketing efforts while holding a DoD clearance.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the

record before me as required by Directive Section E2.2.3. Applicant is a dedicated family man and appears to be a sincere, hard-working person. However, the record evidence as a whole in this case presents an unacceptable risk to the government especially in light of his substantial foreign interests and ties of affection. Of equal import is Applicant's intentional falsification of his most recent SF-86 in which he omitted relevant information about his background. On balance, I conclude that Applicant's access to classified information should not be continued.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Outside Activities (Guideline L): AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d For the Applicant

Subparagraph 1.e For the Applicant

Paragraph 2, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Subparagraph 2.h: Against the Applicant

Subparagraph 2.i: For the Applicant

Paragraph 3, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. Tr., p. 25 - 28.

3. GE 1.

4. Tr., p. 49 - 50.

5. Tr., p. 88 - 92.

6. Tr., p. 92.

7. Tr., p. 59, 92 - 93, 100.

8. Tr., p. 64 - 65, 72 - 73.

9. Tr., p. 94.

10. Tr., p. 76.

11. Tr., p. 62 - 63, 85 - 87, 92 - 93.

12. GE1; Tr., p. 94 - 98.

13. GE 1; Tr., p. 81 - 82.

14. GE 1; Tr., p. 69 - 70.

15. Directive, Enclosure 2.

16. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

17. *See Egan,* 484 U.S. at 528, 531.

18. *See Egan;* Directive E2.2.2.

19. Directive, E2.A2.1.1.

20. E2.A2.1.2.1. 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;

21. E2.A2.1.3.1. 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;

22. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

23. Directive, E2.A5.1.1.

24. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

25. Directive, E2.A12.1.1.

26. Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:...E2.A12.1.2.3. A representative of any foreign interest;