

DATE: June 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30929

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esquire, Department Counsel

FOR APPLICANT

Robert R. Sparks, Esquire

SYNOPSIS

Applicant mitigated security concerns over foreign influence resulting from his relatives' citizenship in the Republic of Korea (Korea): he has parents, who live in Korea, and other relatives, including his wife, who are citizens of Korea but reside in the United States (U.S.), and he has traveled frequently to Korea. Given that these relatives have no ties to the government of Korea, I conclude that it is unlikely that they are foreign agents or in a position to be pressured. Further, there is no substantial likelihood that he would succumb to foreign influence if his family should be subject to duress. As Korea is an ally of the U.S., I think it unlikely that foreign pressure on his family could create a situation that could result in the compromise of classified information. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 14, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on March 13, 2003, where he denied the overall allegation, but admitted each of the underlying subparagraphs; he requested a hearing.

The case was assigned to Department Counsel who attested the case was ready to proceed on May 8, 2003; the case was assigned to me on May 9, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing, issued on May 13, 2003, set the matter for June 16, 2003. At the hearing the Government offered one exhibit for Official Notice and offered three exhibits; all were admitted into evidence (Exhibit I and Exhibits 1-3). Applicant testified. Applicant's counsel asked that the record be left open for five days so that they could submit a reference letter. As the Government did not object, the record was left open until June 20, 2003, to submit additional evidence; the Government was allowed one day to review the evidence. (TR 62-3) No additional evidence was submitted, so the record closed on June 23, 2002. The transcript (TR) was received on June 24, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 40-year-old employee, began working for a defense contractor in July 2002 in the U.S. In December 2002 he completed a Security Clearance Application (SF 86) and requested a security clearance which he needs for the position. (Exhibits 1, 2; TR 25-26; 49) He was initially hired for a job in the U.S.; but after he began work for them, he was offered a position in Korea which he took because of his father's health problems. He went to Korea in November 2002 and is now living there. (TR 26-27, 29-31)

Applicant is a U.S. citizen who was born in the U.S. in 1962 to parents who were citizens of Korea but were in the U.S. when his father was in medical school. Applicant and his parents then returned to Korea as he was then a dual citizen, but he returned to the U.S. when he was 17 and has lived in the U.S. since that time. He attended college and has a B.B.A. from a U.S. university. (Exhibits 1, 2, 3; TR 16-17)

Foreign Influence

Applicant joined the U.S. Army in Korea ⁽²⁾

in 1980 and came to the U.S. at age 17 as he chose his U.S. citizenship over his citizenship in Korea. He served only for six months as he developed health problems. He then completed high school in the U.S. He renounced his citizenship in Korea in the 1982-84 time period and never served in the Korean military. He has lived in the U.S. for more than twenty years and has only possessed a U.S. passport. He does not own any property in Korea. He does not have any rights, privileges, benefits, or obligations with any foreign country. He has not voted in any foreign elections or used a U.S. government position to influence decisions in order to serve the interests of another government in preference to those of the U.S. (Exhibit 3; TR 19-25, 28-29, 47; 50) Applicant states that he would not succumb to any foreign influence. (TR 47-48)

In January 1995 he married a citizen of Korea who was living in the U.S. They have two children born in 1996 and 1998 who were born in the U.S. and are U.S. citizens. He owns a home in the U.S. (Exhibits 1, 2; TR 28, 48, 51-52) His wife and children joined him in Korea in March 2003. (TR 49) Applicant's wife came to the U.S. with her parents in 1985 and attended college in the U.S.; she has been a computer programmer since college for private companies and U.S. government contractors and is in the process of obtaining her U.S. citizenship. Her parents who now live in the U.S. were in the restaurant industry in Korea and in the U.S. They are now retired. He has weekly contact with his in-laws. His wife's two brothers are both naturalized U.S. citizens. Because their English is not good, they have not applied to be U.S. citizens. His wife delayed applying to become a U.S. citizen until June 2002 because she was not eligible until their marriage and latter was busy with the demands of their children. (Exhibit 3; TR 32, 34-39; 52; 60-61)

Applicant's parents have lived in Korea since 1963. His father was a medical doctor and never worked for the Korean government; he is retired due to his health problems. His mother is a homemaker. He has visited his father because of his health problems several times in Korea. When Applicant was in the U.S., he had weekly contact with his parents by telephone. (Exhibits 1, 2, 3; TR 17-18, 34-35) Applicant and his family now live near his parents. (TR 49-50)

Applicant's three siblings were all born in Korea after the family returned to that country. His siblings did not work in Korea before coming to the U.S. (Exhibit 3; TR 18)

- His sister came to the U.S. in the 1980's with her husband; she is a resident alien with the intent of obtaining U.S. citizenship. She is a homemaker. He contacts his sister two to three times monthly by telephone. (Exhibit 3; TR 32-33, 39-41; 50-51)
returned to the US with his wife to continue college. Brother #1 was conscripted into the Korea military, but he never served due to a medical condition. He has worked as a graphic designer for a private ad agency in Korea before returning to the U.S. He is in the process of obtaining a work permit and recently applied for amnesty as he is not in the U.S. legally. Applicant and Brother #1 are in contact two to three times weekly. (Exhibit 3; TR 33,

41-44, 46; 52-58) construction and jewelry industries in the U.S. Brother #2 lives in Applicant's home in the U.S, so Applicant saw him daily when he was in the U.S. (Exhibit 3; TR 33, 41-42, 44-46; 58-60)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern and may be disqualifying include:

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;

Conditions that could mitigate security concerns include:

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 in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has family members who are citizens of Korea. His parents live there, and he and his wife who is a citizen of Korea recently returned to Korea to work for a U.S. government defense contractor. His siblings and wife's family are citizens of Korea who are in the U.S., but are not U.S. citizens. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family are citizens of, or resident or present, in a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information.

While I have considered these concerns, I conclude Applicant has presented sufficient evidence in mitigation⁽³⁾ under MC 1 to meet the burden⁽⁴⁾ those circumstances present. These security concerns are mitigated by the fact that Applicant's family in Korea and in the U.S. have no ties to the government of Korea, and it is unlikely that they are foreign agents or in a position to be pressured. While he has more than minimal contacts with his parents, as he is now living in Korea and assigned there on the staff of a U.S. government contractor, those more frequent contacts do not create a "per se" rule that would preclude him from a trustworthiness decision. Minimal contacts can be a mitigating consideration. Moreover, Applicant made evident that if there were any evidence of any coercion or pressure on himself or the family that he would immediately report such coercion to the proper authorities. While his two brothers have not perfected their immigration status with the U.S., that presents more of an immigration concern, than a security concern. Indeed, Applicant fully disclosed their illegal status in his SF 86 and chose to put them at risk rather than misrepresent their status. That honesty in the investigative process is a good indicator that he is highly unlikely to succumb to any coercion if any of his family members living in Korea or in the U.S. or would be subject to pressures or create a situation that could result in the compromise of classified information. Thus, I conclude that any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Applicant is not vulnerable to duress merely because of these family ties.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.g. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Although Korea is a long-time ally of the U.S. since 1953 when the United States and South Korea signed a mutual security treaty designed to protect this new nation from its neighbor to the north, the Government expressed foreign influence concerns based on an Annual Report to Congress on Foreign Economic Collection and Industrial Espionage from 2000 which reported Korea as an "active collector" of economic espionage. (Exhibit I) The Government expressed a concern that his family could be pressured so that he would be forced to choose between his loyalty to the US and his family. (TR 64-67)
3. **Conditions that could mitigate security concerns include:** 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 in a way that could force the individual to choose between loyalty to the person(s) involved and the United States; 2. Contacts with foreign citizens are the result of official United States Government business; 3. Contact and correspondence with foreign citizens are casual and infrequent; 4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required; 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
4. Since the US has had normal diplomatic relations with Korea since 1953, the Government presented no evidence of a hostile relationship between the U.S. and Korea. Thus, the Applicant does not have to meet the "very heavy burden on Applicant" to show that family ties there do not pose a security risk that the DOAH Appeal Board outlined when there is hostility between a foreign government and the U.S. (ISCR Case No. 01-26893 issued on October 16, 2002)