

KEYWORD: Foreign Influence

DIGEST: Applicant successfully mitigated the foreign influence security concern raised by his family ties to South Korea. Clearance is granted.

CASE NO: 04-06099.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06099

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant successfully mitigated the foreign influence security concern raised by his family ties to South Korea. Clearance is granted.

STATEMENT OF THE CASE

This case rose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 11, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline B for foreign influence based on Applicant's family ties to South Korea. Applicant replied to the SOR on April 27, 2005, and requested a hearing. The case was assigned to another administrative judge on July 7, 2005, and it was reassigned to me on August 29, 2005. With the agreement of counsel, a notice of hearing was issued scheduling the hearing for October 18, 2005. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript November 1, 2005.

RULINGS ON PROCEDURE

The hearing in this case was a joint hearing involving Applicant and his wife, who is also seeking a security clearance, with nearly identical SORs and similar Answers. Also, Applicant and his wife were represented by the same attorney. At the start of the hearing, I advised Applicant that I would consider each case separately, including issuing a separate decision, and that the joint hearing did not change any of his rights under the Directive (Transcript at 5-6). Neither party had any objections to a joint hearing.

Applicant moved to amend the SOR to conform to the record evidence as follows: 1) subparagraph 1.a was amended to reflect that Applicant's father, who was a citizen of and a resident in South Korea, passed away in September 2005; and 2) subparagraph 1.c was amended to reflect that his mother-in-law no longer lives with Applicant and his wife. Department Counsel had no objections, and the motion was granted.

FINDINGS OF FACT

In his Answer, Applicant admitted the factual allegations in subparagraphs 1.a, 1.b, 1.c, and 1.d, although he denied the general foreign influence allegation. Applicant's admissions to the SOR allegations are incorporated herein by reference. In addition, I make the following findings of fact.

Applicant is a 47-year-old married man who is seeking a security clearance for the first time. He and his wife are employed by the same major defense contractor. Applicant is an expert in GPS-related technology and works as a senior systems engineer, and she works as a software engineer. Applicant's five written character references (both employment and personal) are highly favorable (Exhibit G).

Applicant was born, raised, and educated in Seoul, South Korea. He was born into an upper-middle class family, as his father was a successful businessman working in the furniture manufacturing and sales business. He sold those businesses and invested the proceeds in other businesses. Applicant was a diligent and hardworking student and he earned admission to the Seoul National University, which is reputed to be the best college in the country. He started university in 1979, and while there he met his future wife in a church group for college students.

After completing two years of college, Applicant decided to fulfill his mandatory obligation to serve in the South Korean military. For three years during 1981-1984, he was an enlisted man in the South Korean military where he served in the infantry. His primary duty was pulling guard or security duty along the DMZ between South and North Korea. Applicant has no further military service obligation. He returned to the university and completed his bachelor's degree in mineral and petroleum engineering in January 1986.

Applicant and his wife were wed in July 1986. The next month they came to the U.S., because Applicant had been accepted to pursue a master's degree at a U.S. university. He entered the U.S. on a student visa, and his wife was allowed to enter the U.S. as his spouse, although she was not allowed to work. He completed the master's program in 1989. Then in early 1990, Applicant relocated to another area of the U.S. where he had been accepted into a Ph.D. program at a major state university to study GPS-related technology.

While there, Applicant's wife took advantage of the university's policy that granted a tuition waiver for spouses of certain students. She earned a master's degree in special education. After earning the degree, she discovered that special education was academically boring and she did not enjoy working with the parents. Instead, she ended up in volunteer work and worked for a short time as a social worker. She then found employment as a translator for a Korean-language newspaper as Applicant continued working on his Ph.D. While working for the newspaper in the mid or late 1990s, her employer sponsored her for an employment-based visa or green card. Once she obtained her green card, Applicant obtained his green card as a spouse of a lawful resident. As a result, both Applicant and his wife became legal U.S. residents.

In 1997, Applicant accepted a job offer in another part of the country. The job allowed him to continue working on his Ph.D., which he completed in 1999. Applicant's wife elected to return to college in September 1998. She was awarded a bachelor's degree in computer science in August 2000, and she has since been working as a software engineer.

Initially, when Applicant and his wife came to the U.S. their plan was that they would at some point return to South Korea. The longer they stayed in the U.S., however, the more they realized the lifestyle and culture was a better fit for them. Applicant describes himself as a person who likes to play by the rules, and living and working in the U.S. allows him to do so. Applicant views himself as an American, and he has no intention to return to live in South Korea.

Applicant and his wife decided to make the U.S. their home, and they each obtained U.S. citizenship via the naturalization process in March 2003. South Korea does not recognize dual citizenship, and Applicant is no longer a citizen of South Korea based on his voluntary acquisition of U.S. citizenship (Exhibits A and 3). He has destroyed his South Korean passport (Exhibit B), and he obtained a U.S. passport (Exhibit C).

Applicant has traveled to South Korea twice since his arrival in the U.S. in 1986. He made two relatively brief trips to South Korea; the first in 2000 after completing his Ph.D. program and

the second in 2005 when his father was very ill. Given his mother's age, Applicant anticipates making other trips to visit her. His wife has not traveled to South Korea since her arrival in the U.S.

Applicant's father is now deceased, as he passed away in September 2005. His mother is 75 years old and is a citizen of and a resident in South Korea. She has always been a housewife. His brother is 43 years old and is a citizen of and a resident in South Korea. He is a sole operator of a small business installing windows in private homes. His sister is 48 years old, she has three daughters, and she is occupied by caring for her family and running the household. She is married to a man employed as an electrical engineer.

Applicant has had regular telephone contact with his parents over the years, but little contact with his brother or sister. He has called his sister once since his arrival in the U.S. in 1986, and he has called his brother about five times, although he spoke with him more frequently in 2005 when their father was ill. Applicant and his wife provide financial support to his mother, and have been doing so since about 2001. They provide this support because Applicant's father's previous

investments have been reduced by poor investment decisions and maintaining lifestyle. They typically provide \$500 per month, which is not a financial hardship or strain.

Applicant's mother-in-law has lived in the U.S. since about 1989. His mother-in-law now lives in a home for senior citizens in a community near Applicant. Applicant's wife describes her mother as a typical, traditional South Korean woman who is dependent on her husband and her adult children. To that end, one of Applicant's sisters-in-law provides financial assistance to their mother. Applicant's sisters-in-law and his brother-in-law are U.S. citizens living in the U.S. Applicant's mother-in-law's application for U.S. citizenship is pending (Exhibit E).

Neither Applicant nor his wife has any financial or business interests in South Korea, as all such interests are in the U.S. Applicant and his wife own a home in the U.S. with an estimated market value of at least \$600,000 (Exhibit D). Also, Applicant and his wife have accumulated sizeable assets in investment accounts (Exhibit D).

Administrative or official notice was taken of certain matters concerning the country of South Korea (Exhibits 3, 4, and 5, and Transcript at 97-98).⁽²⁾ In particular, I note the following:

- The Republic of Korea (South Korea) is a highly developed, stable, democratic republic with political powers shared between the president and the legislature; it also has a modern economy (Exhibit 3).
- The U.S. fought on the side of South Korea in the 1950-53 Korean War. The U.S. agreed to defend South Korea from external aggression in the 1954 Mutual Defense Treaty (Exhibit 5), and the U.S. has since kept thousands of troops stationed in South Korea to deter North Korea.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to

classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽³⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁵⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁶⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽⁷⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

As noted by the Supreme Court in *Department of Navy v. Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

SOR paragraph 1 alleges foreign influence under Guideline B.⁽¹⁰⁾ The allegation is based on Applicant's family ties or connections to South Korea. A security concern 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 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. In foreign influence cases, it is also appropriate to consider the significance of an applicant's spouse's ties to a foreign country.⁽¹¹⁾ It is presumed an applicant has ties of affection for, or obligation to, a spouse's immediate family members.⁽¹²⁾

Here, the government established its case under Guideline B. Applicant has family members (his mother, brother, and sister as well as his mother-in-law) who are citizens of and/or residents in South Korea. The strength of these family ties is demonstrated by the monthly financial support and the two trips to South Korea for family visits. Taken together, these circumstances raise a potential security concern within the meaning of DC 1.⁽¹³⁾

I reviewed the mitigating conditions under Guideline B and conclude that MC 5⁽¹⁴⁾ applies. Applicant receives credit under MC 5 because neither he nor his wife has financial or business interests in South Korea or any other foreign country that could affect his security responsibilities. Instead, all of their financial interests are in the U.S. The remaining MC under the guideline do not apply based on the facts and circumstances here. The analysis does not necessarily end with the formal mitigating conditions, however, because other matters may extenuate or mitigate the security concern.⁽¹⁵⁾ In making this analysis, I considered five matters under the whole-person concept.

First, none of Applicant's immediate family members or his mother-in-law are employed by or connected with the South Korean national government or military. Second, he has strong family ties to the U.S., as his wife and her immediate family members are living in the U.S. Also, over the years he has had fairly limited contact with his family members in South Korea. What is more, all of his wife's immediate family members, except his mother-in-law, are U.S. citizens, and her citizenship application is pending. Given these facts, Applicant's strongest family ties are to the U.S. Third, Applicant's overall connections to the U.S. are strong. He has lived in the U.S. for nearly 20 years and has only returned twice to South Korea for relatively brief family visits. He furthered his formal education by earning graduate degrees from two U.S. universities, and he has been working for various U.S. companies over the years. The record evidence shows he and his wife have willingly embraced their adopted country, and that their personal and professional interests are firmly rooted in the U.S. and that situation is unlikely to change. Fourth, Applicant receives credit for his highly favorable character evidence. Fifth, South Korea is a democracy and it has been a partner in a key military alliance with the U.S. for decades. These facts (which are not solely determinative), coupled with the totality of Applicant's conduct and circumstances, show that the realistic potential for exploitation⁽¹⁶⁾ is clearly in Applicant's favor. Based on these five matters, coupled with the record evidence as a whole, I conclude that Applicant has such deep and longstanding relationships, connections, and loyalties in the U.S. that he can be expected to resolve any potential conflict of interest in the favor of the U.S. After weighing the record evidence as a whole, I conclude Applicant successfully mitigated the foreign influence security concern. Accordingly, Guideline B is decided for Applicant.

To conclude, Applicant has met his ultimate burden of persuasion to obtain a favorable clearance decision. The record evidence shows Applicant is a trustworthy person who can be relied on to protect classified information. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: For 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Exhibit 4 is the 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage prepared by the National Counterintelligence Center. It was offered because the report's appendix lists "Korea" as one of seven countries who are the most active collectors. The basis for this assertion is a distillation of the views of "nearly a dozen selected Fortune 500 companies" who were contacted by unidentified government officials to obtain their opinions of foreign economic collection and industrial espionage. Although I took administrative notice of Exhibit 4, doing so does not limit me from assessing what weight the information should receive, and I note the following concerns. First, the report is pre-9/11, and the security posture of the U.S. has dramatically changed since this report was issued several years ago. Second, the report does not specify whether it is North Korea or South Korea to which it refers, it simply lists Korea. Third, a sample size of less than 12 companies is insufficient for this survey to have any real meaning or significance. And fourth, the distillation of those corporate opinions is hearsay within hearsay. For these reasons, I have given no weight to the distilled opinions expressed in the report.
3. Executive Order 10865, § 7.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. Directive, Enclosure 3, Item E3.1.14.
7. Directive, Enclosure 3, Item E3.1.15.
8. Directive, Enclosure 3, Item E3.1.15.
9. 484 U.S. at 528, 531 (1988).
10. Directive, Enclosure 2, Attachment 2.
11. ISCR Case No. 01-02452 (November 21, 2002) at 8.

12. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (February 20, 2002).
13. 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.
14. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
15. ISCR Case No. 03-17620 (April 17, 2006) at 4 ("a judge is not limited to Adjudicative Guidelines mitigating conditions when deciding whether an Applicant has demonstrated extenuation or mitigation").
16. Directive, Enclosure 2, Item E2.2.1.8. The potential for pressure, coercion, exploitation, or duress.