DATE: October 9, 2003

In re:

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

Applicant for Security Clearance

ISCR Case No. 02-14351

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the US who has immediate family members who are citizens of South Korea and reside there (save for Applicant's brother who resides in Australia), mitigates any potential risk to undue foreign influence concerns under Guideline B. South Korea, while a country reported to gather economic and proprietary intelligence against the US and its companies, retains strong mutual strategic interests with the US and is a county with a history of democratic traditions and respect for human rights and the rule of law. Clearance is granted.

STATEMENT OF THE CASE

On March 7, 2003, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on March 20, 2003, and requested a hearing. The case was assigned to this Administrative Judge on June 5, 2003, and was scheduled for hearing. A hearing was convened on July 16, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) of the proceedings was received on July 25, 2003.

STATEMENT OF FACTS

Applicant is a 43-year old engineer for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Under Guideline B, Applicant is alleged to have (a) parents who are citizens and residents of the Republic of South Korea, (b) a sister who is a citizen and resident of South Korea and (c) a brother who is a Korean citizen who resides in Australia.

For his response to the SOR, Applicant admitted each of the allegations of the SOR without any accompanying explanations or claims.

Relevant and Material Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant came to the US as a student in 1983 and has resided in this country ever since. He has seen his South Korean parents 4 to 5 times since and regularly communicates with them by telephone and letter. When he calls his parents (which is every two weeks), he regularly lets his two children talk to his parents. He maintains contact with his brother and sister once or twice a year on their birthdays. After graduating in 1985 with a MS in computer science, Applicant worked for several American companies before accepting an engineering position with his current employer in 1996 (*see* ex. 1). Offered a chance in 1989 to join a Korean company and return to South Korea and pursue a PhD program, Applicant declined (*see* R.T., at 31-32). Since entering the workforce in the US, he has taken return trips to South Korea sparingly: in 1992, and once again in 2001.

Applicant became a permanent resident in 1989, and a naturalized US citizen in February 2000. When he accepted US citizenship, he was issued a US passport and permitted his South Korean passport to expire (which it did in 2000). He remains willing to bear arms for the US, even against South Korea, his birth country. No one in his family has ever pressured him to return to South Korea.

Applicant has sent his parents money every year since he became a US citizen: around $5,000.00 at a time. He has no knowledge of any South Korean agent ever questioning himself or any of his family members about any classified information. He is not aware of any duress or coercion inflicted on any of his relatives residing in South Korea, or Australia, and has no reason to believe any of them are in any ways vulnerable to duress, coercion, or influence by South Korean authorities to extract classified information of any kind out of them or Applicant. This is not to say some South Korean official might not be interested in what technical data he has and even press him for it in a rare situation (*see* R.T., at 49-50). Were he or any family member to be approached by a South Korean official, though, he would report the contact to the proper US authorities, such as the FBI (*see* R.T., at 50).

Applicant's employer security officer holds Applicant in high regard as an employee who can be relied upon and entrusted with classified materials. Similarly, Applicant's supervisor finds Applicant to be very reliable and trustworthy, and a valued team member who possesses extremely high expertise in specialized computer systems of critical importance to the success of systems his employer is developing for DoD (*see* ex. A; R.T., at 63-64).

Intelligence reports classify South Korea as a country that has been active in collecting intelligence on economic and proprietary data from American companies operating in the US and abroad (*see* exs. 3 and 4). According to a 1996 OPSEC report, South Korea has centered its collection efforts on computer systems, aerospace technologies, and nuclear technologies (ex. 3). South Korean activities have included stealing information from computerized databases maintained by US government agencies and US companies. *See N. Munro, South Korea Said to Eye US Technology,* Washington Technology, 9:4 October 1994, at 735-52 (cited in ex. 3). To what extent South Korea still collects economic and proprietary data on US companies is not clear. What is also known about South Korea is that it is a country rooted in democratic traditions who shares strategic defense arrangements with the US on the Korean peninsula under the Mutual Defense Treaty between the US and the Republic of Korea of October 1953.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board,

requires the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued, or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members, cohabitant or associate 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 persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make

a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen who after being born and raised in South Korea, immigrated to the US in 1983 on a

student visa, and in 2000 became a naturalized US citizen.

Government urges security concerns over the risk of Applicant's parents and siblings (all citizens of South Korea) who (save for a brother who resides in Australia) reside in South Korea might be subject to undue foreign influence by South Korean authorities to access classified information in Applicant's hands. Because Applicant's parents and sister reside in South Korea, they present potential security risks covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in South Korea pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control.

From what is known from Applicant's own statement and testimony, none of Applicant's immediate family residing in South Korea have current working/non-working relationships with South Korea's government or have any history to date of being subjected to any coercion or influence to date, or appear to be vulnerable to the same. Taking Applicant's explanations about his parents, siblings (inclusive of his sister, and brother who currently resides in Australia) at face value, any risk of undue foreign influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. South Korea, although a country reported to have targeted US economic and proprietary interests in the past, enjoys special country relations with the US through the country's Mutual Defense Treaty and is a democratic government with a history of respect for the rule of law.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in supplied materials and information available under the Adjudication Desk reference (as here).

So, under these furnished information guidelines covering South Korea's relationship with the US, South Korea can best be characterized as a friendly country who is not currently known to pose unacceptable hostage risks. Whatever potential security risks arise as the result of Applicant's having immediate family of demonstrated affection in South Korea, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation extant in a country with interests inimical to those of the US. Despite some history of economic and proprietary intelligence gathering, South Korea remains a friend of the US and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. South Korea, while reported to target the US and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence to obtain either classified information, or unclassified economic and proprietary data.

Because of the presence of Applicant's immediate and extended family members in South Korea (a country whose interests have recently been and continue to be friendly to those of the US), any potential risk of a hostage situation or undue foreign influence brought in the hopes of enlisting either classified information or economic or proprietary data out of Applicant becomes an acceptable one, for which the mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant. Overall, any potential security concerns attributable to Applicant's family members in South Korea/Australia are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in South Korea/ Australia. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to

Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge