

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02877

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 61-year-old female employed as a clerk by a defense contractor in the Republic of Korea ("South Korea"). Although originally a native of that country, Applicant married a United States citizen and became naturalized in 1971. After raising four children, she found herself accompanying her second husband back to South Korea in 2001, where he assumed employment with a U.S. defense contractor. As that marriage failed, Applicant sought and was offered her present employment in South Korea. Also residing in South Korea are her two sisters, both of whom are residents and citizens of that country. Applicant failed to provide any evidence in mitigation regarding the security concern raised by the potential of foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On August 4, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline B (Foreign Influence), it 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. In her response dated August 23, 2004, later amended on September 21, 2004, Applicant admitted to the two allegations contained in the SOR and requested an administrative determination based on the submissions.

The Government's case was submitted on November 10, 2004, and a complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to her. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant submitted materials in a rebuttal to the FORM on November 18, 2004⁽²⁾ and signed for her official copy of the FORM on November 22, 2004. I was assigned this case on March 17, 2005.

FINDINGS OF FACT

Applicant has admitted to the two allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 61-year-old female who has been employed as a general office clerk by a defense contractor in South Korea since March 2002. Born there in 1943, when that region of Korea was still under Japanese colonial control, she eventually married a U.S. citizen in 1966. She became a naturalized United States citizen in 1971. Although that marriage ended in divorce in 1975, she married another U.S. citizen in 1977.

In April 2001, Applicant's second husband accepted employment in South Korea with a U.S. firm conducting defense related work for the United States government. In March 2002, with her marriage facing difficulties, Applicant accepted a job with her husband's employer. This job requires fluency in Korean and her daily contacts are with U.S. military personnel and other contractors. Awarded an interim security clearance in April 2002, Applicant has been trained with regard to security issues and reporting requirements. Shortly after assuming her current position, Applicant became a divorcée.

Applicant has four children. Each is a native born citizen of the United States. Currently, they range in age from 38 to 23. Her eldest son either serves in, or is associated with, the U.S. military. Although there is no information as to her younger son, her middle daughter is married and her youngest is attending college in the United States.

Although she was raised in South Korea, Applicant voluntarily relinquished her rights and obligations to that country 34 years ago when she became a citizen of the United States and started her family. She has held a U.S. passport since 1996. Although her parents are deceased, she has two older sisters who are citizens and residents of South Korea. She notes that her relationship with these sisters could not be used to coerce, exploit, or pressure her because her "decision to become a U.S. citizen required [her] to take an oath of allegiance to the U.S. and renounce all others,"⁽³⁾ and that they are not agents or representatives of a foreign power. Since leaving South Korea over three decades ago, her contact with her sisters has been "limited."⁽⁴⁾

Applicant ranks her concern for her sisters to be inferior to her concern for her American children.

Applicant received her GED in 1995. Since 2001, she has been taking university level classes through a major United States university via extension course-work. Judging by her prior addresses and occasional periods of varied employment, she often accompanied her second husband on his assignments outside of the 48 contiguous states, including previous stints in South Korea. She has had experience living and working among U.S. defense contractors abroad, and is accustomed to life adjacent to, and on, U.S. military bases.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individuals age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance,⁽⁵⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁶⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B - Foreign Influence. 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.⁽⁷⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed below.

Finally, it must be noted that 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 it, in whole or in part, on any express or implied determination as to this Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that owing to her employ with a defense contractor, she is currently residing in South Korea, the foreign country in which her two sisters remain citizens and residents. The citizenship and current residence of these two family members raises a security concern with regard to Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n immediate family member, or a person to whom the individual has close tiers of affection or obligation, is a citizen of, or resident or present in, a foreign country*).

When, as here, the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. Hence, it becomes Applicant's opportunity to thus demonstrate that it is clearly consistent with the national interest to grant her a security clearance.⁽⁸⁾

Here, however, she chose to selectively limit her evidence in response to the Government's case.

Applicant limited her evidence for mitigation regarding her sisters to only three statements: First, she states that their relationship to her could not be used to coerce, exploit, or pressure her because she has taken her oath to the United States, an oath she took freely and holds as sacred. Second, she urges that neither sister is an agent or representative of the Republic of Korea Government. Third, she concludes that their contact has been "limited" since she emigrated from South Korea. While these statements effectively parrot a pertinent portion of Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), 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) and demonstrate familiarity with FI MC E2.A2.1.3.3 ([c]ontact and correspondence with foreign citizens are casual and infrequent), they are conclusory; they are not the foundational or substantiated facts an applicant needs to provide the tribunal so that it can make its own supportable conclusions and reasoned judgments. By merely offering summary conclusions, not facts, Applicant failed to carry her burden and fortify her position with regard to the security concern her sisters raise. Therefore, I find that FI MC E2.A2.1.2.1 and FI MC E2.A2.1.2.3 do not apply.

Living in South Korea is a justifiable condition of employment. Given these particular circumstances, Applicant's current residency abroad does not, standing alone and by itself, pose a disqualifying condition. Therefore, I find for Applicant with regard to subparagraph 1.b of the SOR.

I have considered both the record evidence and the Applicant in light of the "whole person" concept. Applicant is a woman of maturity and experience whose narrative statement reflects good character and integrity. That does not preclude the Government from considering whether her facts and circumstances still pose a security risk"⁽⁹⁾

Applicant failed to fully explain the circumstances of her sisters and, therefore, has failed to carry her burden and assuage the doubts and concerns that they raise. Inasmuch as any doubts must be resolved in favor of the national security, I find against Applicant with regard to the pivotal allegation set forth at subparagraph 1.a of the SOR.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: For the Applicant

DECISION

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

Arthur E. Marshall, Jr.

Administrative Judge

1. ⁰ The government submitted 8 items in support of its case.
2. Applicant submitted 14 items in support of her case.
3. Government Exhibit 3 (Applicant's Answer to the SOR, dated August 23, 2004) and Government Exhibit 5 (Applicant's Amended Answer to the SOR, dated September 21, 2004).
4. This is Applicant's only descriptor regarding the extent of her contact with these sisters ("we have *limited contact* since I left the country....")(emphasis added). Applicant's Rebuttal to the Government's FORM (dated November 18, 2004) at 3.
5. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
6. ⁰ *Id.*, at 531.

7. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

8. Such a showing generally includes presenting sufficient facts and/or evidence to warrant the application of

Adjudicative Guidelines mitigating conditions, to warrant favorable conclusions under the general factors of Directive, Section 6.3, and Enclosure 2, Item E2.A2.1.3, or both.

9. ISCR Case No. 01-26893a (October 16, 2002), at p. 8