

DATE: December 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26659

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's sister and his mother-in-law are citizen residents of Korea. His parents are registered alien residents of the U.S. and have spend 10 months of the year in Korea. Applicant mitigated foreign influence security concerns raised by these foreign associates. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 11 February 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision⁽¹⁾-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 10 March 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 July 2005. On 18 October 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. DOHA received the hearing transcript (Tr.) on 31 October 2005.

FINDINGS OF FACT

Applicant is a 35-year-old mechanical engineer with a Ph. D. He was born and raised in the Republic of Korea (Korea). He moved to the U.S. with his parents in April 1987 when his father was seeking business opportunities. He completed high school in the U.S. and then completed his higher education here. He became a U.S. citizen in February 1995.

Applicant's sister is a citizen resident of Korea. She attended college in the U.S. She is now married to a Korean citizen, lives in Korea, and is a housewife.

Applicant's parents obtained U.S. alien resident status, but spend approximately 10 months a year in Korea where Applicant's father owns two businesses. Applicant's mother is a homemaker. Applicant reports his father is in the process of transferring ownership of his business interests in Korea to his son-in-law (Applicant's sister's husband). When the transfer is completed, his parents intend to reside permanently in the U.S.

Applicant was issued a U.S. passport in May 1995. Since becoming a U.S. citizen, Applicant has traveled to Korea, on his U.S. passport, at least 11 times. Ex. 1 at 5-6. All but the last two of those trips (in July 2000 and April 2002) were to seek a wife. The last two trips were to visit family in Korea. Applicant's U.S. passport expired, but he has applied for renewal and expects it to arrive in the next couple of weeks.

Applicant did not find a wife on his trips to Korea. Instead, he met the woman he would marry in December 1998 at a U.S. university where she was attending language classes. She was born and raised in Korea. Her mother is a citizen resident of Korea. Her father is deceased. Applicant's wife became a U.S. citizen in September 2005.

Applicant does not have any friends in Korea, only family. Since about 2000 he has not felt Korean, but fully American. He feels no obligation to Korea. His contacts with his sister and her husband, and with his mother-in-law are very rare. His family doesn't really know what he does for a living. If contacted by persons concerning classified information or with threats against his family, he will contact his company's security officials.

Korea is a republic with powers shared between the president, the legislature, and the judiciary. Ex. 2 at 3. The judiciary is independent. In the past 20 years, the country has transitioned to an open, democratic system of government. The U.S. is Korea's leading trade partner and a close military ally. The U.S. maintains over 34,000 military personnel in Korea. The U.S. has complained about currency manipulation by the Korean government. Tensions have arisen between the governments over the U.S. belief that the Korea does not sufficiently protect intellectual property rights. Differences have also arisen over policies towards North Korea, especially North Korea's nuclear weapons program.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's spouse is a citizen of the Republic of Korea (¶ 1.a); his parents are citizen residents of Korea with permanent U.S. resident alien status (¶ 1.b); his sister (¶ 1.c) and mother-in-law (¶ 1.d) are citizen residents of the Republic of Korea; and Applicant traveled to the Republic of Korea in 1996, 1997, 1998, 2000, and 2002 to visit family (¶ 1.e). Applicant admitted each of the allegations, except ¶ 1.e. He asserts that his first three visits were to find a woman to marry and the last two were to visit his parents. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline B. Members of Applicant's immediate family are citizens of, resident in, or present in a foreign country. DC E2.A2.1.2.1. Applicant's sister and his mother-in-law are citizen residents of Korea, and his parents are citizens of Korea, who, despite their resident alien

status in the U.S., reside most of the year in Korea. Applicant's wife is now a U.S. citizen, but her mother is a citizen resident of Korea. Although Applicant's mother-in-law is not a member of his immediate family, there is a rebuttable presumption he has ties of affection for, or at least obligation to, members of his wife's immediate family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

As the evidence established a potential disqualifying condition, Applicant had the burden to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive E3.1.15. It is a mitigating condition if an applicant's 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 the individual to choose between loyalty to the family member and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's family members are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b).⁽²⁾ The second part of this mitigating condition "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the U.S., and its human rights record are all relevant in assessing the likelihood an applicant's family members are vulnerable to coercion by a foreign power. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Determining suitability for a security clearance requires a predictive judgment—it is an attempt to determine who might pose a security risk at some future time, based on certain established guidelines. As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty. Exec. Or. 10865 § 7. It is merely a determination the applicant has not met the strict guidelines set out by the President and the Secretary of Defense.

The evidence clearly established Applicant is a loyal, trustworthy U.S. citizen. I have further considered the depth of Applicant's relationship with his foreign associates, whether these individuals are dependent on the Korean government, and their association, if any, with the U.S. I also considered the fact that Applicant's parents intend to live full-time in the U.S. once they complete transferring their business to their son-in-law. Applicant clearly understands the U.S. Government's concerns and his responsibility in reporting any foreign contacts or difficulties with a foreign power. *See* MC E2.A2.1.3.4.

After carefully considering all of the evidence, I conclude Applicant mitigated the security concerns raised by his foreign associates who are citizens of or resident in Korea. I also find for him on ¶ 1.e-traveling to Korea is not a disqualifying condition. His trips there are merely evidence of his ties to his family in Korea.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: 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

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, (Jan. 2, 1992), as amended and modified (Directive).
2. I am mindful of the fact the Appeal Board has not discussed the applicability of 50 U.S.C. § 1801(b) to DOHA cases. In fact, the Appeal Board's interpretation of "agent of a foreign power" seems to be inconsistent with the statutory definition. *See* ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004) (holding an employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). Although I am convinced 50 U.S.C. § 1801(b) defines "agent of a foreign power" for national security matters, including security clearance decisions, I am required to follow the Appeal Board's opinion. ISCR Case No. 03-16516 at 4 (App. Bd. Nov. 26, 2004).