DATE: April 11, 2005

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-08695

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44 year-old male who has been employed by a defense contractor since 1986. While on assignment in the Republic of Korea (Korea) in 1996, Applicant married a Korean citizen. Although she subsequently joined him in the United States, registered as an alien, and commenced the process toward gaining United States citizenship, her parents and brother remain citizens and residents of Korea. Applicant and his wife have given his mother-in-law money to satisfy her mortgage and he extended a loan to his brother-in-law. In 2001, Applicant was reassigned to Korea. He purchased an apartment there to avoid excessive rents and intends to sell that property upon their return in the summer of 2005. Applicant mitigated security concerns. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 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) detailing 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 a written response dated November 8, 2004, Applicant admitted to the five SOR allegations set forth. Additionally, Applicant requested an administrative determination based on the submissions Consequentially, the matter was forwarded for referral to an Administrative Judge to determine whether a clearance should be granted.

The Government's case was submitted on December 14, 2004, and a complete copy of the file of relevant material (FORM)[(1)] as provided to Applicant. Applicant received a copy of the FORM on January 7, 2005. Having been afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation of the allegations, Applicant, on January 18, 2005, responded with further explanation, financial documentation, and a letter of reference and support. I was assigned this case on February 11, 2005.

FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to foreign influence under Guideline B. 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 44 year-old male who has been employed as a Field Service Representative by a defense contractor since September 1986 and has had a security clearance since 1988. He was born in the United States and is a United States citizen. In March 1996, while on assignment in Korea, Applicant married a Korean citizen. The couple subsequently had two children prior to returning to the United States. His wife has since become a registered alien with a pending application for United States citizenship; their children are citizens of the United States owing to their parentage. In 2001, Applicant and his wife returned to Korea owing to a new work assignment. Following his current interim assignment in Iraq, Applicant will return to Korea and is expected to be transferred back to the United States in the summer of 2005.

Applicant's mother-in-law and brother-in-law also live in Korea, although at some distance in a different province. They remain citizens and residents of that country. Applicant has extended financial support to them on two occasions since his 1996 marriage. In 1998, when his mother-in-law was only working part-time because her husband was in failing health, Applicant and his wife gave his mother-in-law approximately $20,100.00 so that she could pay off her mortgage. [(2)] In 2001, he lent his brother-in-law approximately $40,000.00 so that he could purchase an automobile, licenses, and related necessities that would enable him to become an independent taxi operator. Both the gift and the loan were funded from Applicant's personal financial holdings and paid through Applicant's United States bank. Aside from these two isolated instances of financial support, Applicant only has occasional contact with his in-laws.[(3)]

In April 2002, Applicant purchased an apartment in order to avoid paying escalating rents during his current, multi-year assignment in Korea. The purchase, valued at approximately $130,500.00, was funded by a portion of the proceeds from the 2001 sale of his home in the United States. He intends to sell the apartment upon his return to the United States in the summer of 2005.

Applicant's immediate supervisor has known him for 17 years. He states that there is nothing to lead him to believe that Applicant is a security risk or is otherwise unworthy of holding a clearance. The supervisor notes that all of the married personnel in Applicant's category have foreign-born spouses, either Korean or Filipino, and, consequentially, have foreign in-laws. He similarly notes that, given the disparate resources between these United States employees and their foreign spouses' families, "giving occasional financial support is not unusual."[(4)]

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.

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.**

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 in the Conclusions section below.

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 about 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. Moreover, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[(6)]

Finally, 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.

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, the Government has established its case. Applicant's wife, parents-in-law, and brother-in-law are citizens and residents of Korea. Moreover, he has extended financial assistance to his wife's family. As such, the rebuttable presumption that there exists the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information is raised. Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 may be raised, as here, if *(a)n 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*. The mere possession of family ties in a foreign country, however, is not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. Moreover, FI DC E2.A2.1.2.8 (*a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence*.) may similarly be raised by virtue of Applicant's expenditure of funds within Korea.

First, I have considered all the Foreign Influence Mitigating Conditions (FI MC) under Guideline B in this case. The 1998 gift to Applicant's mother-in-law was an isolated, gift from Applicant and his wife in response to an immediate need; there is no evidence that it represents a financial interest or that it was an investment seeking any other return than the independent and separate maintenance of an aging couple. His 2001 "loan" to the brother-in-law was predicated not on a desire to reap profit or create a financial interest, but "to help out."[(7)] Extension of the loan in 2001 posed no risk or financial burden on Applicant's United States-based investments and represented but a fraction of his net holdings.[(8)] Today, the loan has no impact on his current finances and satisfaction of the loan is not integral to Applicant's financial

planning. Moreover, his purchase of a Korean apartment, while a direct interest in Korea, was but a practical, temporary, means to an end. By transferring some of the proceeds from the sale of his last U.S. home toward an interim foreign residence, Applicant self-subsidized his interim housing unfettered by rising rental costs and constrictive lease agreements. Neither individually, nor collectively, are these expenditures substantial given Applicant's resources. Therefore, I find that FI MC E2.A2.1.3.5 (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies. Moreover, inasmuch as none of these expenditures fail to constitute a disqualifying condition, I find for Applicant with regard to SOR subparagraphs 1.c, 1.d, and 1.e.

Additionally, there is no evidence that Applicant's wife is an agent of a foreign power or otherwise in a position to be exploited by a foreign power. Applicant complied with the security requirements and background checks for his wife prior to their marriage in 1996.[(9)] She is currently a registered alien with a pending application for U.S. citizenship, was residing in the United States until her husband's current assignment, is currently residing in Korea only as a consequence of her husband's employment, and will soon be returning to the United States. Indeed, the couples' return this summer should quell any extraneous concerns and quickly render issues surrounding her physical presence in Korea moot. Therefore, I find that FI MC E2.A2.1.3 (*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*) applies. oreover, given her circumstances, I do not find her current presence in Korea to pose a disqualifying condition and, therefore, find SOR subparagraph 1.a. in Applicant's favor.

Applicant's mother-in-law is a sexagenarian widow and his brother-in-law is an independent taxicab owner. Applicant has met his burden in showing that his brother-in-law does not pose a risk, but he has failed to put forth any similar proffer with regard to his mother-in-law. In the absence of elaboration as to her profession or position, I am unable to determine that she is neither an agent of a foreign power nor otherwise in a position to be exploited. Therefore, because security clearance determinations should err, if they must, on the side of denials, I cannot find that FI MC E2.A2.1.3.1 is applicable to the mother-in-law.

There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members.[(10)] Here, Applicant's relationship with his in-laws, while no doubt respectful and gracious, does not seem intimate. First, their contact is infrequent, "occasional," and only incidental to his wife's contact with them. Second, Applicant's two isolated incidents of financial assistance were clearly designed to foster distant independence and independent living, not invite deeper familial bonds or initiate on-going support or obligation. Indeed, despite living in the same country for the past few years - albeit in different provinces - there is no evidence of any party capitalizing on this proximity by relocating or otherwise increasing contact. Third, given current plans to relocate back in the United States in the summer 2005, it is logical to expect that even current casual levels of "occasional" contact will be further attenuated. There is no denying that ties exist between Applicant and his in-laws by virtue of his marriage, but the existent ties, as demonstrated by the facts to be casual and infrequent, pose only minimal risk. Consequentially, I find that FI MC E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*) applies. I additionally find that the existence of in-laws who reside in and are citizens of Korea, under these facts, is not a disqualifying condition. Therefore, I find SOR subparagraph 1.b in Applicant's favor. No other mitigating conditions apply

Second, I have considered the whole person concept. Applicant has been steadily employed by the same U.S. employer since 1986 and he has held a security clearance since 1988. He has diligently created and grown an admirable portfolio of United States funds and, in light of his explanation as to why he chose to purchase, rather than rent, an apartment in Korea, he has also demonstrated personal parsimony and sound judgment. His contact with Korea is incidental to the employment for which he maintains a security clearance; his contact with his in-laws is incidental to his marriage and is minimal. He has helped assure the individual independence of his in-laws by providing well intentioned, but distant, dispassionate, and measured support - and has done so without risk to his own finances or to his fiduciary obligations as the recipient of a security clearance.

Third, Korea can best be characterized as a friendly country that is not currently known to pose unacceptable hostage risks. Whatever potential security risks arise as the result of Applicant's having in-laws in Korea, they are by every reasonable measure mitigated. This situation is in marked contrast to a situation extant in a country with interests

inimical to those of the United States. Despite some history of economic and proprietary intelligence gathering, Korea remains a friend of the United States and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Korea, while reported to target the United States and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence to obtain either classified information, or unclassified economic and proprietary data. Combined with the determinations above, I find that any potential security concerns attributable to Applicant's extended family in Korea are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand any such risks of undue influence. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant or continue a security clearance for this Applicant. 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 E3.1.2.5 of Enclosure 3 of the Directive are:

Paragraph 1. 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

Subparagraph 1.e: 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.

Arthur E. Marshall, Jr.

Administrative Judge

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2. ' ' -- --

3. '

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5. [6] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

6. [6] *Id.*, at 531

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8. ' --

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