

KEYWORD: Foreign Influence

DIGEST: Applicant, a native of the Republic of Korea (South Korea), immigrated to the United States (U.S.) With his family members in 1985. Since becoming a naturalized citizen in February 1998, Applicant has traveled to South Korea about 15 times, with seven of the trips business-related. Applicant is married to a South Korean citizen, and his in-laws are South Korean resident citizens. There is little risk of undue foreign influence where those foreign citizens to whom Applicant is bound by close ties of affection and/or obligation are not agents of a foreign government and are not in a position to be exploited. Clearance is granted.

CASENO: 04-02312.h1

DATE: 04/29/2005

DATE: April 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02312

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a native of the Republic of Korea (South Korea), immigrated to the United States (U.S.) with his family members in 1985. Since becoming a naturalized citizen in February 1998, Applicant has traveled to South Korea about 15 times, with seven of the trips business-related. Applicant is married to a South Korean citizen, and his in-laws are South Korean resident citizens. There is little risk of undue foreign influence where those foreign citizens to whom Applicant is bound by close ties of affection and/or obligation are not agents of a foreign government and are not in a position to be exploited. Clearance is granted.

**STATEMENT OF CASE**

On March 1, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under foreign influence (Guideline B) 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 a security clearance for the Applicant. [\(U\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On March 8, 2005, Applicant executed an Answer to the SOR. On March 16, 2005, Applicant's employer notified DOHA Applicant's classified access was being withdrawn immediately and his employment would be terminated for lack of unclassified work within the next two to four weeks. Should adjudication be favorable, Applicant would be rehired immediately. On March 21, 2005, Applicant requested a hearing before a DOHA administrative judge. On March 24, 2005, Applicant's employer submitted a Letter of Compelling Need and requested expedited adjudication for a secret-level security clearance for Applicant. The case was assigned to me on April 4, 2005, and pursuant to notice of that date, a hearing was scheduled for April 12, 2005.

At the hearing, one government exhibit and 13 Applicant exhibits were admitted. Testimony was taken from Applicant, from a former coworker, and from the associate pastor at his church, as reflected in a transcript received April 22, 2005. At the government's request, administrative notice was also taken of three publications concerning South Korea, including its intelligence and economic collection activities. <sup>(2)</sup>

## FINDINGS OF FACT

DOHA alleged foreign influence (Guideline B) concerns because of the South Korean citizenship of Applicant's spouse; the South Korean citizenship and residency of Applicant's sister, aunt, uncle, and grandmother, and of his spouse's parents and her siblings; and travel by Applicant to South Korea at least ten times between 1998 and 2002. In response to the SOR, Applicant admitted the South Korean citizenship of his spouse, but indicated she had applied for U.S. naturalization. He acknowledged his sister, uncles, and in-laws, including his spouse's siblings, were resident citizens of South Korea, although his aunt and grandmother were living in the U.S. Of his frequent travels to South Korea, Applicant estimated half were work-related and at the request of a previous employer. The other trips were to visit his fiancée and after their marriage, her family.

Applicant's admissions are accepted and incorporated as findings of fact. Additional findings are as follows:

Applicant is a 33-year-old auto-bonding process technician who has worked directly for a defense contractor in its process engineering department since January 2004. Applicant had been employed by a staffing agency on site at the company from mid-April 2003 until he was hired as an employee. Applicant held an interim secret security clearance until March 2005 when it was withdrawn on issuance of the SOR. He seeks a secret clearance for his duties.

Born in South Korea in September 1971 to resident citizens of that nation, Applicant immigrated to the U.S. with his parents and sister in 1985. On arrival, he began to use a first name consistent with his new life as a teen in the U.S. In May 1996, Applicant earned his bachelor of science degree from the state university. In February 1998, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. His acquisition of U.S. citizenship served to revoke his South Korean citizenship. Four days later, he obtained his U.S. passport.

Employed at the time as an application engineer for a U.S. commercial manufacturer of machines used in the semiconductor and telecommunications industries, Applicant was required to travel to customer sites overseas to install

and support the equipment. Applicant went to South Korea on company business six times between March 1998 and December 1998, to Singapore in August 1998, to the Philippines in February/March 1999, to Norway in April 1999, and to Canada seven times from January 2000 to July 2000. He also went to South Korea to act as a translator for the company in October 2000. These trips were all taken on his U.S. passport.

In May 1999, Applicant began to correspond by electronic mail, telephone, and letters with a South Korean whom his mother had identified as a good marriage prospect for him. A first year graduate student studying ceramic art in South Korea, she was one of his cousin's best friends. In September 1999, he went to South Korea to meet her in person for the first time and they got engaged. He returned to South Korea in November 1999 to see her and they took a trip to Guam. In December 1999, he went to South Korea to obtain a visa that would permit her to come to the U.S. as his fiancée. They married in the U.S. in February 2000, and had a son in February 2001. Their second child, another son, was born in January 2004. In October 2004, Applicant's spouse applied for U.S. citizenship. Her naturalization interview is scheduled for mid-May 2005.

Applicant's parents reside in the U.S. His father became a U.S. naturalized citizen in September 1998; his mother also is a U.S. citizen. (3) Applicant's sister moved to South Korea in 1996 to teach English. She married a South Korean resident citizen and had been working as a private instructor of the English language. (4) Applicant contacts his sister once a year on her birthday.

Applicant has an aunt and uncle who are South Korean citizens who live in the U.S. They became U.S. permanent residents in July 2004. His uncle works for an automotive company. As of April 2005, Applicant's paternal grandmother, who is elderly and disabled, was living in the U.S. with his aunt. A citizen of South Korea, Applicant's grandmother is seeking permanent residency status in the U.S. under the sponsorship of Applicant's father.

Applicant has two paternal uncles who are resident citizens of South Korea. Neither of these uncles works for the South Korean government. Applicant is not close to his uncles. He had not spoken to them for ten years before his most recent contact with them, which was in 2000 or 2001. (5) Applicant is unaware whether one of his paternal uncles is even employed while he understands the other helps out in a gift shop.

Applicant's in-laws are resident citizens of South Korea. His father-in-law had worked as a manager for a telephone company before his recent retirement. His mother-in-law is a homemaker. Applicant's spouse has two siblings (a sister and a brother) who live with her parents in South Korea. Applicant's brother-in-law works for a telephone company. Applicant's sister-in-law, a recent college graduate in genetics, works in a research laboratory. Applicant's spouse contacts her parents once a month on average, and calls her siblings on special occasions, such as their birthdays. Applicant speaks with his parents-in-law on occasion, but never about his work. Applicant's contact with his spouse's siblings is on the order of once or twice per year by telephone.

Applicant traveled to South Korea with his spouse and child to see her family members in August 2001 and March 2002. In May 2004, Applicant and his spouse returned to South Korea to introduce her parents to their new grandson. Should any pressure or influence be brought to bear on his or his spouse's relatives, Applicant submits he would notify his employer's security office and proper authorities as "they're the professional [sic]." Applicant's first priority is to his immediate family and his need to support them. Applicant has no financial interests in South Korea.

One of the founding members of a Korean Christian church in his area, Applicant is held in high regard by the pastors and congregation. Active in the church's band, Applicant also serves as a translator of the Korean language services into English for those members who are not conversant in Korean. For the past three years, Applicant has been entrusted with church funds as assistant treasurer. A fellow church member, who held high-level security clearances as a member of the National Guard in the past, has known Applicant for 11 years. He attests to Applicant's "impeccable" reputation and considers Applicant to be an honest and compassionate person.

Applicant has particular expertise involving an automation machine that has prompted his employer to issue a Letter of Compelling Need on his behalf. His coworkers have found Applicant to be conscientious, dedicated, and responsible in his engineering projects and ongoing support to manufacturing. Open to new challenges, Applicant asks for assistance when needed.

## 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 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Concerning the evidence as a whole, the foreign influence adjudicative guideline (Directive ¶ E2.A2.1.1.) is most pertinent to this case.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to 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. (Directive ¶ E2.A2.1.1.) In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

As of April 2005, Applicant's spouse, grandmother, and a paternal aunt were South Korean citizens residing in the U.S. Although his spouse has applied for naturalization in the U.S., his aunt has permanent residency status in the U.S., and his father has sponsored his grandmother for U.S. permanent residency, their foreign citizenship raises a risk of undue foreign influence. Furthermore, Applicant's sister, two paternal uncles, and his spouse's parents and siblings, are all resident citizens of South Korea. The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance of a spouse's ties to a foreign country and the possible effect they may have on applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, November 21, 2002). Applicant's spouse contacts her parents on average once monthly and Applicant speaks with them on occasion. Applicant and his spouse traveled to South Korea in 2001, 2002, and 2004 to see her parents. While Applicant's spouse's contact with her siblings in South Korea is less frequent, her sister and brother reside with her parents. Disqualifying conditions 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*, and E2.A2.1.2.2., *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*, apply in evaluating Applicant's security suitability.

None of Applicant's or his spouse's relatives have been agents of a foreign power, but security significant foreign influence concerns may still exist if the family member is in a position to be exploited by a foreign power in a way that

could cause the applicant to choose between his loyalty to the person and his obligation to the U.S. (6) Conceptually, as long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. A proper assessment of risk requires more than a finding that the individual has close relatives in a foreign country, however. Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S., although the particular circumstances of each applicant must be taken into account.

South Korea has a history of favorable relations with the U.S. and has maintained its commitment to democratize its political processes. South Korea and the U.S. are allied by the 1954 Mutual Defense Treaty and South Korea is the U.S.' seventh largest trading partner. At the same time, the South Korean government has an aggressive, effective intelligence-gathering organization that targets economic and proprietary information in the U.S. (7) Yet, there is no information to suggest that South Korea engages in coercive action against its own citizens with an eye toward pressuring someone in Applicant's position.

As for non coercive means of influence, Applicant's spouse has significantly reduced her personal vulnerability by applying for U.S. citizenship and living in the U.S. Applicant's aunt and grandmother have similarly shown their desire to make their home in the U.S. Of those family members in South Korea, Applicant has limited contact with his sister (once a year) and his uncles (no contact since 2000 or 2001). Applicant is not likely to jeopardize those persons to whom he is closest (his spouse, children, and parents) for a sister or uncle with whom he does not have a close personal bond (*see* mitigating condition E2.A2.1.3.3., *Contact and correspondence with foreign citizens are casual and infrequent*). As for his in-laws, Applicant feels his spouse has "a right to visit them once in awhile," and there is nothing untoward about the extent of his or his spouse's contacts with them. There is no evidence to indicate that his in-laws are engaged in political, scientific, commercial or other activities which might render them more likely to be exploited. His father-in-law is retired from his position as a manager for a telephone company, his mother-in-law is a homemaker, his brother-in-law works for a private telephone company, and his sister-in-law does scientific research.

Although unlikely, in the event a foreign entity was to attempt to influence Applicant indirectly through his spouse by placing pressure on her family members, Applicant has testified credibly he would report any improper contacts to his employer's security officials. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. (*See* ISCR Case No. 99-0501, December 19, 2000; ISCR Case No. 01-26893, October 16, 2002). While Applicant has not been tested in this regard, he is firmly rooted in the U.S. where he has lived since 1985. On arrival in the U.S., he began to use an English first name. He acquired U.S. citizenship in 1998 and his spouse's naturalization interview is imminent. He has no financial interests in South Korea. Those who know him from his church and his job attest to his personal integrity, and he has proved reliable and trustworthy when he held an interim secret clearance. After consideration of all the facts and circumstances presented, I find for Applicant as to SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f.

## **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

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

Subparagraph 1.f.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**



1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Specifically, the three documents are the U.S. State Department's *Background Note: South Korea*, dated February 2005; extracts from the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*; and a report on the Defense Personnel Security Research Center's Espionage Database Project entitled *Espionage by the Numbers: A Statistical Overview*.
3. On his security clearance application (SF 86) executed May 27, 2003, Applicant indicated his mother has South Korean citizenship while his father is a U.S. naturalized citizen. (Ex. 1) However, in his Answer and at his hearing, Applicant indicated, not controverted by the government, that both his parents are U.S. citizens. (See Tr. 69) It is not clear when his mother became a U.S. naturalized citizen.
4. Applicant is not certain of his sister's current occupation. The last time he talked to her, she was teaching English. Applicant does not know what her spouse does for a living. (Tr. 39)
5. In his Answer, Applicant indicated he has not spoken to his uncles in South Korea "since he got married in 2001." The evidence of record is that Applicant married in 2000. It is not clear whether Applicant had any contact with these uncles when he went to South Korea in August 2001.
6. See MC E2.A2.1.3.1. *A determination that the immediate family members(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.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.
7. See the National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000.