

DATE: February 17, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06745

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old and has worked as a welder for a federal contractor since 1989. Applicant was born in South Korea, and became a naturalized citizen of the U.S. in 1995. Applicant has four siblings and parents-in-law that are citizens and residents of South Korea. Applicant failed to provide any information that might mitigate security concerns regarding his foreign ties. Clearance is denied.

**STATEMENT OF CASE**

On September 13, 2004, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated October 6, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all the allegation contained in the SOR. Department Counsel submitted the government's case on December 2, 2004. A file of relevant material (FORM) was received by Applicant on December 29, 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 did not submit additional information. The case was assigned to me on February 11, 2005.

**FINDINGS OF FACT**

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

Applicant is 44 years old and employed as a welder for a federal contractor. He has worked for his current employer since 2001, and worked for a different federal contractor from 1989 to 2001. Applicant was born in South Korea, and

became a naturalized citizen of the U.S. in 1995. Applicant has been married since 1989, and his wife, also born in South Korea, became a naturalized citizen of the U.S. in 2002.

Applicant's two brothers and two sisters are citizens and residents of South Korea. Applicant's parents-in-law are citizens and residents of South Korea. Applicant contacts his brothers and sisters in South Korea by telephone. Applicant traveled to South Korea in April 1999, and in 1994. Applicant's parents are deceased. No other substantive information was provided, nor any specific information regarding Applicant's relationship with his siblings or his in-laws, their occupations, or who he visited in South Korea when he traveled there.

## 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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(4)</sup> 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.<sup>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</sup> 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."<sup>(11)</sup>

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.<sup>(12)</sup> The U.S., because of its supremacy in industrial power remains a prime target of foreign economic collection and industrial espionage.<sup>(13)</sup> 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.<sup>(14)</sup> Traditional allies as well as adversaries have increased

their collection efforts against U.S. targets and will continue to do in the future.<sup>(15)</sup> Korea is among the top seven most active collectors,<sup>(16)</sup> 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 sisters, brothers and parents-in-law are all citizens of South Korea and 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 does not apply. No information was provided to show whether Applicant's family has any ties or not with the government. No information was provided to show what Applicant's siblings and in-laws occupations are and whom they are employed by or any other information that might mitigate his ties with his family.

I have also specifically considered FI MC E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*), and conclude it does not apply. Applicant contacts his siblings by telephone. No other information was provided as to the frequency he may contact his family in South Korea or regarding the closeness of his relationship with them or his in-laws. No information was provided as to his wife's relationship with her parents. No information was provided regarding who he may have visited while traveling to South Korea.

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 have considered all the evidence in this case in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant's four siblings and parents-in-law are South Korean citizens. With the limited information provided, the familial ties and contact Applicant has with his relatives creates a position of vulnerability for him. These facts raise reasonable doubts about Applicant's ability to protect classified information unfettered by concerns about family members who may be subject to the interests of a foreign government and thus, his suitability for access to classified information. Absent substantial information to resolve those doubts, which Applicant failed to provide, and considering the whole person, I find Applicant has failed to mitigate the security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against 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) AGAINST THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against 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 or continue a security clearance for Applicant. Clearance is denied.

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.