

DATE: February 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04455

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esquire

SYNOPSIS

While most of Applicant's conduct demonstrating foreign preference occurred before he became a U.S. citizen, his retention of property interests after naturalization (and loss of his South Korean citizenship) raise no foreign preference concern where Applicant disposed of the property once he became aware of the security significance of continued ownership. However, he was susceptible to potential foreign preference where his father and sister remained in South Korea, where his property interest (in the form of a moral if not legal debt to his father) was not resolved, and where he had continued contact with friends now employed by the South Korean government--a government known to target U.S. financial interests in its intelligence operations. Clearance denied.

STATEMENT OF THE CASE

On 10 April 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 3 June 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge but was re-assigned to me on 2 July 2002 because of a change in regional assignments, and I received the case the next day. On 22 October 2002, I set the case, and issued a notice of hearing the next day for a hearing on 5 December 2002.

At the hearing, the Government presented four exhibits--two admitted without objection, two admitted over objection--and no witnesses; Applicant presented twelve exhibits--admitted without objection, and the testimony of three witnesses, including himself. DOHA received the transcript on 13 December 2002.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 41-year old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Changsung, South Korea in 1962, making him a citizen of South Korea. He was born in a province whose residents have historically experienced institutional and other discrimination by ethnic Koreans born in other parts of the country. He was educated in Korea, completed secondary school there, and was admitted to a prestigious university in Seoul in 1980; he graduated with a degree in economics in 1984. He continued at the same university in a master's program, receiving his degree in business administration in 1986.

While he was in school, he met the woman he later married. She had emigrated to the U.S. with her family as a teenager in 1983, but returned to South Korea to attend college when she gained admission to the same prestigious university. She and Applicant began a serious relationship, but she returned to the U.S. after graduation. Her family--from the "right" side of the country--did not approve of the relationship. Despite this, the relationship continued by mail and telephone. She returned to South Korea in 1988 for what amounted to the formal engagement announcement, and returned to South Korea again in 1989 to be married and reside with Applicant in South Korea.

After he completed his Korean education, Applicant was then required to satisfy South Korea's compulsory requirement for military service. However, because of his educational achievements, he was eligible for a program whereby he served approximately six months on active duty as an officer, then was transferred to the reserves. Applicant served his active duty from August 1986 to February 1987.⁽²⁾ He performed reserve duty until 1990, when he came to the U.S. to study.⁽³⁾ He left active duty as a 2nd Lieutenant. He spoke inartfully during his subject interview when he stated he "retired." He has neither an entitlement to retired pay, nor any further military obligation to South Korea. He would not bear arms for South Korea.

Applicant's academic success entitled him to take an entrance examination for employment in the South Korean government. Applicant passed the examination--one of only 20 to pass the examination the year he took it--and scored high enough to be offered a position in the Finance Ministry, the most prestigious ministry in the South Korean government. However, as a Korean from the "wrong" side of the country, he was assigned to a position in the worst division in the ministry, Customs Corporate. Nevertheless, he served as deputy director of the division from May 1987 to June 1990, where he was involved in trade negotiations supporting South Korea's trade, customs, and tariffs. He testified he lacked the political connections to transfer to another division.

In 1990, Applicant obtained a full scholarship to attend a doctoral program at a university in the U.S. Although the South Korean government has a program which sends employees to graduate schools in the U.S. at government expense (and on government time), Applicant was unwilling to wait until he had the necessary seniority for government sponsorship of his education. He took an unpaid leave of absence, which counted against his seniority in the government, and emigrated to the U.S. in June 1990 along with his wife. The graduate school did not turn out to be as prestigious as Applicant believed, so he transferred to a different graduate school from which he obtained his doctorate in economics in May 1996. According to Applicant, he is considered something of a legend at the Ministry of Finance, as he was the first to obtain a full scholarship to a doctoral program in the U.S. (Tr. 138-139).

South Korean government policy permitted Applicant to take a two-year leave of absence, with an additional two-year extension. In approximately June 1994, his four-year leave would expire. His superiors at the ministry contacted him with two options: either return at the end of the leave period, or resign. Because he had changed degree programs, Applicant was still two years out from graduation. He also now realized that even with his doctorate, he would return to the ministry four years behind his contemporaries, as well as employees originally junior to him. He decided to resign and finish his degree. He also decided to apply for legal permanent resident status in the U.S., having now decided he wanted to become a U.S. citizen.

When Applicant obtained his doctorate in May 1996, he had already been applying for suitable jobs around the U.S., without any success. With a specialty in public economics, the most likely jobs were in government-funded research programs (unlikely to be given to a foreign citizen), or in university research programs, at low pay. He also applied at "big 5" accounting firms, but not smaller accounting firms. He received no job offers.

After much discussion with his wife, who was expecting their second son (their first son was born in March 1994), Applicant decided to take a job in South Korea with a government-funded think tank--much like the government-funded think tank he currently works for. Applicant initially intended to work for the think tank for two years. He thought the experience would be more beneficial to his employment opportunities in the U.S. than less demanding work here, but he also thought anything less than two years would not be seen as significant experience. Applicant began work in South Korea in June 1996. He missed his second son's birth in November 1996 because he could not work out the logistics of a scheduled government trip to Scandinavia to permit him to be present for the birth. Applicant became disillusioned by his job with the think tank and he saw how little progress had been made in Korean society in the time he had been absent. He realized how much better his opportunities were in the U.S., so he quit the think tank job in April 1997 and returned to the U.S. He took a job with a small accounting firm, which he held until obtaining his current job in January 2001.

Applicant became a U.S. citizen in October 1999. His wife had become a U.S. citizen in September 1999. Under South Korean law, neither Applicant nor his wife could remain citizens of South Korea upon acceptance of another citizenship, and in accordance with South Korean law, Applicant and his wife took the necessary steps to record their naturalization with the South Korean government (G.E. 2), effectively terminating their South Korean citizenship. Applicant has his South Korean passport, but it had expired by the time he became a U.S. citizen, and was further stamped "cancelled" as part of the process which confirmed his loss of citizenship.

In August 1988, Applicant bought a condominium in South Korea. He lived in it, and so did his wife once they were married. When they emigrated to the U.S., they rented out the condominium,⁽⁴⁾ and Applicant's father managed the property for them. The father is a retired teacher, now 73 years old. The property is currently valued at about \$80,000.00. However, Applicant took about \$57,000.00 cash out of the property in June 1997 (A.E. A), when Applicant's father wired Applicant money out of the father's accounts so Applicant and his wife could buy a house in the U.S. In theory, there was no monetary consequence to the father as long as he was able to make the necessary refund at the end of each expiring rental term, and replenish his funds with deposits from the new renter, until such time as Applicant disposed of the property.

In January 2001, Applicant applied for a security clearance as required by the contract on which he works. He truthfully disclosed all his foreign connections, employments, travel, and financial holdings. As a result of concerns raised by the DSS agent about his property ownership Applicant gifted the condominium to his father in October 2001 (A.E. D), without having to repay his father the \$57,000.00 (essentially a forgiveness to Applicant of \$57,000.00). Applicant has previously sent money to his father on a couple of occasions, usually the legal South Korean maximum of \$5,000.00 (A.E. C). He is not sure whether he can inherit his father's property now that he is a U.S. citizen. His U.S. citizenship was apparently not a bar to his continued ownership of the property after his naturalization. Although Applicant asserts that his father is a poor man, he had sufficient assets to front Applicant the money that was tied up in the condominium lease when Applicant wanted to buy a home in the U.S.

Applicant works on unclassified projects for his employer, but must be escorted everywhere because the facility itself is secure. All company employees must have clearances. The presumption is that Applicant would not remain employed by the company if he does not obtain his clearance.⁽⁵⁾

Applicant has several friends from college who went into government service as did Applicant, some into the finance ministry, others into other branches of the government. Friends of his have had postings at the Korean Embassy in the U.S. or other international organizations such as the world bank, and have contacted him to catch up on old times. Sometimes Applicant has dined with these friends. He describes the contacts as "casual and infrequent."

Applicant's father, his sister, and his half-siblings are all citizens of South Korea, residing in South Korea. Applicant has regular contact with his father, less regular contact with his sister, still less contact with his half-siblings. All his wife's close relatives live in the U.S. She has no contact with the more distant relatives. Applicant states that none of his relatives, except a now-deceased brother who was a doctor (and thus working in the nationalized health care system) worked for the government.

The South Korean government has an aggressive, effective intelligence-gathering organization that targets economic

and proprietary information in the U.S. (G.E. 3).

Applicant's supervisor for the last two years considers Applicant to be an excellent employee who is very trustworthy. He has given Applicant very good employee evaluations (A.E. E, F). He is generally aware of the security concerns raised by the SOR and does not consider them to be a barrier to Applicant's obtaining a clearance.

Applicant and his wife are involved in their local community and attend a local church. They own property in the U.S. valued at around \$200,000.00. Except for the condominium, they have not had financial assets in South Korea since coming to the U.S. in 1990.

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.A3.1.2.2. Possession and/or use of a foreign passport;

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

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from 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.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

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.

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.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

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

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

Applicant has not been a citizen of South Korea since his naturalization in 1999. Although it is clear from the record that Applicant would renounce his South Korean citizenship, he did not have that choice because his citizenship was revoked as a matter of South Korean law. Nevertheless, Applicant's past conduct may still be examined for evidence of foreign preference. 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 established its case under Guideline C. However, I conclude that Applicant has mitigated the security concerns

Applicant claims to prefer his U.S. citizenship to his foreign citizenship and his conduct supports that assertion. Applicant lost his South Korean citizenship as a matter of South Korean law when he became a U.S. citizen and reported that fact to the South Korean government. Applicant is clearly proud of his U.S. citizenship. The only action he

has taken since his naturalization is his continued significant property interest in South Korea--an ownership interest apparently not affected by his naturalization. However, he divested himself of formal ownership of the property in response to expressed concerns by DSS. He may be entitled to inherit the property, but that is a speculative interest. Applicant's acceptance of educational benefits through college, and his satisfaction of required military service, are reasonably mitigated as having occurred before Applicant acquired U.S. citizenship. Further, I see no evidence of foreign preference in Applicant's obtaining an education visa to pursue his doctorate in the U.S. His employment in the South Korean government and by a government-funded think tank were voluntary actions which nevertheless occurred before he obtained his U.S. citizenship. His returning to South Korea after becoming a legal permanent resident of the U.S. (with the stated intent to be naturalized) perhaps requires some extra assessment. But, his desire to have work experience more appropriate to his education seems reasonable, as does his assessment that suitable employment was not available in the U.S. because he was not yet a citizen. In addition, it was this time in South Korea--a much shorter period of time than he originally anticipated--which made him realize how little progress his native land had made in the years he had been gone as well as how much his pending citizenship would mean to him. Applicant's conduct was legal and perhaps even prudent given his circumstances, demonstrates no division in his national preferences which presents an unacceptable level of risk to U.S. interests. I resolve Guideline C for Applicant.

However, Applicant appears vulnerable to foreign influence. 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, sister, and half-siblings remain residents of South Korea. His contacts with his half-siblings do not appear to subject him to any particular risk, but the same cannot be said for his father and sister with whom he has a closer relationship. Notwithstanding Applicant's representations that none of his family work for foreign governments, the record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1. In addition, his visibility as the finance ministry "legend" raises the profile on his contacts with his college friends now employed in the South Korean government, even if those contacts might otherwise appear to be casual and infrequent.

In addition to the above concerns, the foreign country at issue is South Korea, a country 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 have reviewed Applicant's ties or connections to South Korea with additional scrutiny.

Here, based on the record as a whole, the government has established its case under Guideline B. In particular, Applicant has close relationships with immediate family members who are citizens of, or residents in, South Korea, and he has demonstrated his duty or obligation to his father by sending him money on occasion. In addition, Applicant has good friends from college who work in foreign policy in South Korea, friends who have contacted him and visited with him when they have been posted to the U.S. While outwardly casual, those contacts raise greater security concerns where Applicant was formerly employed in the South Korean government himself (and briefly in a government-funded think tank), and is considered a notable person for his education exploits, and given the ongoing intelligence operations of the South Korean government against U.S. interests. Finally, I do not consider Applicant's financial interest in the condominium completely resolved by gifting the property to his father. Since that gift amounted to a moral if not legal financial benefit to Applicant, he remains indebted to his father for the value of the property. Although any inheritance issue is speculative, he clearly retains his filial concern for his father's financial well-being. The potential for foreign influence is simply too high. I resolve criterion B. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph 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.

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 statement contains a typographical error reflecting the date as 1997.
3. Reserve duty was waived for South Koreans resident outside the country, and was terminated for Applicant--even when he again resided in South Korea--because of his status as a legal permanent resident of the U.S.
4. However, rents in South Korea work differently than in the U.S.: the renter deposits a large, agreed sum with the landlord, who then has the use of the money until the end of the lease. At the end of the lease term, the landlord return the entire original amount to the renter. Presumably, the effective cost of the rental is whatever the landlord is able to earn with the principal during the rental period.
5. A fact that is, nevertheless, officially irrelevant based on well-settled Appeal Board precedent.