

DATE: May 21, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18810

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's mother-in-law and father-in-law live in South Korea. His 73 year old mother-in-law is a housewife, but is also a U.S. citizen. His 79 year old father-in-law is a Korean lawyer practicing family law. His father-in-law retired from the Korean Army 30 years ago, and is a Korean national. His cousin is a housewife. She is a citizen of and resides in Korea. His friend is a pastor. He is also a citizen of and resides in Korea. There is no evidence that any member of his family or his friend have any current connection with a foreign government or is in a position to be exploited by any government. Clearance is granted.

**STATEMENT OF THE CASE**

On January 28, 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 the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on February 20, 2003.

The case was received by the undersigned on March 14, 2003. A notice of hearing was issued on March 27, 2003, and the case was heard on April 25, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called one witness to testify on his behalf. The transcript was received on May 9, 2003. The issues raised here are whether the Applicant's perceived foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

Applicant is 45 years of age, has a Degree in Engineering, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline B - Foreign Influence

The Applicant was born in South Korea and immigrated to the U.S. in 1977, at the age of 18 (Transcript (TR) at page 32 line 24 to page 33 line 3). He became a U.S. citizen in 1985, and married a Korean American in 1986 (TR at page 34 lines 2~20).

1.a~1.c. and 1.f. The Applicant's 73 year old mother-in-law is a U.S. citizen, but currently lives with her husband in South Korea (TR at page 26 line 11 to page 27 line 4, at page 27 lines 12~23, and Applicant's Exhibit (AppX) F). She is a housewife, and has no connections with the Korean government (TR at page 27 line 24 to page 28 line 1). The Applicant's 79 year old father-in-law is a Korean attorney who practices family law (TR at page 27 lines 5~12, at page 36 lines 16~19, and AppX G). He retired from the Korean army in the 1960s; and as such, has had no connection with the Korean government for about 30 years (TR at page 37 line 25 to page 38 line 11, and AppX G). The Applicant traveled to Korea in 1998 and again in 2001 to visit his in-laws (TR at page 31 lines 15~19, and Government Exhibit (GX) 1 at page 5).

1.d. and 1.e. The Applicant has a cousin who is a citizen of and resides in Korea (TR at page 29 line 23 to page 30 line 16, at page 41 lines 1~4, and AppXs H). She is a housewife, and has no connection with the Korean government (*id*). The Applicant has a friend who is also a citizen of and

resides in Korea (TR at page 30 line 17 to page 31 line 14). He is a pastor of a church, and has no connection with the Korean government (*id*).

### Mitigation

The Applicant's Director (third level supervisor) testified at length as to the Applicant's good character and trustworthiness (TR at page 45 line 12 to page 51 line 7, *see also* AppX B). He has known the Applicant for about 12 years (*id*). His employer's Industrial Security Specialist also has only laudatory comments about the Applicant (AppX A).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Foreign Influence

#### Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

#### Condition that could mitigate security concerns:

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

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based

upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

The Applicant's elderly in-laws reside in Korea. His mother-in-law is an American, but is married to a Korean national. His mother-in-law is a housewife, and his father-in-law, at 79 years of age, still practices family law. His father-in-law retired from the Korean army more than 30 years ago, and neither of his in-laws have any connection with any government, and there is no evidence that their presence in Korea can be exploited by any government. As to his Korean cousin, who is a housewife, and his Korean friend, who is a pastor, they have no connection with the Korean government, nor is there any evidence that their presence in Korea can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even countenance any such attempt at exploitation of any of his Korean relatives or of his Korean friend. Guideline B is thus found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

## **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge