

KEYWORD: Foreign Influence

DIGEST: Applicant, a U.S. citizen, is employed by a U.S. government contractor in South Korea. His wife and mother-in-law are citizens and residents of South Korea. Additionally, Applicant's brother-in-law and three sisters-in-law are citizens and residents of South Korea. Applicant failed to mitigate Guideline B security concerns. Clearance is denied.

CASENO: 03-23697.h1

DATE: 03/31/2006

DATE: March 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23697

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esq

SYNOPSIS

Applicant, a U.S. citizen, is employed by a U.S. government contractor in South Korea. His

wife and mother-in-law are citizens and residents of South Korea. Additionally, Applicant's brother-in-law and three sisters-in-law are citizens and residents of South Korea. Applicant failed to mitigate Guideline B security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 29, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing January 11, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me August 10, 2005. On December 16, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, offered three exhibits for admission to the record (Ex.s 1 through 3), and offered three documents for administrative notice, which were enumerated I through III. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant called no witnesses and offered three exhibits for admission to the record. Applicant's exhibits were marked as Ex. A, B, and C and were admitted to the record without objection. On January 5, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct under Guideline B, Foreign Influence. Applicant admitted the seven Guideline B allegations. Applicant's admissions are incorporated as findings of fact.

Applicant is 43 years old and employed by a government contractor in South Korea.. He has held a security clearance since 1986. (Ex. 1; Tr. 19.)

Applicant was born and received his early education in the Republic of Korea (South Korea). He immigrated to the U.S. with his parents in 1977. He attended college in the U.S. and received a degree in electrical engineering in 1986. In 1988, he earned a master's degree in software engineering. (Tr. 19-21.) He became a U.S. citizen in 1984. (Tr. 20.)

Applicant's father, mother, two brothers, and two sisters are all U.S. citizens and live in the U.S. (Tr. 42.)

Applicant was married in 1989. Soon after his marriage, Applicant and his wife moved to South Korea, where they have lived ever since. (Ex. 1; Tr. 23-32;50-51.) Applicant's wife is a citizen and resident of South Korea. She is also a registered U.S. alien. (Tr. 31.) The couple has two teen-aged daughters, ages thirteen and fifteen. (Ex. 1; Tr.30.) Applicant's daughters were born in South Korea and are U.S. citizens. (Tr. 30.) In South Korea, Applicant and his wife jointly own land upon which an apartment building will be constructed in approximately 2008 . (Tr. 46-47.) In 2002, Applicant's wife purchased an apartment in South Korea, which she subsequently sold. (Tr. 43.) When Applicant is paid his salary in South Korea, he gives U.S. dollars to his wife. She exchanges the dollars for South Korean won and pays the family's bills. (Tr. 45.)

Applicant has been employed as a U.S. civil servant and as a government contractor in South Korea since 1989. He is currently an employee of a U.S. government contractor. Applicant's wife's mother is a citizen and resident of South Korea. Until his death in February 2005, Applicant's wife's father was also a resident and citizen of South Korea. (Tr. 35.) Applicant's wife has one brother and three sisters, who are also citizens and residents of South Korea.

Applicant's mother-in-law and three sisters-in-law are housewives who do not work outside their homes. His brother-in-law is a salesperson. None of the husbands of Applicant's sisters-in-law are employed by the South Korean government. (Tr. 36-38.)

When Applicant's father-in-law was living, Applicant and his family visited his father-in-law approximately six times a year. Since his father-in-law's death, Applicant sees his mother-in-law and his wife's siblings and their spouses once or twice a year at his mother-in-law's house. (Answer to SOR; Tr 40- 41.) Applicant speaks with his mother-in-law about once a year on the telephone. He thinks his wife speaks on the telephone more frequently with her mother when he is not at home. (Tr. 52-53.)

Applicant has a childhood friend who is a citizen and resident of South Korea. The friend owns a environmental construction company. In the past, Applicant talked with his friend about once every two weeks. Applicant last spoke with his friend about six months ago. (Tr. 54-55.)

Applicant submitted five letters of character reference from U.S. military commanders and supervisors who have worked with him. All those providing character references on behalf of Applicant spoke highly of him and his abilities, and they attested that he possesses the good character, maturity, and trustworthiness required of those entrusted with security clearances. (Ex. A.)

I take administrative notice that South Korea is a highly developed and stable democratic republic. While South Korea is one of the most ethnically and linguistically homogeneous populations in the world, it has experienced a very high rate of emigration, with over 1.5 million ethnic Koreans emigrating from South Korea and residing in the U.S. (Document I for Administrative Notice at 1-2.)

I also note that in the past 30 years, South Korea has experienced extraordinary economic growth. It is now the seventh-largest trading partner of the U.S. and possesses the eleventh-largest economy in the world. (Document II for Administrative Notice at 2, 4.) Despite South Korea's prominence as a trading partner of the U.S., some South Koreans are critical of U.S. policies and the presence of U.S. military in their country. In 2002, there were anti-U.S. demonstrations in South Korea. South Korea has been aggressive in seeking to acquire U.S. technology from U.S. companies and government contractors. These aggressive tactics are reflected in the industrial espionage and economic information collection South Korea has carried out against U.S. companies, many of whom are U.S. government contractors. In its 2000 annual report, the National Counterintelligence Center identified South Korea as one of the seven countries most active in economic espionage against the U.S. (Document III for Administrative Notice.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As

Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife is a citizen of South Korea currently residing with him in South Korea (¶ 1.a.); that his mother-in-law and father-in-law are citizens and residents of South Korea (¶ 1.b.); that Applicant has personal contact with his mother-in-law and father-in-law in South Korea

approximately five to six times per year (§ 1.c.); that Applicant's brother-in-law and three sisters-in-law are citizens and residents of South Korea (§ 1.d.); that Applicant has contact with his brother-in-law and his sisters-in-law in South Korea one to times per year (§ 1.e.); that Applicant has a friend who is a citizen and resident of South Korea (§ 1.f.); and that Applicant has personal and telephone contact with his friend in South Korea at least once every two weeks. In his answer to the SOR, Applicant admitted all Guideline B allegations. In his testimony, he noted his father-in-law had died in February 2005, and he tended to minimize the number of contacts he had with his mother-in-law and his childhood friend in recent time.

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism, or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of South Korea has aggressively sought privileged and classified information from U.S. businesses and government contractors. Even though South Korea is not hostile to the U.S., some of its citizens are anti-American, and a political climate exists that could threaten U.S. security interests. *See* ISCR Case No. 02-26976, at 4-5 (App. Bd. Oct 22, 2004).

Applicant's admissions raise two possible Guideline B security concerns. Applicant's wife, mother-in-law, brother-in-law, three sisters-in-law, and his childhood friend are all citizens and residents of South Korea. The citizenship and residency of these family members and an associate with whom Applicant has close ties of affection and obligation raise security concerns under E2.A2.1.2.1. of Guideline B. Additionally, Applicant's wife, with whom he shares his home, has close ties of affection and obligation to her mother, brother, and three sisters, thus raising the potential for foreign influence or duress, and this raises a security concern under E2.A2.1.2.2. of Guideline B.

Applicant's status as a U.S. citizen residing in South Korea could increase his vulnerability and that of his family members and close associates in South Korea to exploitation or pressure from anti-American groups.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's wife, mother-in-law, brother-in-law, three sisters-in-law, or his childhood friend are agents of a foreign power, they are all citizens and residents of South Korea, and Applicant failed to demonstrate that they could not be exploited by a foreign power in a way that could force him to choose between loyalty to them and to the U.S. Additionally, Applicant failed to demonstrate that his wife's relationship with her mother, brother, and sisters could not be exploited in a way that could force him to choose between loyalty to his wife and her family members and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun.

2, 2005)

Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1, DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's is committed to his wife in marriage, a relationship that is enduring and familial. His contacts with his mother-in-law, brother-in-law, and sisters-in-law, while infrequent, are based on family obligation and affection and are therefore not casual. His contacts with his childhood friend may be at present infrequent, but they are based on bonds of friendship and obligation spanning many years. Accordingly, MC E2.A2.1.3.3 does not apply to Applicant's relationship with his wife, mother-in-law, brother-in-law, three sisters-in-law, and childhood friend. The Guideline B allegations of the SOR, with the exception of those parts of allegations 1.b. and 1.c. regarding Applicant's relationship and contacts with his deceased father-in-law, are concluded against the Applicant.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

The following are my conclusions as to the allegations in the SOR:

Paragraph 1: Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.