KEYWORD: Foreign Influence
DIGEST: Applicant, a naturalized citizen of the United States, is an owner-employee of a computer services company which contracts with federal agencies. He has two brothers living in South Korea. Another brother and his mother are South Korean citizens living in the United States. Clearance was granted. The government appealed. The Appeal Board remanded the decision. After additional findings of facts and conclusions, I again conclude that Applicant successfully mitigated the security concerns under Guidelines B and E. Clearance is granted.
CASENO: 03-17620.h1
DATE: 05/15/2006
DATE: May 15, 2006
In re:
SSN:
Applicant for Security Clearance
ISCR Case No. 03-17620
REMAND DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM
A DIVERSITY OF THE STATE OF THE
APPEARANCES
FOR GOVERNMENT
Sabrina Flaine Redd, Esg. Department Counsel

FOR APPLICANT

Mark S. Zaid, Esq.

SYNOPSIS

Applicant, a naturalized citizen of the United States, is an owner-employee of a computer services company which contracts with federal agencies. He has two brothers living in South Korea. Another brother and his mother are South Korean citizens living in the United States. Clearance was granted. The government appealed. The Appeal Board remanded the decision. After additional findings of facts and conclusions, I again conclude that Applicant successfully mitigated the security concerns under Guidelines B and E. Clearance is granted.

STATEMENT OF THE CASE

On July 21, 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) to Applicant. The SOR alleged facts under Guideline B (foreign influence) and Guideline E (personal conduct) detailing reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked. The SOR detailed foreign influence and personal conduct issues as the reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.

In a sworn written statement, dated August 9, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on February 24, 2005. Notice of the hearing was dated April 1, 2005. A hearing was conducted on May 3, 2005. The transcript was received May 13, 2005. A decision was entered on June 22, 2005. The government appealed. The Appeal Board remanded the case on April 17, 2006.

APPELLATE ISSUES

The Appeal Board directed me to issue findings of fact and discuss SOR ¶ 2.b., and to discuss adjudicative process guidelines E2.2.1.1 through E2.2.1.9.

FINDINGS OF FACT

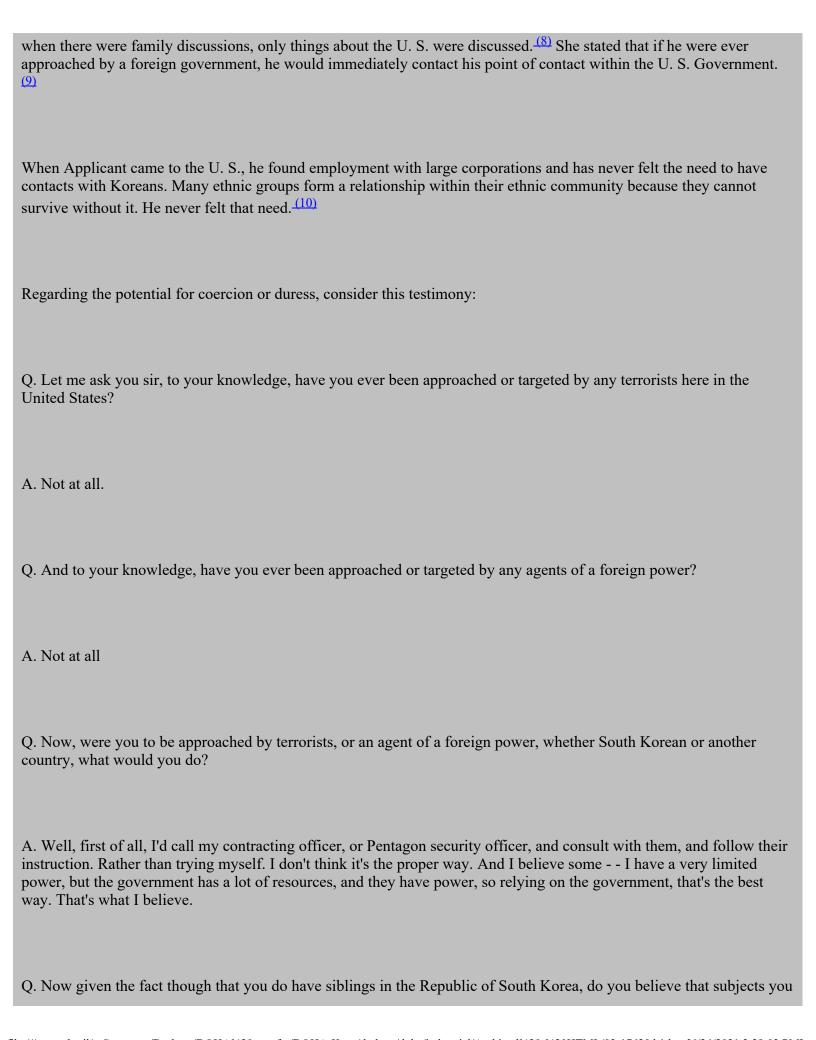
I adopt the findings of fact from the original decision and make the following additional findings of fact. SOR ¶ 2.b. alleges that during an April 23, 2004 interview with an authorized investigator for the Department of Defense, Applicant stated that his brother's sole duties involved bookkeeping, notwithstanding the fact that the Japanese and Korean components of Applicant's company's website listed his brother as a point of contact. As of February 2004, his brother ceased to be employed by his company, as an accountant and an employee.

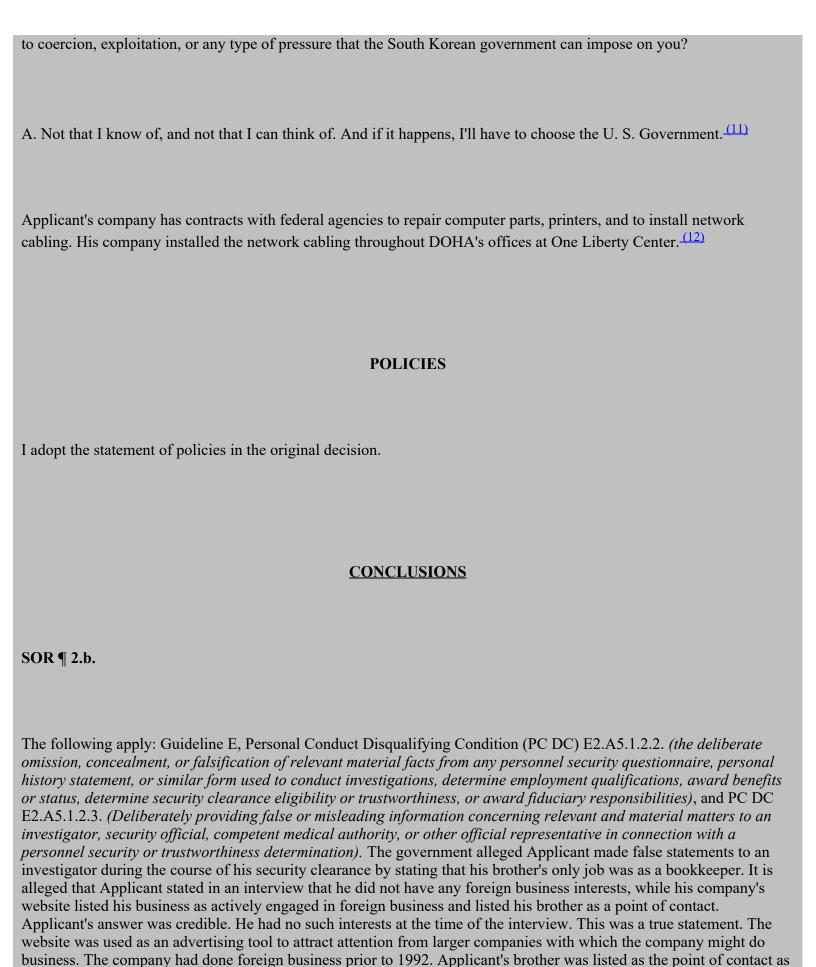
The solutions engineer/sales manager of Applicant's company testified that since joining the company in 1999, there were no business relationships with any foreign business. The contact person's name for foreign business on the company's website and some foreign language instructions had been removed from that website. The company was trying its best to develop business from as many sources as possible. The Small Business Administration (SBA) suggested the company use any methods possible to obtain business, with the goal of partnering with larger defense corporations.

Applicant's brother was responsible for accounting and inventory control. He was listed as the foreign business contact person on the company's website because he spoke the Japanese and Korean languages. He would only be used as an interpreter because he did not have the ability to market or sign contracts. (3) He no longer works for the company.

Two brothers live in South Korea. One is an administrator with a private university and the other operates a small store. Neither has involvement with political, scientific, or commercial activities with the South Korean government. (5)

Applicant has not been approached by foreign agents, and said if he would be he would contact his contracting officer or a government security officer. If forced to make a choice, he would choose loyalty to the U. S. over loyalty to his brothers. (6) Applicant renounced his South Korean citizenship when he became a U. S. citizen. (7) His daughter said that





he spoke fluent Japanese and Korean.

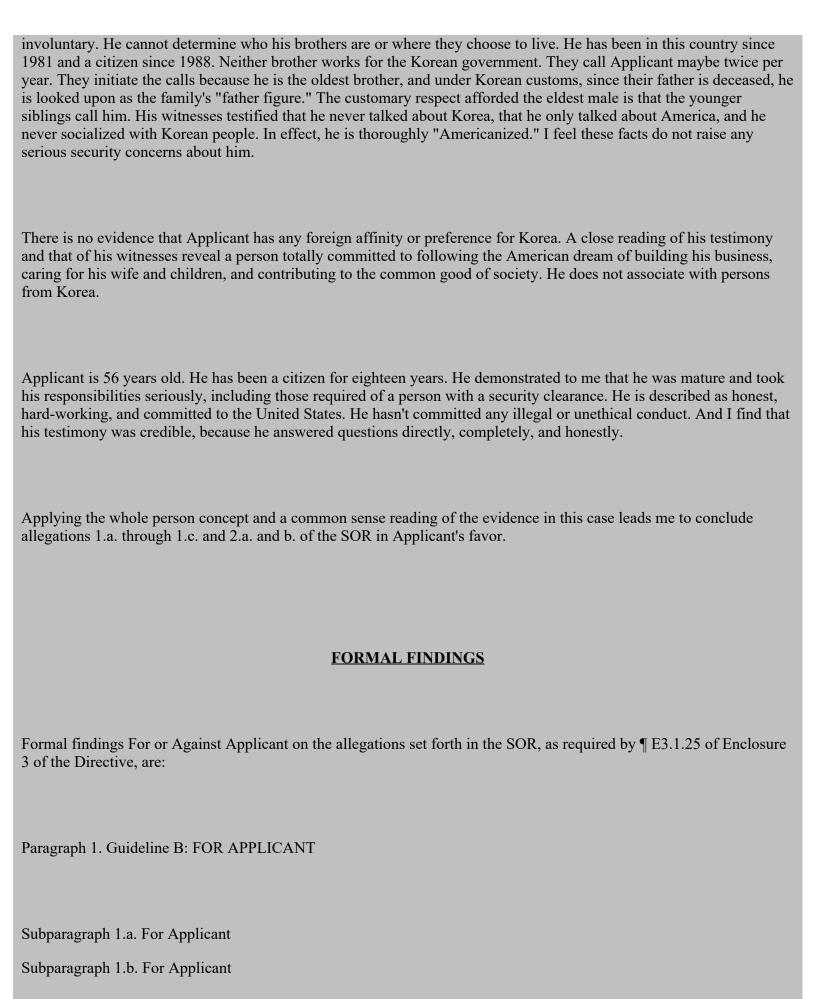
He was engaged in "puffing" his business. When the investigator asked him if he was doing business in a foreign setting he truthfully answered "no." He was not doing business in a foreign country. He was not asked, "Could you do business in a foreign country?" This was corroborated by his sales manager's testimony that since at least 1999, there had been no request by anyone either from a foreign business or by a U. S. company wanting to do business in a foreign company. He further testified that Applicant's brother was an accountant and watched the inventory and that he had no authority to market the company nor to sign any contracts for the company. He would have been an interpreter if some firm had wanted Applicant's company do business where knowledge of the Korean or Japanese language was required. That request never came, and this information was removed from Applicant's website after the brother left Applicant's company. Applicant may have misunderstood the agent's question and the agent misinterpreted Applicant's answer. I do not find any false statement by Applicant either on his SF 86 or in the interview, nor do I find that there was any intent by Applicant to give a false answer. Applicant testified truthfully to the agent because his knowledge and understanding of the facts were different from that of the agent. I find for the Applicant on SOR ¶ 2.b.

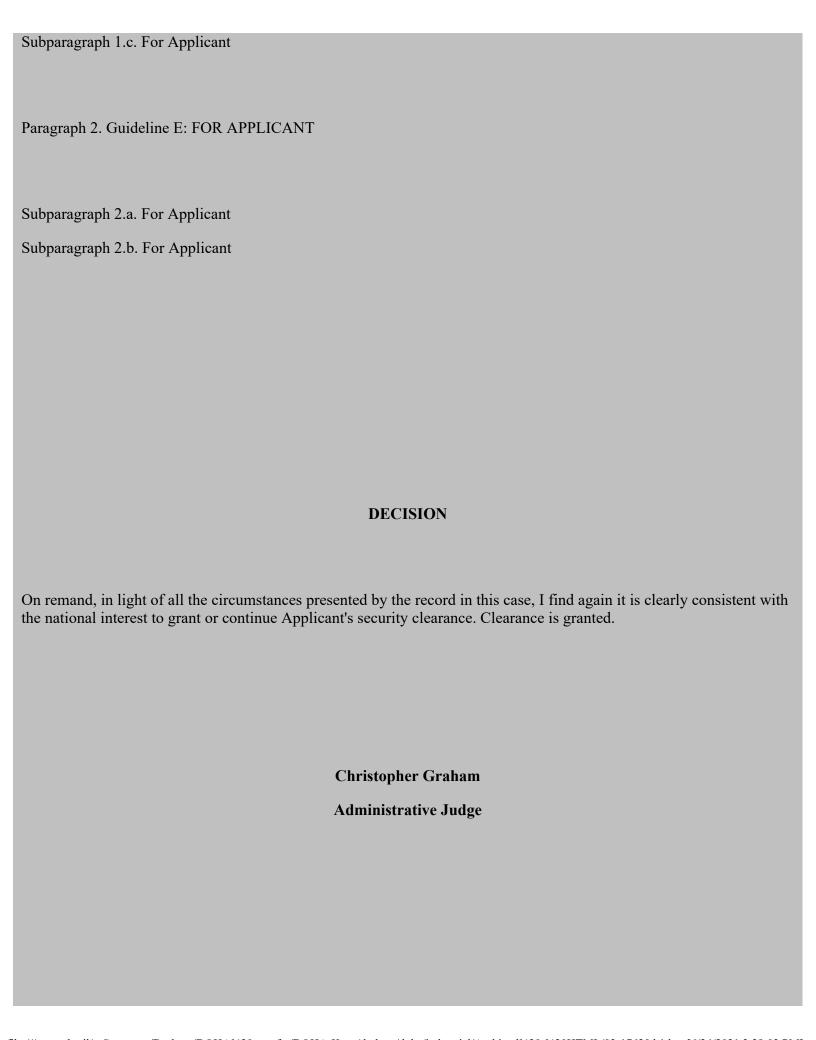
Adjudicative Process

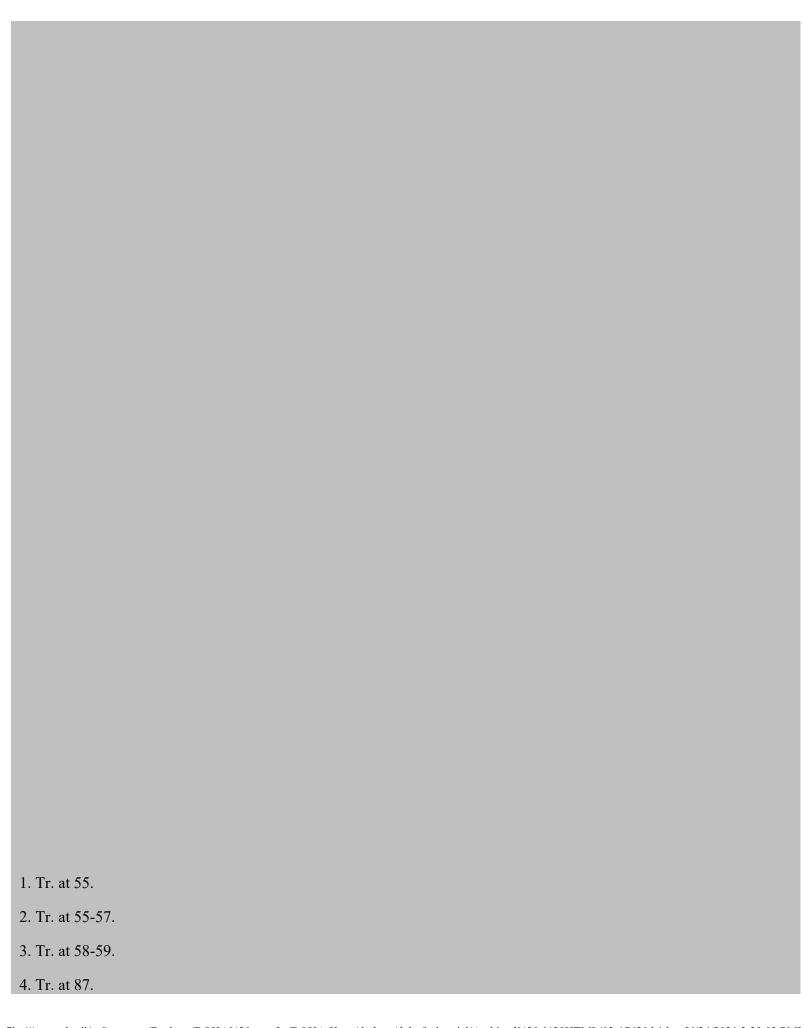
Guideline E2.2.1. The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for as security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- **E2.2.1.1.** The nature, extent, and seriousness of the conduct;
- **E2.2.1.2.** The circumstances surrounding the conduct, to include knowledgeable participation;
- **E2.2.1.3.** The frequency and recency of the conduct;
- **E2.2.1.4.** The individual's age and maturity at the time of the conduct;
- **E2.2.1.5.** The voluntariness of participation;
- E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
- **E2.2.1.7.** The motivation for the conduct;
- E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
- **E2.2.1.9.** The likelihood of continuation or recurrence.

The extent of Applicant's foreign influence is that he has two brothers living in Korea. Applicant's participation is







- 5. Tr. at 89.6. Tr. 85-98.7. Government Exhibit 2 (Applicant's Sworn Statement dated April 23, 2004) at 5.
- 8. Tr. at 82.
- 9. Tr. at 83.
- 10. Tr. at 91-92.
- 11. Tr. at 97-98.
- 12. Tr. at 55.