

KEYWORD: Foreign Influence

DIGEST: Applicant is 40 years old, born in the U.S., and is a scientist for a defense contractor. As a child, Applicant lived with his parents in several U.S. cities before they returned to their native South Korea. To further his education, Applicant returned to the U.S., after graduating college in South Korea. Applicant's wife is awaiting the final step to be sworn in as a U.S. citizen and all three of Applicant's children were born in the U.S. Applicant's parents, sister, brother and mother-in-law are citizens and residents of South Korea. Applicant has successfully mitigated the security concerns regarding foreign influence. Clearance is granted.

CASENO: 02-25102.h1

DATE: 03/02/2005

DATE: March 2, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25102

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old, born in the U.S., and is a scientist for a defense contractor. As a child, Applicant lived with his parents in several U.S. cities before they returned to their native South Korea. To further his education, Applicant returned to the U.S., after graduating college in South Korea. Applicant's wife is awaiting the final step to be sworn in as a U.S. citizen and all three of Applicant's children were born in the U.S. Applicant's parents, sister, brother and mother-in-law are citizens and residents of South Korea. Applicant has successfully mitigated the security concerns regarding foreign influence. Clearance is granted.

STATEMENT OF CASE

On August 28, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated September 26, 2003, Applicant responded to the SOR allegations, and elected to have his case determined based on the written record in lieu of a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR and clarified some dates. Department Counsel submitted the government's case on June 29, 2004. A file of relevant material (FORM) was received by Applicant on July 15, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional information, and Government Counsel did not object. The case was originally assigned to another judge on August 25, 2004, and due to caseload considerations it was later transferred to me on February 1, 2005.

FINDINGS OF FACT

Applicant is 40 years old and a scientist for a defense contractor. Applicant was born in the U.S. to South Korean parents and is a U.S. citizen. He lived with his parents at different U.S. locations and other foreign countries where his father was a professor of physics, before returning to South Korea. Applicant graduated from college in South Korea in 1989, and returned to the U.S. in 1994, to study for his masters degree. Applicant completed his masters degree in 1995, and was accepted as a Ph.D. candidate at a prestigious university in the U.S. Applicant completed his Ph.D in August 2000. Applicant worked in the U.S. from July 2000 to April 2002 as a staff physicist, before starting work as a research physicist for a renowned laboratory that is a federal contractor.

Applicant has been married since 1992 and his wife is a permanent resident of the U.S. from South Korea. She has applied to become a naturalized citizen of the U.S., has completed the interview process and passed the required tests. Her application has been recommended for approval and she is waiting for final approval and swearing in as a U.S. citizen. Applicant's wife also has a Ph.D in physics from the same university as Applicant. She earned her degree at the same time as her husband. Applicant's wife works for the same federal contractor as Applicant. Applicant's wife has completed a National Agency Check (NAC) investigation and was granted permission to work during off duty hours at the laboratory. Applicant and his wife have three children, all born in the U.S.

Applicant's father is a physicist who studied and taught in the U.S. for several years. Applicant's parents are citizens and residents of South Korea. Applicant's father is professor emeritus at a university in Korea and his mother is a housewife. Applicant's father conducts joint research experiments with U.S. scientists. Applicant's father's research is not related to military or industrial applications and he does not hold a South Korean security clearance.

Applicant's brother is a citizen and resident of South Korea. He earned his MBA from a U.S. university and works as a chief executive officer for an investment firm. Applicant's sister is a housewife. Applicant's mother-in-law is a housewife. None of Applicant's family members work directly or indirectly for the South Korean government.

Applicant traveled to South Korea in May 1995, shortly after he and his wife completed their doctorates. They received permission from their Ph.D coordinator to travel at this time, as they were in between assignments and knew they would not have much time later. They visited family while in South Korea. Applicant and his wife traveled again to South Korea in April 2000, to attend the funeral of Applicant's wife's father.

Applicant formally renounced any citizenship ties to South Korea in 1992 and his renunciation was accepted the same year. Applicant worked for his father between 1989 and 1992 as an unpaid research assistant at the Physics Department of a South Korean university. Applicant worked there in preparation for his post-graduate education in the U.S. His research was published in scientific journals. He also was responsible for translating a physics textbook used by American universities into Korean.

Applicant's has had numerous research papers published in scientific journals. Applicant provided character letters that attest to his outstanding character, balanced lifestyle, and loyalty to his country. He is considered an outstanding research scientist whose efforts have advanced the U.S. scientific capabilities. Applicant is considered a trusted employee and team player with unquestionable integrity, reliability, and dependability. In addition, Applicant has not had any adverse comments or issues regarding his employment.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence.⁽⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSION

Under Guideline B, "[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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."⁽¹¹⁾

South Korea is an ally and has diplomatic ties with the United States. The U.S. is the world's leading industrial power and U.S. industry continues to lead the world in technology development.⁽¹²⁾ The U.S., because of its supremacy in industrial power, remains a prime target of foreign economic collection and industrial espionage.⁽¹³⁾ Due to the race to control scarce resources and the global markets, economic collection against the U.S., including the theft of trade secrets and competitive business information is likely to increase.⁽¹⁴⁾ Traditional allies as well as adversaries have increased their collection efforts against U.S. targets and will continue to do in the future.⁽¹⁵⁾ Korea is among the top seven most active collectors,⁽¹⁶⁾ although the information provided does not distinguish between North and South Korea.

Based on the allegations in the SOR, Foreign Influence Disqualifying Condition (FI DC) 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*), must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance

to Applicant under Guideline B. In this case, FI DC 1 applies because Applicant's wife, parents, sister, brother and mother-in-law are all citizens of South Korea and all except his wife reside there.

I have considered all the potentially mitigating conditions under Guideline B in this case. I specifically considered Foreign Influence Mitigating Condition (FI C) E2.A2.1.3.1 (*A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates(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*), and conclude it applies. None of Applicant's relatives work either directly or indirectly for the South Korean Government. Applicant's father and brother were both educated in the U.S. His father has devoted his life to academia, and his brother is a businessman. Neither hold security clearances in South Korea. Applicant's father does not conduct defense or industrial related research in his position as a university professor. Applicant's mother, sister and mother-in-law are housewives with no ties to the government. There is no evidence indicating any one of Applicant's relatives is an agent of a foreign power.

The question remains whether Applicant is vulnerable to exploitation through relatives in a foreign country? South Korea is a highly developed, stable, democratic republic.⁽¹⁷⁾ Its power is shared between the president and the legislature.⁽¹⁸⁾ South Korea has a well established judicial system and it is a member of the United Nations.⁽¹⁹⁾ South

Korea has the 12th largest economy in the world and is now the sixth-largest trading partner with the U.S. [\(20\)](#) Under the circumstances, the possibility that the government would attempt to exploit or pressure its residents to act adversely to the interest of the United States is limited.

It is important to consider the vulnerability to duress of Applicant's relatives in South Korea. Applicant's father is a professor emeritus at a Korean university. He is not employed by the government, has not held a security clearance in Korea and has not worked on defense related research. His father has conducted joint research ventures with U.S. scientists. Applicant's brother works for a private investment firm in Korea. Applicant's mother, sister and mother-in-law are all housewives with no connections with the government or foreign powers. Considering the backgrounds and jobs of Applicant's family and their country of origin there is minimal opportunity for adverse influence against Applicant's relatives in South Korea.

Another significant variable to consider is Applicant's vulnerability to pressure or duress applied indirectly through his ties with his relatives. Applicant has visited his family on two occasion in the last ten years, which supports that he has some ties of affection and obligation to his family in South Korea. At the same time Applicant has extensive ties to the United States. Applicant was born in the U.S. and received his advanced degrees at American universities. Applicant formally renounced in 1992, any citizenship ties with South Korea, and the renunciation was accepted that same year. His renunciation 13 years ago is a strong indicator of his ties and intentions. Applicant's wife is awaiting the final step to become a naturalized citizen. She received her Ph.D from an American university. She is also a research scientist with the same defense contractor. All three of Applicant's children were born in the U.S. Applicant's outstanding character was attested to by numerous supervisors and co-workers and he has had no adverse or questionable incidents regarding his employment.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I am persuaded by the totality of the evidence, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Foreign Influence (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

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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.
11. Directive, ¶ E2.A2.1.1.
12. Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2000 at 13.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 15.
17. U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet, South Korea, November 19, 2003.
18. *Id.*
19. U.S. Department of State, Background Note: South Korea, March 2003 at 3.
20. *Id.* at 4.