

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09456

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has three siblings who are citizens and residents of South Korea. They are not agents of the South Korean government, or in a position to be exploited by that government. The Applicant is knowledgeable about his security responsibilities, and shows that he can fulfill them. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On May 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed 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 a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing before June 13, 2005, and requested a hearing. The case was received by the undersigned on July 21, 2005, and a Notice of Hearing was issued on August 2, 2005.

A hearing was held on August 26, 2005, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted one exhibit. The transcript was received on September 14, 2005.

FINDINGS OF FACT

The Applicant is 62, married and has a Master's Degree in Mechanical Engineering. He is employed by a defense contractor as an Engineer, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth

in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

The Applicant was born in the Republic of Korea (South Korea) in 1944. He emigrated from South Korea in 1968 in order to continue his studies in the United States. The Applicant became a naturalized American citizen in September 1979. His wife was also born in South Korea, and she became a naturalized American citizen in September 1979. They were married in 1972, and have two American born sons. (Government Exhibit 1, Transcript at 30.) They have about \$750,000 in assets in the United States. (Transcript at 31.)

Since becoming an American citizen, the Applicant has traveled six times to South Korea. The majority of those trips, especially those in 2002 and 2003, were to see his mother. At that time she was very ill. The Applicant's mother passed away in April 2004. Due to the Applicant's own health situation at that time, he was unable to attend her funeral. (Government Exhibit 2 at 2-3; Transcript at 34-35.) The Applicant's wife has no relatives living outside the United States.

He has three sisters who continue to live in South Korea, and one who is an American citizen and lives in the United States. The three sisters in South Korea are either retired or never worked. He calls his oldest sister about monthly, and has very little contact with his other sisters in South Korea. None of them are agents of the South Korean government. (Transcript at 18-26.)

The Applicant was asked what he would do if he was approached by a foreign intelligence service. He stated in no uncertain terms that he was a proud American, that he had been briefed by his employer to report such situations to them, and that he would not respond to any such attempt. (Transcript at 27-28.)

Mitigation.

The Applicant has been part of the defense industry for over 30 years, and is very proud of the work he does. (Transcript at 35-36.) His manager since 1999 submitted a letter on the Applicant's behalf. He states that the Applicant "conducts himself with pride and displays respect to all he works with." The manager recommends the Applicant for a position of trust. (Applicant's Exhibit A.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connection that could lead to poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's parents are deceased. The evidence shows that the Applicant's relationship with his sisters in South Korea is not terribly close. He has not traveled to South Korea since his mother's death and he only calls one of his sisters on an infrequent basis. It is difficult to call any family relationship "casual and infrequent," but this one comes close. Finally, none of his family in South Korea is an agent of the government or, in my opinion, in a position to be exploited by the South Korean government. The possibility that the Applicant can be coerced by his family is virtually nil.

Disqualifying Condition 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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: E2.A2.1.3.1. (*A determination that the immediate family member(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), and E2.A2.1.3.3. (Contact and correspondence with foreign citizens are casual and infrequent).

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of his family in the United States, and his pride in being an American citizen and a member of the defense industry. He is knowledgeable about security and understands his responsibility. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: 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 the Applicant.

Wilford H. Ross

Administrative Judge