DATE: June 18, 2004

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-10874

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Josiah M. Black, Esq.

SYNOPSIS

Applicant, a native of the Republic of Korea (South Korea), immigrated to the U.S. with his entire immediate family when he was 17. He became a naturalized United States citizen in June 1983. In December 1984, he married in South Korea a native of that country who he had met on a trip to see relatives. They established their home and had children in the U.S., while Applicant worked for a succession of U.S. firms where he was granted security clearance. In 1996, he took a job in South Korea working on commercial projects, but moved his family back to the U.S. in July 2000 due to concerns about his children's education and work demands in South Korea. He has since been employed by a U.S. defense firm and has no intent to return to South Korea to live or work. While his spouse's parents and siblings are resident citizens of South Korea and she maintains regular contact with them, there is little risk of undue foreign influence as the foreign relatives are neither agents of a foreign power nor in positions where they are likely to be exploited. Clearance is granted.

STATEMENT OF THE CASE

On August 5, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.[(1)] DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Influence (Guideline B).

On August 22, 2003, Applicant, acting *pro se*, executed an Answer to the SOR, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on October 9, 2003. Pursuant to formal notice dated October 22, 2003, a hearing was scheduled for November 20, 2003. On October 29, 2003, counsel for Applicant entered his appearance and requested a continuance, which was granted. Pursuant to amended notice of November 14, 2003, the hearing was rescheduled for December 12, 2003.

At the hearing, held as rescheduled, the Government submitted two exhibits and requested administrative notice, which was granted, of the U.S. Department of State's *Country Reports on Human Rights Practices-2000* for the Republic of Korea, and the Central Intelligence Agency's *The World Factbook* on South Korea. Applicant submitted 15 exhibits, his testimony, and the testimonies of his spouse and two coworkers. A transcript of the hearing was received December 23, 2003.

FINDINGS OF FACT

The SOR alleges Foreign Influence concerns related to the South Korean citizenship and residency of Applicant's in-laws, his residency in South Korea and employment with South Korean companies from 1996 to 2000, and Applicant's maintaining a savings account in a financial institution in South Korea with deposits valued at approximately $40,000 US. In his Answer, Applicant admitted his spouse's family members are resident citizens of South Korea, but denied those relatives engaged in occupations outside of the home (father-in-law is a medical doctor who owns a hospital, brother-in-law is an airline pilot, spouses of sisters-in-law are an engineering manager and financial adviser, respectively), are agents of a foreign government, or in a position likely to be exploited. Regarding his past employment with Korean companies, Applicant indicated his activity did not pose a conflict with his security responsibilities, and he is not eligible for any social or retirement benefits in South Korea. While he previously held assets in a Korean bank, those funds were transferred to the U.S. in May 2002, and were used to purchase his residence. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

Applicant is a 44-year-old principal engineer employed by a defense contractor since July/August 2000.[(2)] He seeks a secret clearance.

A native of South Korea, Applicant immigrated to the United States (U.S.) with his family when he was still a teenager.[(3)] His family was not well off, and decided to emigrate because of political instability. He finished high school in the United States and attended his state's university where he was elected to the Phi Beta Kappa Society. In May 1983, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required.[(4)] In May 1984, he earned his bachelor of science degree in electrical engineering. While pursuing graduate studies at the same university, Applicant married a South Korean native in South Korea in December 1984, and she immigrated to the U.S. in 1985. He met his spouse in Summer 1984 when he was in South Korea visiting his relatives. She comes from a relatively prosperous family by South Korean standards. Her father, a licensed physician since September 1974, owns a small medical clinic in a rural area in the southern part of the country where he serves as the head doctor.

On earning his master's degree in electrical engineering in May 1986, Applicant worked as a research engineer for a U.S. defense contractor for two years. He held a secret clearance for his duties. During that time, he and his spouse had their first child, a son born in June 1987. Applicant's mother-in-law, who does not work outside of the home, came from South Korea for a visit on the birth of her grandson.

In about August 1988, Applicant and his immediate family (spouse and son) relocated to another state where he had accepted a position as a systems engineer working in sonar technology. He was granted a security clearance for his duties. That November, he and his spouse had their second son. Applicant's spouse became a U.S. naturalized citizen in September 1990. She was removed from the family census register in South Korea on August 19, 1998, on report of her loss of Korean nationality in September 1990.

While working full-time conducting research, Applicant pursued his doctorate degree in electrical engineering which was awarded to him in 1992. In June 1992, Applicant and his immediate family moved to their present locale. The following month, he began working as a member of the technical staff of a federally-funded research and development laboratory where he was granted a secret clearance for his work. From July 1994 to July 1996, Applicant served as test director for a radar system located on a remote atoll. His clearance was upgraded to top secret due to the sensitivity of that work. Applicant was a conscientious and dedicated worker who made significant technical contributions.

On the completion of the radar project, Applicant applied for a managerial position with a Korean aerospace corporation that had been advertised in a Korean community newspaper. Applicant, who had not been back to South Korea since his marriage, learned of the opening from a former colleague from college. Viewing it as a good career opportunity because of his bilingual capabilities, and after assuring himself the work would have only commercial applications, Applicant accepted the position and moved his family to South Korea in August 1996, intending to stay two or three years.[(5)]

While Applicant worked as a principal engineer/project manager for the Korean company, Applicant and his family (spouse and two sons) lived in an apartment paid for by his Korean employer. His children attended an international school where the instruction was in English as they planned on returning to the United States. Applicant traveled abroad on official business for his Korean employer, including to the U.S. Accompanied by coworkers on these business trips, Applicant traveled exclusively on his U.S. passport. His working group eventually spun off into its own company, and for the last six months of his employment in South Korea, he worked for this new firm as a chief engineer.

While living and working in South Korea, Applicant maintained a savings account in a financial institution in South Korea into which his pay was deposited. Applicant initially opened the account with funds he had brought with him from the U.S. Over his four years in Korea, he accumulated assets valued at about $40,000 US.

Concerned about his children's education, and frustrated by management inefficiency and the long hours expected of him by his Korean employer, Applicant resigned from his job. He and his family returned to the U.S. in July/August 2000 where he began working for his present employer as a principal engineer. Needing a secret clearance for his duties, Applicant executed a security clearance application (SF 86) on August 16, 2000. He disclosed the South Korean residency and citizenship of his parents-in-law, and his foreign employment for the South Korean firm from August 1996 to June 2000.[(6)]

In the Summer of 2001, Applicant, his spouse, and their two sons traveled to South Korea to visit relatives.[(7)] They stayed with her parents and visited with her siblings. During that visit, Applicant had dinner with about 20 of his former coworkers. All of Applicant's close relatives, father, stepmother, two stepbrothers, one stepsister, and his paternal grandmother are resident citizens of the U.S. Applicant's father owned a factory in the U.S. before he retired.

In early March 2002, Applicant and his spouse had another son born to them in the U.S. Applicant's mother-in-law came from South Korea to help with the care of the baby. She stayed with them for about one month. Applicant's father-in-law did not accompany his spouse on any of her three trips to the U.S. (in 1987, 1994, and 2002). He visited Applicant and his spouse in the U.S. in 1991 when he came for a medical conference.

On March 11, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his foreign connections and employment. Applicant revealed his mother-in-law has been staying at his home since February 22, 2002, to help care for his newborn son. He described his spouse's family in South Korea as wealthy, but denied they had ties to any Korean government officials.[(8)] Applicant indicated his spouse contacts her family members in South Korea about once per month, but he claimed he had no close tie or bond of affection with her relatives. He explained his employment in South Korea did not turn out as expected. He denied any close contact with former work associates in South Korea, but admitted he had gotten together for a casual dinner with former coworkers during a trip to South Korea in 2001. Applicant acknowledged he did not close his bank account in South Korea when he left the country in July 2000 as he was waiting for a more favorable foreign exchange rate to withdraw the monies on deposit, worth about $40,000 US.

In June 2002, Applicant transferred his monies on deposit at the Korean bank into a wire transfer account and then used them in down payment of his residence in the U.S. In mid-June 2003, Applicant and his spouse closed on their home in the U.S., taking out a mortgage loan of $504,000. As of December 2003, they had about $150,000 in equity in their home. Applicant also had $60,000 in a 401K account, $10,000 in cash reserves, and stock valued at $10,000. He had about $26.41 in the wire transfer account in South Korea, which has not been closed because he has to appear in person to close it. He intends to close the account on his next trip to South Korea. Applicant does not have any other financial assets in Korea. and he does not intend to pursue any employment in South Korea in the future. In accord with Korean traditional practice, Applicant's spouse expects her younger brother to inherit her parents' assets.

In January 2003, Applicant and his spouse and children went to South Korea to celebrate his father-in-law's 70th birthday. During his one week visit, Applicant and his family stayed with his parents-in-law. He met almost all of his spouse's extended family there to celebrate the occasion.

As of December 2003, none of Applicant's spouse's relatives in South Korea were employed by a governmental entity, active in politics, or serving in the South Korean military. Her father practices medicine in his clinic. Her brother is an airline pilot, and his wife stays home to care for their year-old baby, although she used to work as a private tutor teaching mathematics. Her two sisters do not currently hold jobs in South Korea. Her sisters' husbands are employed, as an information technology engineer for a South Korean internet-based news company and as a financial advisor/director of a venture capital company, respectively. Applicant's spouse calls her parents in South Korea once or twice per month and Applicant speaks to his in-laws on those occasions where she hands him the phone. His spouse has contact with her sisters "maybe once a month," and with her brother once a year. Applicant speaks with the siblings once every three or four months. Applicant has had no contact with any of his former colleagues in South Korea since 2001.

Applicant has the support of his present managers. In his three years at the company, Applicant has demonstrated technical competency, a strong work and personal ethic, and an ability to handle classified documents appropriately. On one occasion, Applicant left a closed area having inadvertently failed to secure one of two locks on the door.[(9)] It did not result in a breach of classified information as one lock was secured.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

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 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.

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 or present in, a foreign country;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

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

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.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the Government has established its case under Guideline B. Applicant's spouse has close ties of affection and/or obligation to her parents and siblings (primarily her two sisters), who are resident citizens of South Korea. However, Applicant has met his burden of demonstrating he is not vulnerable to foreign influence either through these foreign relations or his past employment with a South Korean firm in South Korea.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's immediate family members are long time residents of the U.S. who made the choice to immigrate for better opportunities. There is nothing about his parents' or step-siblings situations which present a Foreign Influence concern. However, Applicant is married to a native of South Korea. While she has lived in the U.S. since 1985, been a U.S. citizen since September 1990, and has even been removed from the family census register in South Korea, her parents and siblings are all resident citizens of South Korea.

In its decision in ISCR Case No. 01-02452, decided on November 21, 2002, the DOHA Appeal Board held it was reasonable for the Administrative Judge to consider the significance of an applicant's spouse's ties to a foreign country and the possible effect they may have on an applicant's conduct under Guideline B. Furthermore, the Board reaffirmed in ISCR Case No. 02-04786, decided on June 27, 2003, "as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, *or* obligation to, the immediate family members of the person's spouse.'" Applicant's spouse shares a close bond with her parents and siblings (her two sisters in particular). She contacts her parents by telephone once or twice per month, and her mother stayed with them for about a month during each of her three visits to the U.S. Although Applicant does not initiate contact with his parents-in-law, he speaks with them on occasion, and has stayed in their home on trips to South Korea. Applicant's spouse does not share an especially close relationship with her brother, contacting him only once a year,[(10)] but she calls her sisters about once per month. In determining Applicant's security suitability, consideration is therefore warranted of disqualifying conditions 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*, and E2.A2.1.2.2., *sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*.

The security concerns engendered by the foreign citizenship and residency of close family members or those to whom one is bound by obligation may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). None of Applicant's in-laws or their spouses are employed by, or connected with, the South Korean military, law enforcement, or a governmental agency. Applicant's parents-in-law reside in a rural area of the country where his father-in-law continues to operate his own medical clinic. Despite their relative prosperity, Applicant's in-laws uphold Korean cultural traditions, and there is nothing untoward about her father's medical practice. Applicant's brother-in-law is a pilot who trained in the U.S. and currently works as a first engineer for a Korean airline that is not state owned. Applicant's sisters-in-law do not work outside the home, while their husbands are employed, as an engineer for an Internet-based news company and as a director of a private venture capital firm, respectively.

A determination that a family member is not a foreign agent satisfies a requirement of MC E2.A2.1.3.1., but the analysis does not end there.[(11)] Security significant Foreign Influence concerns may still exist if the family member is in a position to be exploited by a foreign power in a way that could cause the applicant to choose between his or her loyalty to the person and his or her obligation to the U.S. Conceptually, as long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. A proper assessment of risk requires more than a finding that the individual has close relatives in a foreign country, however. Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S., although the particular circumstances of each applicant must be taken into account.

South Korea has a history of favorable relations with the U.S. and has maintained its commitment to democratize its political processes. Despite recent improvement in relations with Communist North Korea, persons who commit acts viewed as supporting North Korea may be detained and arrested under Korean law (*see Country Report on Human Rights Practices-2000*). 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. As for non coercive means of influence, there is no evidence any of Applicant's in-laws are involved in political, scientific, commercial or other activities which might render them more likely to be exploited. MC E2.A2.1.3.1. applies in his favor.

In this case, the Foreign Influence concerns do not just involve the in-law relations in South Korea, however. Having immigrated at age 17, become a U.S. naturalized citizen at age 23, earned degrees to the doctorate level from U.S. universities, and worked for defense contractors with security clearance, Applicant still pursued employment in South Korea from 1996 to 2000. To his credit, Applicant accepted the position only after he assured himself of the work's commercial application. Nonetheless, his engineering work for a Korean company is conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government, either directly or through his employer (*see* E2.A2.1.2.6.). While a foreign government may have less influence on a large corporation with a significant international presence, there are financial incentives (such as lower taxes or other favorable economic development terms) which the government could offer to influence the company's business decisions in its favor. Applicant was not only beholden to his foreign employer for his salary but also for his living quarters. Furthermore, his day to day responsibilities brought him into contact with Korean nationals whose motivations may not always have been apparent. When he returned to South Korea for a visit in 2001, he had dinner with about 20 of his former colleagues.

He also had about $40,000 US on deposit in a bank account in South Korea as recently as May 2002. When Applicant moved his family to South Korea in 1996, he took a substantial amount of cash with him from the U.S. There is no evidence that he left any significant assets in the U.S., even though he planned to return at some future date. E2.A2.1.2.8. *A substantial financial interest in a country*, also applies.

In mitigation, Applicant testified persuasively he has had no contact with any of his former Korean work associates since that dinner in 2001. He has no intent to pursue any future employment in South Korea, as his experience did not

prove as anticipated. Not only was Applicant dissatisfied with the demands on his time expected by his Korean employer, but he did not have the work or cultural connections with his Korean colleagues. As evidence of his plan to remain in the U.S., he has been working for the same defense contractor since 2000, and he and his spouse purchased a home in June 2002. He depleted the assets in his foreign bank account, withdrawing the $40,000 and transferring the funds to the U.S. where he used them for the down payment on his residence. Although he still has a foreign bank account, he has only $26.41on deposit and intends to close the account on his next trip to South Korea. Foreign financial interests are so minimal at this point to where they are not likely to affect Applicant's security responsibilities (*see* MC E2.A2.1.3.5.).

Should any undue pressure be placed on Applicant because of his past work in South Korea, or on his in-laws in South Korea, I am persuaded Applicant would report to proper U.S. authorities any contacts, request, or threats by foreign authorities or individuals. Applicant has an established record of dedicated work on projects requiring a security clearance. He merited the trust of the Department of Defense for his clearance to be upgraded to top secret in 1985 when he was married to a resident alien. His present situation poses even less of a security risk. His spouse has since acquired U.S. naturalized citizenship, and she has been removed from her family's register in South Korea. She has no desire to return to South Korea. Applicant has three children who are native-born U.S. citizens being raised by Applicant and his spouse in the U.S. He is invested financially in the U.S. (salary, home ownership, 401K assets, stocks). His current supervisors are convinced of his personal integrity and loyalty to the interests of the U.S. Given the totality of the facts and circumstances, Applicant has mitigated the Foreign Influence concerns. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. are resolved in Applicant's favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: 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. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Applicant testified he started working for his current employer in August 2000. (Tr. 30). He indicated on his SF 86 that he started in July 2000.

3. In his sworn statement, Applicant indicated he immigrated to the United States when he was 17 with his entire family. (Ex. 2). In his resume, he reported the date of immigration as July 1977 (Ex. A), which would be consistent with his sworn statement. Yet, on his SF 86 (Ex. 1) he indicated that his parents (father, stepmother) had been naturalized in the U.S. on the same day in May 1976, which would have predated their immigration assuming the family came to the U.S. in 1977. This inconsistency was not addressed at the hearing.

4. As reported by the U.S. Department of State, South Korea does not recognize dual citizenship after an individual reaches the age of 21. However, the government of South Korea considers an individual to be a citizen if the person's name appears on the family census register. *See* http://travel.state.gov/skorea.html. Applicant testified to his understanding he is not a citizen of South Korea. (Tr. 89). Applicant's spouse testified she lost her South Korean citizenship automatically when she became a U.S. citizen. (Tr. 149).

5. Applicant has consistently maintained that the move to Korea was intended to be temporary. When asked on direct examination how long he intended to remain in South Korea, Applicant responded, "Well, at most, two or three years." (Tr. 35). On cross examination, he testified he and his family planned to come back to the U.S. at some point, not necessarily after four years, but he had some problems with the working environment and concerns for his children's education that precipitated the family's return to the U.S. in 2000. (Tr. 86-87). However, Applicant's spouse testified the initial plan was to stay two or three years in South Korea. (Tr. 176).

6. The record is not clear as to issuance of an interim clearance to Applicant for his present duties. His department manager testified Applicant follows established procedures for the handling of classified information. (Tr. 121).

7. Applicant told the DSS agent that his family members accompanied him on that trip. (Ex. 2). However, at his hearing he testified he was unaccompanied during his visit in 2001, which was for only four days to see his in-laws. (Tr. 64).

8. When asked on cross examination what he meant by wealthy, Applicant responded his in-laws enjoy "a comfortable living." (Tr. 91). His spouse testified her parents are not wealthy, but are "over average." They own their home, the building in which his father-in-law maintains his medical practice, and bought a house for his spouse's brother.(Tr. 177-78).

9. Applicant's supervisor testified it was an accident that happens to many of the employees. (Tr. 139).

10. The Directive provides for mitigation where contact and correspondence is casual and infrequent (*see* E2.A2.1.3.3.). While contact between Applicant's spouse and her brother is infrequent, her relationship with him cannot be viewed in isolation from her relations with other family members, including her parents, to whom her brother may well be close.

11. The mitigating condition is bifurcated in nature [*A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . .*]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the Foreign Influence concerns.