

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized U.S. citizen from the Republic of South Korea (ROK), has relatives who reside in and are citizens of the ROK. However, they are not agents of that government or vulnerable to coercion by that government. Applicant has mitigated the security concerns under Guideline B (foreign preference) about her close ties of affection to foreign citizens. Clearance is granted.

CASENO: 03-25101.h1

DATE: 07/26/2005

DATE: July 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25101

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

David Price, Esquire

SYNOPSIS

Applicant, a naturalized U.S. citizen from the Republic of South Korea (ROK), has relatives who reside in and are citizens of the ROK. However, they are not agents of that government or vulnerable to coercion by that government. Applicant has mitigated the security concerns under Guideline B (foreign preference) about her close ties of affection to foreign citizens. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's most recent background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On May 20, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence). Applicant timely responded to the SOR (Answer), admitted (with explanation) all of the factual allegations therein, and requested a hearing.

On January 12, 2005, I convened a hearing at which the government presented one evidentiary exhibit (GE 1) to support the SOR. Department Counsel also asked that I take official notice of the contents of five other documents marked as GE 2 through GE 6.⁽²⁾ In response to an objection by Applicant's counsel, I declined to consider GE 2⁽³⁾ as it is irrelevant to the issues raised by the pleadings.⁽⁴⁾ I agreed to consider the remaining exhibits.

In response to the government's case, Applicant testified in her own behalf, presented the testimony of five other witnesses, and proffered ten evidentiary exhibits admitted without objection as AE A through J. DOHA received the transcript (Tr) on January 21, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein as fact. Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is a 43-year-old native of the Republic of South Korea (ROK). She was naturalized as a U.S. citizen December 1987, and is now employed by a defense contractor in a position for which she needs a security clearance.

After graduating high school in the ROK in about 1980, Applicant found work on a U.S. Air Force (USAF) base working in various commercial jobs before being hired by the Air Force as a civilian secretary. In 1981, Applicant met and married her first husband, a USAF enlisted man stationed at the same Air Force base. In 1982, Applicant accompanied her husband who was transferred back to the United States for about four years. Their three children were born during this assignment in the United States.

Shortly after the third child was born in 1986, Applicant's husband was transferred back to the ROK. By then, Applicant had become a permanent resident alien in the U.S. and, in 1987, she briefly returned to the U.S. to be naturalized as a U.S. citizen. The legal effect of this event in the ROK was to terminate Applicant's Korean citizenship.

When Applicant and her family returned to the ROK in 1986, Applicant again found work on base at the commissary, then at the base personnel office. In late 1987 or early 1988, Applicant was hired by a U.S. defense contractor doing business with the Air Force in the ROK. She applied for and was granted a security clearance required for her work in a U.S. operations center. In 1989, Applicant's husband was again transferred back to an Air Force base in the U.S. In 1993, he left the military and the family moved to his home state.

Applicant's marriage was deteriorating around the time they returned to the U.S., and after her husband left the military he had trouble finding a suitable civilian job. He eventually returned to Korea with their three children and found work as a civilian DoD employee. Applicant remained behind having found work as a flight attendant and traveled back and forth to Korea to see her children. In 1997, she left her airline job and returned to Korea. That year she was hired by another, larger U.S. defense contractor doing business in support of U.S. forces in the ROK. She was again granted a security clearance as required by her job description.

Applicant's first marriage ended in June 1998. In December 1998, she married her second and current husband, a native-born U.S. citizen who also worked for the same defense contractor as Applicant. The two had met previously in 1988 when both had worked as cleared employees for a different defense contractor in the ROK. Soon after they were married, Applicant and her new husband moved to Japan, where he worked on a different contract for the same company in support of U.S. forces in that country and she eventually found work as a school teacher. However, Applicant's children remained with their father and Applicant traveled back to Korea several times to see them and to pursue legal efforts at regaining custody of her children.

Applicant and her husband moved back to the United States in August 2001 and have lived in their current residence ever since. Applicant now works for a wholly-owned subsidiary of the company her husband works for, and she requires a clearance for that job. They owe about \$178,000 on the mortgage for their house, which was recently appraised as having a market value of about \$235,000. They also have about \$53,000 in bank savings and a retirement portfolio worth about \$250,000.

Applicant's parents and six siblings (three brothers and three sisters) are all citizens of and reside in the ROK. Her father is retired from the real estate business and is in failing health. Applicant traveled to the ROK the week before hearing to see him. Her mother has always been a housewife. Both are in their 70's.

Applicant's three brothers are all older than she, and her three sisters are all younger. Her oldest brother drives a taxi, another operates heavy construction equipment, and the youngest of the three brothers sells medical supplies. The oldest of Applicant's sisters owns a furniture store. The next youngest sister is a part-time college professor and works on a contract with a village-level municipality to study herbs, pollen, and other plant life as part of an effort to improve local agricultural yields. Her youngest sister is a housewife.

Applicant maintains contact with her parents about monthly, but more often recently due to her father's health problems. She also talks monthly with the oldest of her sisters, who is Applicant's main source of information about their family. In addition to her January 2005 trip to the ROK, Applicant visited in August 2002 to visit her family and to attend World Cup soccer matches. Four other trips to the ROK listed in her security questionnaire (SF 86) were taken as part of her efforts to regain custody of her children. She and her current husband now have custody of her youngest child, who is attending college in the United States.

Applicant is highly regarded for her dedication, reliability, and trustworthiness in and out of the workplace. Several witnesses and personal references with significant experience in the military and in the defense contracting industry, who have known Applicant from her current job and from past defense contracting work in the ROK, have enthusiastically recommended Applicant for a position of trust. The person who hired her for the job which led to her first security clearance, a retired USAF colonel with more than 40 years combined military and defense contracting experience, described Applicant as "morally incorruptible."

The ROK is a stable, democratic republic with an elected legislature and executive branch. Its foreign policy and commercial interests are generally aligned with those of the United States, and there is a long, well-established history of mutual defense agreements. The ROK has recently increased its efforts to acquire foreign technology and has some history of economic espionage efforts against several countries, including the United States. The ROK does not have a record of human rights abuses or of failure to control its law enforcement or military organizations.

POLICIES

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based its preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the applicant bears a heavy burden of persuasion.⁽⁶⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽⁷⁾

The Directive sets forth adjudicative guidelines⁽⁸⁾ to be considered in evaluating an applicant's suitability for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that the Applicant has close ties of affection to foreign citizens, I conclude the relevant adjudicative guideline to be applied here is Guideline B (Foreign Influence).

CONCLUSIONS

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 may 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. [\(9\)](#)

The government has presented sufficient information to support the allegations in the SOR. As alleged in SOR ¶¶1.a and 1.b, Applicant's parents and six siblings are citizens of and reside in the ROK. Applicant also has traveled to the ROK at least six times since February 1999 (SOR ¶1.c) and lived in the ROK with her first husband, a civilian DoD employee, and their three children from 1995 until late 1998 (SOR ¶1.d). The government has also established the facts alleged in SOR ¶¶1.c and 1.d, but these facts do not, in and of themselves, invoke disqualifying adjudicative factors. They merely plead evidence that I have considered in arriving at a decision based on the record as a whole. However, much of Applicant's travel was necessary as she was trying to see her children and, later, trying to regain custody. She lived in Korea between 1995 and 1998 because that was where her American husband was working and living with her American children.

Nonetheless, the proven allegations in SOR ¶¶1.a and 1.b support application of Guideline B disqualifying condition (DC) 1. [\(10\)](#) It is a rebuttable presumption in these cases that ties to an immediate family member (parents, siblings, spouse, and children) are close ties even if the rate of contact is low. Here, Applicant has demonstrated she is close to her parents because she was (quite reasonably) concerned enough about her father's health to travel to the ROK as recently as January 2005. She also has maintained contact with her siblings through the years both in person and by e-mail and telephone. None of this conduct is unusual or unreasonable in and of itself, but can be disqualifying in relation to holding a security clearance.

I have also considered the Guideline B mitigating conditions (MC) and conclude only MC 1 [\(11\)](#) is applicable to the facts and circumstances presented here. It is clear Applicant's family members in the ROK are not agents of any foreign government. The only possible connection with a foreign government is the contractual arrangement between one of Applicant's sisters and a village-level governmental entity for the study of pollen, herbs, and the like. This connection is so attenuated from the definition of "foreign agent" [\(12\)](#) as to lack any security significance in this context.

However, Applicant's ultimate burden of persuasion in this case required her to also show her parents and siblings are not in a position to be exploited by the ROK government so as to force Applicant to choose between her responsibility to U.S. interests and her loyalty to her family. While the mere presence of an applicant's relatives in a foreign country may be enough to disqualify one from holding a clearance, the analysis does not end there. Adjudication of this issue requires consideration of the whole body of record evidence available, including the nature and circumstances of the country involved. South Korea is a longstanding ally of the United States, with a democratically elected government. There is no evidence that the ROK engages in human rights abuses of its citizens, or that the activities and influence of the ROK military and law enforcement authorities are unchecked by the legislature or executive. While there is evidence South Korea engages in economic espionage, the trade relationship between the ROK and the U.S. is generally non-adversarial. Finally, the ROK apparently does not exert indigenous legal requirements on native-born Koreans who have foreign citizenship. Rather, the legal effect of Applicant's naturalization as a U.S. citizen was to terminate her Korean citizenship and the rights and benefits attendant thereto. Based on all of the foregoing, I conclude Applicant should have

the full benefit of MC 1.

I have also considered the fact that Applicant has twice before been granted access to classified information by the Department of Defense. While, the government is never precluded from re-evaluating any applicant's suitability to hold a clearance, I cannot ignore the fact the government has previously decided to grant access to this Applicant after reviewing essentially the same facts as are before me here. Further, Applicant and her husband have significant assets here and little reason to do anything to compromise their life in the U.S. She is also highly-regarded by present and past associates with significant experience in classified military affairs and defense contracting work overseas as a loyal, dedicated, and trustworthy U.S. citizen.

I have carefully weighed all of the evidence, and I have applied the pertinent disqualifying and mitigating conditions listed under Guideline B. A fair and commonsense assessment⁽¹³⁾ of Applicant's ties of affection to foreign citizens, her work history, her prior grants of access to classified information, the overwhelmingly positive recommendations for a position of trust, the information about the ROK, and her current circumstances as a naturalized citizen leads me to conclude the Applicant has overcome the adverse information presented by the government. I conclude Guideline B for the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., pp. 11 - 19.
3. GE 2 is a copy of a memorandum from the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), dated August 16, 2000. It clarifies DoD policy regarding the security concern about possession and / or use of a foreign passport.
4. Tr., pp. 16, 20 - 21.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, Enclosure 2.
9. Directive, E2.A2.1.1.
10. Directive, 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;
11. E2.A2.1.3.1. 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;
12. *See*, 50 U.S.C. §1801(b).
13. Directive, E2.2.3.