DATE: May 16, 2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-02172

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant did not exercise foreign preference where his dual citizenship was based solely on his birth in a foreign country and his stated reluctance to bear arms against his former countrymen lacked security significance. Applicant mitigated foreign influence concerns where record evidence demonstrated that family members had no connection with the foreign government and were not in a position to be exploited by the foreign government. Clearance granted.

STATEMENT OF THE CASE

On 26 November 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding[(1)] that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 11 December 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to two different Administrative Judges but was re-assigned to me on 13 January 2003 because of a change in regional assignments, and I received the case the same day. On 16 January 2003, I set the case, and issued a Notice of Hearing (NOH) the next day for a hearing on 19 February 2003.

On 23 January 2003, Applicant requested a continuance because he was going to be out of the country most of February. I granted the continuance on 1 February 2003, reset the case on 20 February 2003, and issued a second NOH on 21 February 2003 for a hearing on 17 March 2003.

At the hearing, the Government presented two exhibits--admitted without objection--and no witnesses; Applicant presented one exhibit--admitted without objection, and the testimony of one witness, himself. DOHA received the transcript on 25 March 2003.

RULINGS ON PROCEDURE

At the hearing, Department Counsel requested that I take official notice of the OPSEC Intelligence Threat Handbook, a 27 November 2002 Washington Times article on "Face of U.S. Espionage Changing," the 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, and the State Department web page discussion of dual nationality in Korea. I granted the request (Tr. 22, 59).

FINDINGS OF FACT

Applicant admitted having been a dual citizen of the Republic of South Korea by operation of Korean law until he renounced that citizenship after applying for his clearance; admitted a reluctance to bear arms against South Korea; and admitted having provided annual support to his parents--citizens and residents of South Korea--of approximately $4,000.00-5,000.00, but not since January 2002. He denied that his sister was a citizen of South Korea or that he owed military service to the Republic of South Korea; accordingly I incorporate his admissions as findings of fact.

Applicant--a 30-year-old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant--an ethnic Korean--was born in Seoul, South Korea in May 1972, making him a citizen of South Korea. He grew up in South Korea until approximately November 1984 (age 12), when his parents--both citizens of South Korea--moved to the U.S. with Applicant and his older sister. His parents believed the educational system and opportunities were better in the U.S. than in South Korea.

From November 1984 until late 1988-early 1989, Applicant's father spent six months in South Korea, where he works as an independent architect, and two or three months in the U.S. When Applicant's grandmother became ill in early 1989, his father returned to South Korea, where he has remained except for occasional short visits to the U.S. Applicant's grandmother died in 1995.

Applicant's mother remained in the U.S. from November 1984 to 1992 or 1993, when she considered Applicant and his sister old enough to fend for themselves in the U.S. She then returned to South Korea to live with her husband. While in the U.S., she was employed as a seamstress, but has been a homemaker since returning to South Korea. Neither parent has any connection to the South Korean government.

Applicant's sister was in high school when she moved to the U.S. She completed high school in the U.S., obtained undergraduate and graduate degrees in the U.S., and became a U.S. citizen in April 1997. She then returned to South Korea to teach English at a private school. She lives with her parents. She has a valid U.S. passport issued in March 2002 (A.E. A). She has no connection to the South Korean government.

Applicant speaks to his parents and sister weekly by telephone. His parents have visited him thrice, in 1995, 1996, and 2003, when they came for Applicant's wedding. He and his sister provided economic support to their parents during an economic downturn in South Korea, but have not provided any support since January 2002.

Applicant was in 7th grade when he moved to the U.S. He completed his primary and secondary education in the U.S. and went on to obtain undergraduate and master's degrees in information systems. He became a U.S. citizen in December 1992. He obtained his U.S. passport in June 1993. Since coming to the U.S., Applicant has been back to South Korea on four occasions: the summers of 1988 and 1990, when he was still a citizen of South Korea; December 1996 (a visit he disclosed on his clearance application (G.E. 1); and February 2003, when he and his wife traveled to South Korea for their honeymoon.[(2)] He has only used his U.S. passport for foreign travel since becoming a U.S. citizen. He last renewed his South Korean passport in 1990 before his summer travel that year; this passport has expired. He has no connection to the South Korean government. He has no financial assets or accounts in South Korea. All his assets and financial accounts are in the U.S., where he and his wife intend to remain.

The State Department website[(3)] describes its understanding of South Korean law regarding dual nationality of native-born South Koreans:

The Government of the Republic of Korea does not recognize dual citizenship after an individual reaches the age of 21.

Americans of Korean descent who hold dual citizenship under South Korean law and work or study in South Korea are usually compelled to choose one or the other nationality soon after reaching 20 years of age. In addition, South Korean citizen men age 18 and over are subject to compulsory military service. The Government of the Republic of Korea considers an individual to be a citizen of South Korea if the individual's name appears on the family census register. A male dual national who has reached the age of 18 may not be allowed to abandon his ROK nationality until he finishes his military service or has received a special exemption from military service.

There have been several instances in which young American men of Korean descent, who were born and lived all of their lives in the United States, arrived in the ROK for a tourist visit only to be drafted into the South Korean army. At least two of these cases involved U.S. citizens of Korean descent whose names had been recorded on the Korean family census register at the time of their birth in the U.S. and who had been unaware of their South Korean citizenship. Further information concerning dual nationality is available at the nearest South Korean consulate or through the Consular Affairs' Dual Nationality flyer on the Internet at http://travel.state.gov/.

At the time Applicant completed his Security Clearance Application (SCA)(SF-86)(G.E. 1) in July 2001, he believed that South Korea still considered him a citizen of South Korea, based on recent changes in South Korean law. He truthfully disclosed his dual citizenship and other foreign connections. He openly discussed those connections in his sworn statement of November 2001 (G.E. 2).At the time of his interview, he believed South Korea would consider him subject to mandatory military service requirement applicable to South Korean citizens. He stated he would resist any efforts by the South Korean government to require him to perform such duty, as he considered himself only a U.S. citizen.

Applicant would not bear arms for the Republic of South Korea, and would bear arms for the U.S. Indeed, Applicant has registered with the Selective Service System as required by Federal law. However, he has expressed a reluctance to bear arms against South Korea, unless South Korea was taken over by the communist North, and involved in hostilities against the U.S. Nevertheless, he cannot imagine circumstances that would require him to bear arms against South Korea.

At the time of his sworn statement, Applicant stated a willingness to renounce his South Korean citizenship, but had not done so because of the perceived difficulties attendant to making a special trip to South Korea. However, while his clearance was pending, he took steps to renounce his foreign citizenship, and asserts that he has no further obligation to South Korea--to include military service.

The South Korean government has an aggressive, effective intelligence-gathering organization that targets economic and proprietary information in the U.S.

The record contains no evidence of Applicant's work history or character.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country;

E2.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship.

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. 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 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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 in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s). . .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.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Although it appears that Applicant has been a dual citizen of South Korea and the U.S. since his naturalization in

December 1992--when he was 20 years old--South Korea does not recognize dual nationality after age 21.[(4)] Although Applicant was apparently not compelled to make the required election of citizenship when he visited South Korea in 1996, he has now taken the steps required to renounce his South Korean citizenship (or elect his U.S. citizenship) and be relieved of his military obligation. Regardless of when Applicant formally ceased to be a citizen of South Korea, his past conduct may still be examined for evidence of foreign preference. However, Applicant's foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the government has not established its case under Guideline C, and I conclude that Applicant has mitigated anysecurity concerns

Applicant claims to prefer his U.S. citizenship to his foreign citizenship and his conduct supports that assertion. Applicant placed himself in a position to lose his South Korean citizenship as a matter of South Korean law when he became a U.S. citizen because South Korea does not recognize dual nationality. Applicant eventually reported that his naturalization to the South Korean government and, as a result is no longer a citizen of South Korea. Applicant is clearly proud of his U.S. citizenship. Since his naturalization as a U.S. citizen, he has engaged in no conduct that could be construed as an exercise of dual citizenship and the government has alleged none. The government alleges--and Applicant admits--a reluctance to bear arms against South Korea. This fact is without security significance. The appropriate disqualifying condition is "military service or a willingness to bear arms for a foreign country." Applicant has performed no such service and expressed no such intent. He has stated a clear willingness to serve in the U.S. military and has registered for the Selective Service System as required by Federal law.[(5)] He has merely expressed a perfectly understandable reluctance to bear arms against his former countrymen, unless they were taken over by the communist North and involved in action against U.S. interests. This action implicates no disqualifying condition under Guideline C. I resolve Guideline C for Applicant.

The government has established its case under Guideline B, but Applicant has mitigated the concerns. Under Guideline B for foreign influence, a security concern 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 U.S. 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 if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service. Applicant's father, mother, and sister remain residents of South Korea, although his sister is a U.S. citizen. He has regular contact with his parents and sister. He has provided economic support to his parents in the past, but none currently.[(6)] Nevertheless, none of these relatives have any connection to the South Korean government, nor is it likely that they are agents of that government. I conclude his family members do not constitute an unacceptable security risk as required by MC 1.

I reach this conclusion notwithstanding the fact that the foreign country at issue is South Korea, a democratic country nevertheless known to target U.S. economic interests in its intelligence gathering. Of course, in every security-clearance case an applicant's ties or connections to any foreign country deserve careful examination. Common sense suggests that such connections do not deserve the same level of scrutiny, however, as a foreign country whose interests are hostile or inimical to the U.S., or a foreign country with an authoritarian or totalitarian government. Accordingly, I reviewed Applicant's ties or connections to South Korea with additional scrutiny. However, while South Korea is known to target U.S. economic information, there is no information to suggest that South Korea engages in coercive action against its own citizens with an eye toward pressuring someone in Applicant's position to reveal classified information. Thus, having concluded that Applicant's family members are not agents of the South Korean government, they are not likely to seek classified information directly from Applicant. Nor are they likely to be coerced by the South Korean government to obtain classified information indirectly from Applicant. In a similar fashion, Applicant no longer owes any military service to South Korea. Even if he did, Applicant has demonstrated a clear resolve to resist induction into the South

Korean military should any attempt be made--none were during his 1990, 1996, or 2003 visits to South Korea--to impose the requirement on him. I resolve criterion B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Paragraph 2. Criterion B: For THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).

2. Applicant's wife--also an ethnic Korea originally from South Korea--became a naturalized U.S. citizen in August 2002; her immediate family resides in the U.S. (Tr. 43). Applicant's parents attended the wedding in the U.S., but Applicant and his wife traveled to South Korea to honeymoon and meet Applicant's extended family (Tr. 50-53)

3. See, www.state.gov. The website does not disclose what Korean law concerning dual nationality was at the time Applicant became a U.S. citizen.

4. *c.f.* ISCR Case Number 02-04455, where the citizenship of a native-born South Korean was essentially revoked automatically when Applicant submitted proof of his U.S. naturalization at the South Korean embassy in 1999.

5. Neither of which is expressly or impliedly a disqualifying or mitigating factor under Guideline C.

6. Nevertheless, even ongoing financial support to his parents adds little security significance to the equation.