KEYWORD: Outside Activities; Personal Conduct; Foreign Influence

DIGEST: Applicant successfully mitigated security concerns related to Guideline L, Outside Activities. However, he failed to mitigate security concerns deriving from Guideline E, Personal Conduct and Guideline B, Foreign Influence. Clearance is denied.

CASENO: 03-08883.h1

DATE: 03/30/2006

DATE: March 30, 2006

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-08883

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Stanley Z. Zimmerman, Personal Representative

SYNOPSIS

Applicant successfully mitigated security concerns related to Guideline L, Outside Activities. However, he failed to mitigate security concerns deriving from Guideline E, Personal Conduct, and Guideline B, Foreign Influence. 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 March 18, 2005, 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 L (Outside Activities), Guideline E (Personal Conduct), and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing April 13, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me July 27, 2005. On October 19, 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 eight exhibits for admission to the record (Ex.s 1 through 8), and offered five documents for administrative notice, which were enumerated I through V. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant called no witnesses and offered two exhibits for admission to the record. Applicant's exhibits were marked as Ex. A and Ex. B and were admitted to the record without objection. Applicant's personal representative provided an oral as well as a written closing statement. At the conclusion of the hearing, I left the record open until November 2, 2005, so that Applicant could, if he wished, submit evidence he had discontinued an

activity after being notified it was in conflict with his security responsibilities. On October 21, 2005, Applicant submitted documents showing he had resigned as President, Chairman, and Member of the Board of Directors of a U.S. corporation which wholly owned a subsidiary corporation in South Korea. The documents also showed he had transferred back to the U.S. corporation all of his common stock ownership interest. Applicant's post-hearing documents were identified as Ex. C and admitted to the record of the proceeding without objection. On November 1, 2005, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains twelve allegations of disqualifying conduct under Guideline L, Outside Activities, one allegation of disqualifying conduct under Guideline E, Personal Conduct, and two allegations of disqualifying conduct under Guideline B, Foreign Influence. Applicant admitted with explanation nine allegations under Guideline L and two allegations under Guideline B. He denied three allegations under Guideline L and one under Guideline E. Applicant's admissions are incorporated as findings of fact.

Applicant is 66 years old and president and chief executive officer of a privately-held corporation, which he founded in 1986 and which became operational in 1989. The corporation has revenues of approximately $50 million a year. (Tr. 58.) Applicant owns about 92 percent of the company and estimates his ownership interest is worth approximately $40 to $50 million. The company employs 400 people. Most of Applicant's business consists in supplying engineering and information technology management services to Federal agencies and other Federal contractors. (Ex. 6.) In October 2005, Applicant acquired another company, which, when consolidated with his present organization, will enable him to employ 600 people and earn projected corporate annual revenue of $80 million. (Ex. 1; Tr. 37-38.) His current personal annual income is between $500,000 and $600,000. (Tr.104.)

Applicant has held a security clearance since 1995 or 1996. As the chief executive of a government contracting company, Applicant is required to hold a security clearance. He does not work with classified information, although his employees do. His company has a Top Secret facility clearance. (Tr.36; 75.)

Applicant was born and educated in the what is now the Republic of Korea (South Korea). He married his wife, also an immigrant from South Korea, in 1966. The couple are parents of two adult children, one of whom resides in London, England, with her fiancé, a British citizen, who is employed in banking. (Ex. 3 at 2.)

Applicant and his wife became U.S. citizens in 1974. In 1989, when he began full operation of his company, Applicant formally renounced his South Korean citizenship. (Tr. 31.) In 1981, Applicant's wife obtained a position with an international organization, relinquished her U.S. citizenship, and reverted to Korean citizenship in order to obtain certain travel and educational benefits from the international organization. Upon retirement from the international organization in 1998, Applicant's wife sought renewal of her U.S. citizenship.[(3)] She receives a pension from the international organization. (Ex.2 at 3; Ex. 3 at 2; Tr. 62.)

Applicant's parents, four brothers, and one sister were all born in South Korea and immigrated to the U.S. at the encouragement of Applicant. The parents, three of the brothers, and the sister became U.S. citizens. One additional brother resides in the U.S. as a registered alien and has applied for U.S. citizenship. (Ex. 1; Ex. 2; Ex. 3.) Applicant's wife has a sister who is a citizen and resident of South Korea. Applicant's sister-in-law is a lay religious worker serving the poor. Until January 2004, Applicant and his wife sent approximately $1,000 a month to the wife's sister for her support. (Answer to SOR at 9.)[(4)] Applicant surmised his wife likely continues to send money to her sister without his knowledge. (Tr. 62.)

Applicant travels to South Korea at least once a year, and sometimes more often. (Tr. 96-97.) When his visits South Korea, Applicant regularly sees his sister-in-law, cousin-in-law, and former high school and college classmates, who are now retired and with whom he has maintained friendships. (Tr. 96-97.) These individuals are all citizens and residents of South Korea. Additionally, he has maintained close ties with the South Korean university from which he received his undergraduate degree. He donated $50,000 to the university in 2000, $50,000 in 2001, and $100,000 in 2004.

In 2004, Applicant's alma mater in Korea selected him from over 100,000 graduates to receive an honorary doctorate degree. Applicant traveled to South Korea to receive the degree and delivered an acceptance speech in English and Korean. For four months in 2004, at the request of the university's alumni association in the U.S., Applicant permitted six advanced graduate students from the university to observe, as interns, the marketing activities of his company. The university paid Applicant's company compensation of $1,700 to provide the internship experience[(5)]. The students were assigned to work in a conference room in the company's headquarters building. While the company's facility clearance covered the headquarters building, no classified information was worked on or stored in the building and the interns never worked in areas of Applicant's company that housed classified information. (Answer to SOR; Tr. 93-96.)

In 1984, through one of his brothers, Applicant became acquainted with a South Korean student who was studying in the U.S. Applicant befriended the student. The young man married a goddaughter of Applicant's wife. The student completed a Ph.D degree in chemical physics in the U.S., and then returned to South Korea, where he is now a university professor and research dean. (Ex. A.) The professor is a citizen and resident of South Korea. In 1999 or 2000 the professor approached Applicant with an investment proposal incorporating wireless telecommunication technology. Applicant initially demurred, but, eventually, in 2001, he provided approximately $100,000 in start-up money for the project. As time went by, he provided another $400,000 and approximately $350,000 of in-kind support for the project. (Tr. 50-51.)

Applicant and the professor originally created two corporations, one in Korea, which would carry out research and development of the product, and one in the U.S., which would market and sell the product. Beginning in 2000, Applicant's government contracting corporation agreed to advance funds and to provide services to the U.S. corporation. Under the agreement, the government contracting business acquired an option to convert the debt owned by the U.S. corporation to shares, provided venture capital investors provided second stage financing. Approximately half of Applicant's investment of $835,000 was spent in the U.S., while the rest was spent in South Korea. The South Korean company received grants of $300,000, $63,000, and $62,000 from South Korean government agencies. (Tr. 55; Answer to SOR at 2; 4-6.) The work site for the South Korean company was located at a private university in South Korea.

Applicant was not satisfied with the Korean company's progress. He arranged for the U.S. company to become dominant, and the Korean company to became a wholly-owned subsidiary of the U.S. company. Applicant owned 36% of the parent company; nine percent was owned by a U.S. citizen; and 35 percent was owned by Korean nationals. (Tr. 51-52; Answer to SOR at 2-3.) Applicant stopped funding the Korean company in 2003. The U.S. company became dormant, and Applicant considered his business venture with the South Korean professor to be a total loss. (Tr. 52-53.) In 2004, Applicant's government contracting corporation paid the South Korean wholly-owned subsidiary $12,500 to complete a marketing study of business opportunities in Korea. (Ex. A at 4.) At the time of his hearing Applicant was on the Board of Directors of the U.S. parent company and held stock in the company. (Tr. 56; 89.) He was aware of the security significance of his foreign financial interest. (Tr. 89.)

Applicant continued to receive yearly status reports from his friend, the professor, on the progress of the South Korean business during his vacation trips to Korea once or twice a year. (Answer to SOR at 6.) He communicated with the Korean professor by e-mail from his computer at his government contracting corporation. (Tr. 88.)

Applicant's contributions to charitable and business organizations in the U.S. were $223,000 in 2004; $160,000 in 2003; $250,000 in 2002; $179,000 in 2001, and $177,000 in 2000. (Answer to SOR at 6.)

Question 12 on the security clearance application (SF-86) reads: **Your Foreign Activities - Property** Do you have any foreign property, business connections, or financial interests?" When Applicant completed and signed his SF-86 on February 2, 2001, he answered "no" to Question 12. (Ex. 1.) Question 13 on the SF-86 reads:"**Your Foreign Activities - Employment** Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?" Applicant responded "no" to Question 13.

At his hearing, Applicant stated he had not begun to focus on the Korean corporation or to fund it until after he had signed and submitted his SF-86. (Tr. 66.) He denied being employed by or ever receiving any money from the Korean corporation. (Tr. 68.) When he met with an authorized investigator of the Defense Department in May 2003, he did not discuss his role in establishing and helping to fund the joint business enterprise with the Korean professor. (Ex. 2.) When he met again with an authorized investigator of the Defense Department in July 2004, he explained his financial interest in the Korean corporation and denied he had deliberately failed to disclose that information on his security clearance application, which he signed in February 2001. Applicant did not personally fill out his security clearance application in 2001. His daughter, who was a corporate vice-president and the corporation's facility security officer, completed his application for him. (Ex. 3 at 3.) In his answer to the SOR, Applicant asserted his failure to list his business relationships with South Korean entities was not deliberate and was an unintended omission. (Answer to SOR at 7-8.)

On October 21, 2005, Applicant submitted a letter, dated October 20, 2005, addressed to the Secretary-Treasurer of the U.S. corporation, in which he severed all ties with the parent corporation and the South Korean wholly-owned

subsidiary corporation. Specifically, he resigned immediately as President, Chairman, and Member of the Board of Directors of the U.S. corporation which wholly owned the subsidiary corporation in South Korea. Additionally, he provided a copy of his stock ownership certificate, dated June 18, 2001, showing on its face ownership of 359,155 shares of common stock in the corporation and showing on the reverse that, on October 20, 2005, he had transferred back to the U.S. corporation all of his common stock ownership interest and appointed the Secretary-Treasurer to effectuate the transfer. (Ex. C.)

I take administrative notice that South Korea is a highly developed and stable democratic republic. The government of South Korea has deployed troops to Iraq and is allied with the U.S. in the War Against Terror. However, some younger South Koreans object to the U.S. military presence in South Korea and have organized to express anti-American sentiments. 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 and residing in the U.S. (Document I for Administrative Notice at 2; Document V for Administrative Notice at 13.)

I also note that in the past 30 years, South Korea had 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.) In the past, the trading relationship between the U.S. and South Korea has been, at times, acrimonious. The U.S. has complained about the lack of transparency in South Korea's trading and regulatory systems and its use of currency manipulation to enhance its trading posture. Additionally, telecommunication issues have created tension in the trading relationship between the two countries. (Document III for Administrative Notice at 9, 10, 12.) South Korea's aggressive trade tactics are also reflected in the industrial espionage and economic information collection it 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 IV 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 L - Outside Activities

In the SOR, DOHA alleged Applicant raised concerns under Guideline L, Outside Activities, with the following information: that he was president and chief executive officer of a company with revenues of approximately $45 million a year (¶ 1.a.); that the company, founded by Applicant in 1986, provides information technology and information services to private, state, and federal clients and employs approximately 400 people (¶ 1.b.); that, in partnership with his corporation, Applicant provided approximately $500,000 in about 1999 to form a U.S. company that partnered with a U.S. university and a South Korean university for a work site in South Korea to carry out product research and development (¶ 1.c.);that Applicant owed 36 % of the company, and that 9% was owned by a U.S. citizen; 5% was owned by a South Korean partner of Applicant, 16% and 14% interests were owned by South Korean nationals, and the ownership of 20% was unknown (¶ 1.d.); that Applicant provided funding for the company because he wanted to help his South Korean friend, a professor and research dean, start a business (¶ 1.e.); that the company funded by Applicant was granted $300,000 from May 1, 2002 through April 30, 2003, by an entity of the South Korean government (¶ 1.f.); that the company funded by Applicant was granted $63,000 during the period April 1,2002, through March 30, 2003, by an entity of the South Korean government (¶ 1.g.); that the company funded by Applicant was granted $62,000 during the period August 1, 2003, through July 31, 2004, by an entity of the South Korean government (¶ 1.h.); that Applicant travels frequently to Korea, in part to obtain updates from the company's offices in South Korea (¶ 1.i.); that Applicant donated at least $100,000 to a South Korean university in at least 2000 (¶ 1.j.); that a South Korean university paid

Applicant's U.S. company about $1,700 monthly to employ six South Korean citizens at the company (¶ 1.k.); and that Applicant received an honorary doctorate degree from a South Korean university in April 2004 (¶ 1.l.).

An individual's involvement in certain types of outside employment activities is of security concern if it poses a conflict with his security responsibilities and could create an increased risk of unauthorized disclosure of classified information. Directive ¶ E2.A12.1.1. In this case, conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment, with a foreign country, any foreign national, or a representative of any foreign interest. Disqualifying Condition (DC) E2.A12.1.2, DC E2.A12.1.2.1., DC E2.A12.1.2.2., and DC E2.A12.1.2.3. An additional cause for concern under Guideline L is any service, whether compensated, volunteer, or employment with "any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology." DC E2.A12.1.2.4.

Applicant is the President and Chief Operating Officer of privately-held corporation that receives almost 100% of its revenue from work on government contracts and which requires a facility security clearance to do its work. While Applicant does not work with classified information, he is required to hold a security clearance, and individuals employed by him hold security clearances and may be charged with protecting classified information.

In 1999, Applicant was approached by a friend who was a citizen and resident of South Korea and asked to provide funds to start a company in South Korea that would try to develop wireless telecommunication technology. Wishing to help his friend, Applicant voluntarily entered into a business relationship with the individual and provided over $500,000 in cash and $350,000 in in-kind contributions to establish a U.S.-based company and a South Korean-based company to research and market a specific wireless telecommunications technology. Later, Applicant, who was the chief source for financing the two partner companies, sought more control over the South Korean company by making it a wholly owned subsidiary of the U.S. company. The Korean company acquired three grants from entities of the South Korean government. Several South Korean nationals held ownership interests in the U.S. parent company that Applicant served as President and Chief Operating Officer.

The facts establish that Applicant entered into business relationships with foreign nationals to research and market wireless telecommunications technology. This raises a security concern under DC E2.A12.1.2.2.of Guideline L. Nothing in the record suggests that the proposed research and marketing plan involved protected technology, although the possibility exists that this technology could be protected at some time in the future, thereby causing a future concern under DC E2.A12.1.2.4.

An individual can mitigate security concerns arising under Guideline L if an evaluation of the outside employment or activity indicates that it does not pose a conflict with the individual's security responsibilities. Mitigating Condition (MC) E2.A12.1.3.1. Applicant's conduct at his hearing indicated he was aware his business relationships with foreign nationals conflicted with his security responsibilities, and thus MC E2.A12.1.3.1. is inapplicable in mitigation.

An individual may also mitigate security concerns arising under Guideline L if he terminates or discontinues the activity upon being notified that it is in conflict with his security responsibilities. MC E2.A12.1.3.2. On October 20, 2005, Applicant filed documentation showing he had severed all ties with the U.S. company which wholly owned the South Korean subsidiary company, and he had transferred back to the U.S. corporation all stock he owned in the company. Accordingly, Applicant's termination of his financial and managerial activity with foreign nationals serves to mitigate the Guideline L allegations of the SOR.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when he answered "no" to Question 13 on the SF-86 and thereby denied ever being employed by or acting as a consultant for a foreign government, firm, or agency. Additionally, the Government alleged in the SOR that Applicant failed to disclose his part ownership in the U.S. company that funded and wholly owned the South Korean subsidiary company, as alleged in ¶¶ 1.c. and 1.d. of the SOR. (¶ 2.a.)[(6)]

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, Applicant's conduct and the record evidence establish the Government's case. Applicant's "no" answer to Question 13 was not credible, since he had been actively advising and consulting with his South Korean professor friend in the creation of a South Korean business entity since approximately 1999 or 2000. Applicant delegated to his daughter, who was employed by him as the corporation's facility security officer, the responsibility for filling out his SF-86. Question 13 on Applicant's SF-86 was answered falsely. Applicant signed his SF-86 in February 2001. As the individual possessing the privilege of holding a security clearance, Applicant had a duty to submit a truthful and complete SF-86 and to carefully review his application before signing and submitting it. Failure to do so raises concerns under ¶ E2.A5.1.1 of Guideline E about Applicant's judgment, trustworthiness, reliability, and willingness to comply with rules and regulations.

Applicant's falsification of relevant and material facts on his personnel security questionnaire also raises security concerns under Disqualifying Condition (DC) E2.A5.1.2.2., and DC E2.A5.1.2.4. of Guideline E. His deliberate omission of relevant and material facts in his response to Question 13 on his SF-86 raises concerns under DC E2. A5.1.2.2. His concealment of information he considered embarrassing or professionally damaging could make him vulnerable to coercion and blackmail. DC E2.A5.1.2.4. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition (MC) E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. One additional mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. MC E.2.A.5.1.3.2. Applicant supplied the correct information only after being questioned for the second time by an authorized investigator of the Defense Department. His falsification was not an isolated incident and occurred recently. Accordingly, MC E.2.A.6.1.3.2. does not apply to the facts of Applicant's case. The Guideline E allegations in the SOR are concluded against the Applicant.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's sister-in-law is a citizen and resident of South Korea (¶ 3.a.) and that Applicant and his wife send the sister-in-law approximately $1,000 a month in financial support (¶ 3.b.) Applicant admitted both Guideline B allegations. In his answer to the SOR, he denied providing his sister-in-law with monetary support after January 31, 2004, but in his testimony he admitted his wife was likely continuing to send her sister money without his knowledge.

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 sister-in-law is a citizen and resident of South Korea. The citizenship and residency of this family member to 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 sister, thus raising the potential for foreign influence or duress, and this raises a security concern under E2.A2.1.2.2. of Guideline B.

The record also reflects that Applicant has distinguished himself in South Korea as a successful businessman whose

business focuses on services to the U.S. government and to contractors for the U.S. government. His large and public financial contributions to support a university 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. itigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's sister-in-law is an agent of a foreign power, she is a citizen and resident of South Korea, and Applicant failed to demonstrate that she could not be exploited by a foreign power in a way that could force him to choose between loyalty to her and to the U.S., or that his wife's relationship with her sister could not be exploited in a way that could force him to choose between loyalty to his wife and her sister 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 travels to South Korea frequently to visit with friends and associates there, including his sister-in-law. Over the years, he and his wife have sent $1,000 a month to the sister-in-law in Korea for her support. Applicant asserts his wife is probably continuing to send money to her sister for her support, leading to the conclusion that their relationship with the sister is familial and their contact with her is neither casual nor infrequent. Thus, MC E2.A2.1.3.3. does not apply to Applicant's relationship with his sister-in-law. Accordingly, the allegations in subparagraphs 3.a. and 3.b. of the SOR 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 judgment about Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

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

Paragraph 1: Guideline L: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Paragraph 2.: Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3.: Guideline B: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: 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.

3. Applicant's SF-86, signed in February 2001, lists his wife as a citizen of the Republic of Korea (South Korea). (Ex. 1.)

4. Applicant's SOR answer regarding the support of his sister-in-law is ambiguous. Also in his answer to the SOR, signed April 13, 2005, he admits he provided his sister-in-law with financial support "until the end of January this year." *See* Applicant's answer to SOR at 9.

5. In his signed, sworn statement, Applicant said the university paid his company $1,700 to provide six students with an internship experience. (Ex. 3 at 5.) In his testimony he said the university paid the company between $1,300 and $1,500 for providing the internship experience. It was not clear whether the amount paid was for the group of students or for each of the six students. (Tr. 94.)

6. The Government did not allege that Applicant falsified material facts in his answer to Question 12 on the SF-86.