

DATE: October 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29577

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Government established a *prima facie* case under Guideline B based on the fact applicant's mother and three siblings are citizens of, and reside in, South Korea, and the fact applicant has a relationship with an official of the South Korean government. The applicant has, however, presented convincing evidence that his immediate family members in South Korea do not present a significant security risk, and that his relationship with the South Korean government official is distant. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 3, 2004. The case was assigned to the undersigned on June 22, 2004. A Notice of Hearing was issued on July 8, 2004, and the hearing was held on August 4, 2004. The transcript was received on August 25, 2004.

### **FINDINGS OF FACT**

Applicant is a 51 year old engineer. He has been employed by the same defense contractor for six and one-half years, and has held a DoD security clearance for four years.

Applicant was born in South Korea. In 1979, he moved to the United States to attend college. By 1985 he had earned a Ph.D. He became a naturalized United States citizen in 1995. His wife, to whom he has been married since 1983, is a

naturalized United States citizen. They have two teenage children.

Applicant's 82 year old mother, brother, and two sisters are citizens and residents of South Korea. He has visited these family members in South Korea once during each of the last three years. He speaks by telephone with his mother monthly and with his siblings a few times a year. He considers his relationships with his mother and siblings to be "close" (TR at 19). None of these family members is connected to the South Korean government.

Applicant's 74 year old mother-in-law is a citizen and resident of South Korea. Applicant speaks to her once or twice a year. She does not raise a security concern.

Applicant maintains friendships with a few South Korean citizens. Only one of these friendships raises a security concern. (1) Applicant attended high school and college with an individual who works for the South Korean Foreign Ministry. This high-ranking official first contacted applicant in the United States in the early 1980s. They did not meet at that time. He next contacted applicant about six years ago (in the late 1990s) when he was assigned to the same area where applicant lives. Applicant and the official visited each others home four or five times during a one year period. These face-to-face encounters were the first since applicant left South Korea in 1979. The next and last time they met was two to three years ago when the friend and his wife were passing through applicant's town and they and their spouses had dinner together. Their last communication was a few months after the dinner when the official called applicant and invited applicant and his family to visit and stay at his house in a different state. Applicant did not accept the invitation, and that was the last communication they had. Applicant does not know where the official is assigned at the present time (TR at 37).

A letter from applicant's manager at his place of employment was admitted into evidence (Exhibit A). The manager expresses his "full support for [applicant] and his appeal regarding his security clearance application."

Applicant has no assets in South Korea. He has considerable assets in the United States, including \$300,000.00 in equity in a house and approximately \$65,000.00 in a 401K account. He is no longer a South Korean citizen, and has no intention of returning to South Korea to live. His two children, who were born here, plan on remaining in the United States.

## CONCLUSIONS

Although applicant, his wife and two children are United States citizens living in the United States, applicant's elderly mother and three siblings are citizens and residents of South Korea. This fact requires application of Disqualifying Condition 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 of or present in, a foreign country*).

Based on the evidence presented, I conclude that these immediate family members are not agents of South Korea. I further conclude that they are not in a position to be exploited by South Korea in a way that could force applicant to choose between loyalty to them and loyalty to the United States. Although it would be naive to think South Korea does not conduct economic espionage against the United States, it is highly unlikely that South Korea, a democratic ally which is heavily dependent upon the United States for its security, would risk its relationship with the United States by forcing a United States citizen to betray his country. Furthermore, although applicant considers himself "close" to his immediate family members in Korea, based on the evidence presented, including the facts that applicant renounced his South Korean citizenship, has lived in this country for approximately 25 years, married and raised a family here, and intends on retiring and living here permanently, I conclude he would not compromise classified information in the unlikely event pressure was applied on him to do so. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(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*) is applicable to this case.

Applicant's friendship with the high-ranking South Korean government official raises security concerns, and requires application of Disqualifying Condition E2.A2.1.2.3 (*relatives, cohabitants, or associates who are connected with any foreign government*). However, since applicant's contact with this individual has been casual and infrequent, Mitigating

Condition E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*) is also applicable. The fact that applicant has not communicated with this person in years, and doesn't even

know where he is currently living and working, leads me to conclude that this casual and infrequent relationship should not preclude applicant from having access to classified information.

Based on the foregoing, I conclude that applicant's evidence was sufficient to overcome the Government's *prima facie* case under Guideline B.

### **FORMAL FINDINGS**

#### GUIDELINE B: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

Subparagraph 1c: for the applicant

Subparagraph 1d: for the applicant

Subparagraph 1e: for the applicant

Subparagraph 1f: 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.

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Joseph Testan

Administrative Judge

1. The individual identified in SOR Allegation 1f is a college professor with no ties to the South Korean government.