

DATE: October 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-04455

REMAND DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esquire

SYNOPSIS

Applicant was potentially susceptible to foreign preference where his father was a citizen and resident of South Korea, and where he had continued contact with long- time 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

Applicant challenged the 10 April 2002 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign preference and foreign influence. (1) Applicant answered the SOR on 3 June 2002 and requested a hearing. DOHA assigned the case to me 2 July 2002 and I convened a hearing on 5 December 2002. DOHA received the transcript 13 December 2002.

On 10 February 2003, I issued an unfavorable decision, finding for Applicant on Guideline C (Foreign Preference) but against him on Guideline B (Foreign Influence). Applicant timely appealed, and on 31 July 2003, the Appeal Board remanded the case to me for further processing consistent with the rulings and instructions set forth in the remand decision, which I incorporate by reference. My resolution of the Guideline C allegations is not at issue in this remand.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact. He is a 41-year old employee of a defense contractor seeking access to classified information. He has not previously held a clearance. To the extent the Appeal Board did not find them to be error, I incorporate by reference my findings of fact from my 10 February 2003 decision.

In January 2001, when Applicant applied for a security clearance (GE 1), he was asked to disclose any employment by foreign governments (question 13) and any contacts with foreign governments (question 14) other than official U.S. government business or routine immigration matters. In response to both questions, he truthfully disclosed his

employment by the South Korean Ministry of Finance from May 1987 to June 1990. He also disclosed "have friends (Korean nationals) working in the World Bank, the IMF, and Korean Embassy in Washington, DC."

In his January 2001 sworn statement (GE 2), Applicant elaborated on those foreign contacts. In a listing of foreign contacts in the U.S., he listed five friends from college and two from his time at the Ministry of Finance who were Korean government employees. Of his college friends, one was a Director, Tax Collection Agency who was currently working as the tax attache at the Korean Embassy.⁽²⁾ Another friend was a Director, Korea Fair Trade Commission who was currently working as the fair trade attache at the Korean Embassy.⁽³⁾ A third friend was a Director, Ministry of Finance and Economy, currently working as an economist at the World Bank.⁽⁴⁾ A fourth friend was a Director, Ministry of Information and Communications who was then a graduate student in the U.S.⁽⁵⁾ The fifth friend was a Director, Bank of Korea, currently working at a U.S. office of the Bank of Korea.⁽⁶⁾

Two of Applicant's friends date from his time at the Ministry of Finance. One is the Director, Ministry of Finance and Economy, currently working as an economist at the World Bank.⁽⁷⁾ The other is the Director, Korean Customs Agency, currently working as an exchange officer with the U.S. Customs Service.⁽⁸⁾ Applicant also noted reconnecting with two of his high school classmates at an alumni gathering in the U.S. in 2000. One was a Director, Korean Customs Agency, working as the customs attache at the Korean Embassy. The other was a Director, Ministry of Justice, working as the legal counselor at the Korean Embassy.⁽⁹⁾

Applicant characterizes these contacts as "casual and infrequent." In his January 2001 sworn statement he described them thus:

. . . My friends working at the Korean Embassy are my shadows from the past work experiences at the Korean Ministry of Finance. They might just call me for no obvious reason because we have been friends for last twenty years. Most of them became friends even before we started to work for Korean Government. However, the shadows are getting dimmer and dimmer since we have no common things to talk or share any more. . .

Applicant acknowledged at the hearing that these friends had contacted him in the U.S. Despite the passage of time since he had seen them, the contact by at least one friend came as no surprise (Tr. 132). He surmised that his friends obtained his telephone number somewhere and they contacted him to get information about living in the area. He also claimed some notoriety among his past friends and colleagues in the Korean Government: "So in some sense, I am sort of legendary in Ministry of Finance, because I was the first guy who got stipend from American university." (Tr. 138-139). Applicant asserts that he has not had any further contact with these friends since they returned to Korea.

In October 2001, Applicant gifted his condominium in South Korea to his father because of security concerns suggested to Applicant during his subject interview. At the time, the property was rented, and Applicant's father took title subject to the lease. 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 returns 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.

Because he took title subject to the lease, Applicant's father would have to make the necessary refund to the renter at the end of the lease term. The property was valued at about \$80,000.00. The refund to the renter was about \$60,000.00. However, the father apparently had sufficient cash reserves to make the refund. In June 1997 (A.E. A), when Applicant still owned the condominium, he took about \$57,000.00 cash out of the property, 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. Applicant's father has not sought repayment of this amount, and further, took on repayment of the \$60,000.00 rental refund that Applicant would otherwise have been required to make. Applicant and his wife have equity in two properties in the U.S. and other liquid assets that total approximately \$420,000.00. (Answer).

Applicant's father and his half-brother are citizens of South Korea, residing in South Korea. Applicant last had contact with his half-brother in 2000, and had little contact with him before that. Applicant has regular contact with his father--a 73-year-old retired teacher--by telephone and visited him in Korea in 1997 (when his mother died) and 2000 (when his

brother died). His father has visited the U.S. twice to visit Applicant and see his grandchildren, but does not want to immigrate to the U.S. because he is uncomfortable with the language. Applicant's sister is still a Korean citizen, but now resides with Applicant in the U.S., and is seeking to become a legal permanent resident.

The South Korean government has an aggressive, effective intelligence-gathering organization that targets economic and proprietary information in the U.S. (G.E. 3).⁽¹⁰⁾

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽¹¹⁾

CONCLUSIONS

The government established a case for disqualification under Guideline B by demonstrating that Applicant's father is a citizen and resident South Korea,⁽¹²⁾ and he has seven friends of long standing who work for various agencies of the South Korean government that have international reach.⁽¹³⁾ His regular communication with his father, his occasional financial support to his father, and his travel to South Korea for family funerals in 1997 and 2000 demonstrate his close ties of affection.⁽¹⁴⁾

In my original decision, I expressed concern about the ownership status of Applicant's condominium, and had reservations about whether it might still constitute a financial interest.⁽¹⁵⁾ The Appeal Board concluded that I erred by not clearly articulating my reasons for concluding that Applicant remained indebted to his father and by failing to consider the value of the foreign interest against Applicant's holdings in the U.S. Having re-evaluated the record, I conclude that Applicant does not have a financial interest in a foreign country, or if he does, it is minimal in comparison to his financial holdings in the U.S.⁽¹⁶⁾

Applicant transferred his interest in the condominium to his father in October 2001, by gift. That he did so specifically to address a security concern suggested during his subject interview causes me to be wary, but Applicant's documentation makes it clear he has no ownership interest in the condominium. However, a lingering concern is that Applicant apparently rented his \$80,000.00 condominium by taking a \$60,000.00 deposit from his renter in accordance with South Korean financial practice. I calculate that as \$20,000.00 equity for Applicant. His rental income amounted to

whatever he earned on the \$60,000.00 during the term of the lease, after which he must repay the deposit to the renter. But Applicant got a \$57,000.00 cash transfer from his father in June 1997 so Applicant could make a down payment on a property in the U.S. Applicant has not had to repay that transfer. In addition, although Applicant gifted the condominium to his father in October, and presumably the \$20,000.00 equity, the father is now responsible to repay the \$60,000.00 deposit to the renter. Applicant has not explained how his father--a retired principal of a high school, a member of the same disfavored ethnic group as Applicant, and a person Applicant has previously provided financial support to--is able to afford cash payments of \$117,000.00 (assuming the equity is not liquidated). Nevertheless, I conclude that any obligation by Applicant to his father is filial, not legal, and thus only a further indication of his close ties to his father. Accordingly, I find the allegations of 2.b. for Applicant.

However, Applicant fails to meet most of the relevant mitigating conditions under foreign influence, and the mitigating condition he arguably meets is insufficient to overcome the applicable disqualifying conditions. While Applicant's father does not appear to be an agent of a foreign power, Applicant has not demonstrated that he is not otherwise so situated as to be a point of influence on Applicant.⁽¹⁷⁾ Further, although the Appeal Board took issue with my characterization of Applicant's friends as "good friends" "involved with foreign policy," those characterizations do not change the fact that Applicant has seven friends of long standing who are employed by the South Korean Government. They are the kind of friends who go to the trouble to look Applicant up when they are in the U.S., sometimes even when they are not even in the same state. They are the kind of friends Applicant took the trouble to look up when he returned to South Korea after many years in the U.S. These friends have served in the South Korean Embassy in the U.S., in other South Korean agencies present in the U.S., as official liaison to other U.S. agencies, and assigned to international non-governmental agencies located in the U.S. They clearly constitute "associates who are connected with any foreign government" under DC 3. For purposes of this DC it matters not whether their role is foreign policy, diplomatic, or routine governmental. What matters is that Applicant contacts were the result of his friendship and not any U.S. government business, precluding application of MC 2.⁽¹⁸⁾ And while there is an argument for application of MC 3,⁽¹⁹⁾ in the overall context of this case the contacts are not casual or infrequent. The friendships are long-standing, most going back more than 20 years. They resume easily after several years of no contact. Even accepting Applicant's assertions that the connections are weakening with the passing of the years, these past contacts present a potential avenue for future contacts aimed at influencing Applicant, whether through positive or negative pressure. This is particularly true where the foreign country at issue is South Korea, a country known to target U.S. economic interests in its intelligence gathering. I resolve Guideline B against Applicant.

FORMAL FINDINGS

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For 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 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant first met him in 1980, while in college, and they have been friends since then. They worked together at the Ministry of Finance from 1988-1990, had no contacts from 1990-1999, but resumed contacts in 2000. They had dinner three times in 2000 and talked 3-4 times by telephone from 2000-2001. The friend was expected to return to Korea in

about January 2002. Applicant described him as a friend for many years (Tr. 132).

3. They had met in 1979, at a college prep academy, and have been friends since. He had worked at the Economic Planning Board from 1987-1990 while Applicant was at the Ministry of Finance, had no contact from 1990-1999, but resumed contact in 2000. They had dinner once in 2000 and spoke by telephone once or twice from 2000-2001. He was expected to return to Korea in spring 2001.

4. They met in college in 1981 and have been friends since. They worked together at the Ministry of Finance from 1987-1990, had no contact from 1990-1995, but resumed contact in 1995. They met twice in 1995, while the friend was a doctoral candidate at a local university and helped Applicant and his wife move furniture. They met twice in Korea in 1996, when Applicant was employed in the think tank there. They had no contacts from 1997-1999, but reconnected in June 2000 when the friend came to the World Bank. Applicant helped him find a place to live and had dinner with him in November 2000. They also had telephone contact 3-4 times from 2000-2001. He was expected to return to Korea in approximately June 2003.

5. They met in college in approximately 1983 and have been friends since then. The friend worked at the Ministry of Information and Communication from 1987-1990 while Applicant worked at the Ministry of Finance. Applicant asserts, without corroboration, that the Ministry of Information and Communication is the Korean equivalent to the U.S. Postal Service. Applicant had no contact with his friend from 1990-1995, met him 2-3 times in Korea in 1996, had no contact from 1997-1998, but reconnected in fall 1999 when the friend came to graduate school in the U.S. They met several times from 1999-2001. Applicant thought they might get together before he returned to Korea in May 2001

6. They met in college in 1980 and have been friends since. Applicant had no contact with his friend from 1990-1995, met him once in Korea in 1996, had no contacts from 1997-1999, but exchanged telephone calls about three times from 1999-2001. He was expected to return to Korea in approximately January 2003.

7. They met in 1987, when both worked for the Ministry of Finance, and have been friends since. They worked together from 1987-1990, had no contact from 1990-1999 (except when the friend visited him in 1992 or 1993), and resumed contact in 2000. They met about three times in 2000. The friend is expected to return to Korea in approximately January 2003.

8. They first met while they were in high school, but really got to know each other when they worked together at the Ministry of Finance from 1987-1990. They worked together in the Customs Cooperation Division and have been friends ever since. They had no contact from 1990-1990, but met twice for dinner in 2000. He is expected to return to Korea in January 2002.

9. Applicant was re-introduced to these classmates in 2000 and had dinner with them one other time in 2000. Both were expected to return to Korea by 2002 or 2003.

10. To clarify concerns expressed by the Appeal Board regarding GE 4, I gave that exhibit essentially no weight in rendering my decision, except to the extent it tangentially corroborates the security issues noted in GE 3 that South Korea pursues economic information in the U.S.

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

12. 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;

13. E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;

14. However, he has little contact with his half-brother in South Korea and his sister now lives with him in the U.S. Consequently, I conclude that neither of them presents a source of potential influence on Applicant.

15. E2.A2.1.2.8. A substantial financial interest in a country . . . that could make the individual vulnerable to foreign influence.

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

17. 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 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.

18. E2.A2.1.3.2. Contacts with foreign citizens are the result of official United States Government business;

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