

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born and raised in the Republic of South Korea (South Korea). He served in the U.S. military for four years and was stationed in South Korea. In 2003, he became a U.S. citizen. He resides in South Korea with his wife, who is a citizen of South Korea. Applicant's parents and grandparents are citizens and residents of South Korea. In 2004, Applicant mistakenly thought he was a dual citizen of South Korea and the U.S. When he clarified his misunderstanding, he formally renounced his South Korean citizenship and had his South Korean passport voided. While Applicant mitigated Guideline C security concerns, he failed to mitigate Guideline B security concerns. Clearance is denied.

CASE NO: 04-11571.h1

DATE: 06/22/2006

DATE: June 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11571

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant was born and raised in the Republic of South Korea (South Korea). He served in the U.S. military for four years and was stationed in South Korea. In 2003, he became a U.S. citizen. He resides in South Korea with his wife, who is a citizen of South Korea. Applicant's parents and grandparents are citizens and residents of South Korea. In 2004, Applicant mistakenly thought he was a dual citizen of South Korea and the U.S. When he clarified his misunderstanding, he formally renounced his South Korean citizenship and had his South Korean passport voided. While Applicant mitigated Guideline C security concerns, he failed to mitigate Guideline B security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 11, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing September 20, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me April 10, 2006. On May 31, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, offered three exhibits for admission to the record (Ex. 1, 2, and 3), and offered fifteen official U.S. documents, enumerated I through XV, for administrative notice. Applicant objected, in general, to the Government's 15 official documents for administrative notice, asserting they were unduly cumulative and of marginal relevance and materiality. Applicant specifically objected to the Government's official document XV, which provided selected court documents for a case in which an individual was charged with, and pled guilty to, conspiracy to gather and obtain national defense information in violation of 18 U.S.C. §§ 793(b) and (g). The Government's exhibits were admitted to the record without objection. The Government's documents for administrative notice were admitted to the record over Applicant's objections. Applicant testified on his own behalf, called one additional witness, and offered ten exhibits and a table of contents for admission to the record. Applicant's exhibits were marked Ex. A through K, with H marked as the table of contents. Applicant's Ex. A and D were withdrawn. Applicant's remaining exhibits were admitted to the record without objection. On June 8, 2006, DOHA received the transcript (Tr.) of the proceeding.

RULING ON PROCEDURE

Without objection from either party, the SOR was amended at subparagraph 2.c. by striking the word "fiancee" and replacing it with the word "wife." The amended allegation at subparagraph 2.c. thus reads: "Your wife is a citizen and resident of South Korea."

FINDINGS OF FACT

The amended SOR contains two allegations under Guideline C, Foreign Preference, and four allegations under Guideline B, Foreign Influence. Applicant denied the Guideline C allegations. He admitted two of the Guideline B allegations and admitted in part and denied in part two of the Guideline B allegations. Applicant's admissions are incorporated as findings of fact.

At the time of his hearing, Applicant was 26 years old. He was born, raised, and educated in in South Korea. In 1998, he came to the U.S. and studied English for approximately ten months. He sometimes has difficulty communicating in English because he did not study English until he was in his late teen years. (Tr. 102.) After his studies in the U.S., Applicant returned to South Korea, and in 1999, he enlisted in the U.S. Army, where he served for four years. During most of his service, he was stationed in South Korea. Applicant was honorably discharged from the Army in 2003. (Ex. 1; Ex. 2; Tr. 89-90.) He joined the Army reserves for one year after his discharge from active duty. In 2005, he enlisted in the Army reserves for an additional two-year tour. (Tr. 96-97.)

Applicant was issued a South Korean passport in March 2002. The expiration date of Applicant's South Korean passport was March 2007. (Ex. C.)

Applicant became a U.S. citizen and acquired a U.S. passport in August 2003. (Ex. 1.) When he completed his military duty, he accepted a job with a government contractor in Korea. Because the job required him to have a security clearance, Applicant completed a security clearance application (SF 86). Question 3 on the SF 86 asks, in pertinent part: "Are you now or were you a dual citizen of the U.S. and another country?" Applicant was confused by the question. (Tr. 98.) He answered "yes," and indicated he was a dual citizen of the U.S. and South Korea. (Ex. 1; Tr. 97-98.) Later, Applicant learned that South Korea does not recognize dual citizenship and that when he became a U.S. citizen, he could no longer claim South Korean citizenship. (Tr. 20.)

In July 2004, Applicant was interviewed by a special agent of the Defense Security Service. He no longer claimed dual citizenship. He admitted possessing a South Korean passport with an expiration date of March 2007. He signed a statement saying he planned to relinquish his Korean passport. (Ex. 3.)

In November 2004, Applicant executed a document, certified by an official of the South Korean Ministry of Justice, that formally abandoned his Korean nationality. He also filed paper work informing the South Korean government that he was an American citizen and requested that his name be removed from the Korean Family Census Register. (Tr. 115; Ex. B.) He took his South Korean passport to South Korean authorities and asked them to void the document. They reminded him that his passport was not valid because he was no longer a South Korean citizen, and they said it was not necessary to void the passport. Applicant persisted and requested that the officials void his passport. The officials stamped "void" across the face of the passport. (Ex. C.) Applicant said he did not consider throwing the passport away after he became a U.S. citizen and no longer had a use for it (Tr. 99.) Applicant brought the voided passport to his hearing. (Tr. 92-93; 118.) He was unaware that his possession of a voided or cancelled passport might cause a security concern. He considers himself to be an American citizen only. (Tr. 93; 95.)

Applicant is the older of two children born to his parents, who are citizens and residents of South Korea. Applicant has a younger sister, born in approximately 1982, who is a citizen of South Korea and who has U.S. permanent resident status. (Tr. 75.) Applicant's sister appeared as a witness at his hearing. (Tr. 72-89.)

Applicant's birth father was a heavy drinker and abused his wife, Applicant's mother. When Applicant was approximately nine years old, his mother left the marital home with the two children. She took them to live with their paternal grandparents, citizens and residents of South Korea. The grandparents raised the children for approximately six years. (Tr. 72-75.)

Applicant's mother worked to save money so that she could support the children on her own. When Applicant was approximately seventeen years old, his mother married a U.S. Army officer, a U.S. citizen, who retired from the Army and now holds a position with a government contractor in South Korea. After leaving his grandparents' home at the age of approximately fourteen, Applicant lived with his mother and stepfather. (Answer to SOR at 2.) Applicant holds his step-father in high regard. He has little or no contact with his biological father and does not know what the father does for a living. Applicant thinks his grandparents have contact with the father, who apparently approaches them for money. Applicant has asked his grandfather not to give his telephone number to his father because he does not want his father to contact him and beg for money. (Tr. 94-95; 130-132.)

Applicant is close to his mother, step-father, and grandparents. He speaks with his mother and step-father daily. He speaks with his grandparents on the telephone two or three times a year. In approximately March 2006, Applicant learned his grandmother was in the hospital. He sent about \$500 to his grandparents to help with the grandmother's medical expenses. (Tr. 116-117.)

In January, 2005, Applicant was married in South Korea to a young woman who is a citizen and resident of South Korea. (Ex. J) Applicant and his wife are the parents of a daughter, born in South Korea in September 2005. Applicant's daughter acquired U.S. citizenship at birth. (Ex. K.) Applicant's wife receives health benefits from the South Korean government. (Tr. 120.)

Applicant's wife's parents are citizens and residents of South Korea. Applicant's wife's father is an electrician and her mother is a homemaker. (Tr. 104-105.) Applicant's wife has five older sisters who are also citizens and residents of South Korea. (Tr 104-107; 119.) Applicant testified that, to the best of his knowledge, none of his family members by birth or by marriage ever worked for the government of South Korea. (Tr. 107.) Applicant and his wife are close to the wife's parents. They speak with the parents on the telephone once a week or once every two weeks. Applicant speculates his wife speaks individually with her parents more often. (Tr. 118-119.)

In January 2006 Applicant purchased some land in the U.S., next to land previously purchased by his step-father. Applicant hopes to move to the U.S. someday and build a house on the land he purchased. (Tr. 101-102; 124-125.)

Applicant submitted letters of character reference from his mother, step-father, civilian supervisors, and military commanders. All of the letters attested to Applicant's technical expertise, good character, and personal integrity. (Ex. E-1 through E-8.)

I take administrative notice that South Korea is a highly developed and stable democratic republic. While South Korea is one of the most ethnically and linguistically homogeneous populations in the world, it has experienced a very high rate of emigration, with over 1.5 million ethnic Koreans emigrating from South Korea and residing in the U.S. (Background Note: South Korea, Bureau of East Asian and Pacific Affairs, U.S. Department of State, April 2006: Document XIV for Administrative Notice at 1-2.)

I also take administrative notice that the Government of South Korea does not recognize dual citizenship, and it considers an individual to be a Korean citizen if his or her name appears on the Korean Family Census Register. Because the Korean government does not automatically remove the names of those who are no longer Korean citizens from the Korean Family Census Register, individuals who formerly held South Korean citizenship before becoming American citizens have an affirmative obligation to inform the Korean government of their American citizenship and to request the removal of their names from the Korean Family Census Register. (Consular Information Sheet for Republic of Korea, U.S. Department of State, August 9, 2005: Government Document XII for Administrative Notice at 4-5.)

I also note that in the past 30 years, South Korea has experienced extraordinary economic growth. It is now the seventh-largest trading partner of the U.S. and possesses the eleventh-largest economy in the world. (Document XIV for Administrative Notice at 2, 4.) Despite South Korea's prominence as a trading partner of the U.S., some South Koreans

are critical of U.S. policies and the presence of U.S. military in their country. In 2002, there were anti-U.S. demonstrations in South Korea. (Korea: U.S. - Korean Relations--Issues for Congress, CRS Issue Brief for Congress, Congressional Research Service, Library of Congress, updated February 22, 2005, at 13-14: Document I for Administrative Notice.) South Korea has been aggressive in seeking to acquire U.S. technology from U.S. companies and government contractors. These aggressive tactics are reflected in the industrial espionage and economic information collection South Korea has carried out against U.S. companies, many of whom are U.S. government contractors. (Section 5: Economic Intelligence Collection Directed Against the United States, Intelligence Threat Handbook, at 5-6, Government Document VI for Administrative Notice; Intelligence Threat Handbook, Economic Espionage, at 34, Government V for Administrative Notice.)

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 possession and use of a foreign passport may be a disqualifying condition under ¶E2.A3.1.2.2. of Guideline C of the Directive. In a memorandum (Money memorandum), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated that Guideline C specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. He clarified that Guideline C contains "no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country" and he further stated that "the only applicable mitigating factor addresses the official approval of the United States Government for the possession or use" of a foreign passport. Accordingly, pursuant to the policy guidance of the Money Memorandum, "consistent application of [Guideline C] requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline C - Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with South Korea and the

United States (¶ 1.a.) and possessed a South Korean passport, issued March 28, 2002, which would not expire until March 28, 2007. (¶ 1.b.)

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States. Applicant's possession of a valid South Korean passport while, at the same time, possessing a valid U.S. passport, raises security concerns under DC E2.A3.1.2.1. and DC E2.A3.1.2.2. of Guideline C.

We turn to an examination of applicable mitigating conditions under Guideline C. An applicant may mitigate Guideline C DC E2.A3.1.2.1. security concerns if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country (MC E2.A3.1.3.1.) and if he expresses a willingness to renounce dual citizenship. (MC

E2.A3.1.3.4.) At his hearing, Applicant testified credibly that the question on the SF 86 about dual citizenship confused him. He further demonstrated that he believed his dual citizenship was based solely on his birth in South Korea and that he had taken no actions to exercise South Korean citizenship after becoming a U.S. citizen. He also presented credible evidence showing that after learning what constituted dual citizenship, he formally declared his change of nationality from citizenship of South Korea to U.S. citizenship and filed that declaration with responsible authorities of the South Korean government. Accordingly, I conclude MC E2.A3.1.3.1. and MC E2.A3.1.3.4. apply to allegation 1.a. of the SOR. Allegation 1.a. of the SOR is concluded for the Applicant.

The Money Memorandum clarifies the application of the foreign preference adjudicative guideline to cases involving an applicant's possession or use of a foreign passport. The policy guidance was deemed necessary to clarify Guideline C in cases "involving the possession and/or exercise of dual citizenship, including especially cases involving the use of dual passports." The Money Memorandum specified that Guideline C "contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country" and it directed "that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." (Money Memorandum at 1.)

Possession and use of a foreign passport may be a disqualifying condition under DC E2.A3.1.2.2. of Guideline C. The policy of the Money Memorandum applies to all Guideline C adjudications and identifies the following security concern: "the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States."

Applicant's case can be distinguished from those of individuals claiming dual citizenship and possessing and using dual passports. Applicant testified credibly that once he clarified his misunderstanding about the meaning of dual citizenship, he neither claimed dual citizenship nor intended to maintain and use a South Korean passport. Even though South Korea does not recognize dual citizenship, Applicant officially renounced his South Korean citizenship and surrendered his South Korean passport to authorized officials of the South Korean government. In order to demonstrate that he had surrendered his passport, Applicant requested that the authorized officials mark his South Korean passport as void or cancelled and return it to him. They did so. Applicant, who is neither an attorney nor an expert in international law, brought the voided passport, which he believed had been invalidated, to his hearing, as a good-faith demonstration of his renunciation of his South Korean citizenship.

The evidence shows Applicant not only expressed a willingness to renounce his dual citizenship, he affirmatively did so. Accordingly, I conclude that mitigating condition E2.A3.1.3.4. applies to Applicant's actions in renunciation of his South Korean citizenship.

Additionally, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2. of the Directive (whole person analysis). After weighing the Guideline C disqualifying and mitigating conditions, the policy guidance of the Money Memorandum, and the factors in the whole person analysis, I conclude allegation 2.b. of the SOR for the Applicant.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant currently resides in South Korea (¶ 1.a.); that his parents are citizens and residents of South Korea (¶ 1.b.)⁽³⁾; that Applicant's wife is a citizen and resident of South Korea (¶ 1.c.); and that Applicant's grandparents are citizens and residents of South Korea (¶ 1.d.)⁽⁴⁾

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A

person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism, or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of South Korea has aggressively sought privileged and classified information from U.S. businesses and government contractors. Even though South Korea is not hostile to the U.S., some of its citizens are anti-American, and a political climate exists that could threaten U.S. security interests. *See* ISCR Case No. 02-26976, at 4-5 (App. Bd. Oct. 22, 2004).

Applicant's admissions raise three possible Guideline B security concerns. Applicant's parents, wife, and grandparents are all citizens and residents of South Korea. The citizenship and residency of these family members with whom Applicant has close ties of affection and obligation raise security concerns under E2.A2.1.2.1. of Guideline B. Additionally, Applicant's wife, with whom he shares his home, has close ties of affection and obligation to her parents and sisters, who are also citizens and residents of South Korea, thus raising the potential for foreign influence or duress, a security concern under E2.A2.1.2.2. of Guideline B.

Applicant resides in South Korea as a U.S. citizen, and this raises a concern under E2.A2.1.2.6. that his residency could cause him and his family members in South Korea to be vulnerable to coercion, exploitation, or pressure by a foreign government or from anti-American groups.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate 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 an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's wife, parents, and grandparents are agents of a foreign power, they are all citizens and residents of South Korea, and Applicant failed to demonstrate that they could not be exploited by a foreign power in a way that could force him to choose between loyalty to them and to the U.S. Applicant also failed to demonstrate that, as a U.S. citizen residing in South Korea, he could not be exploited by a foreign power in ways that could force him to choose between loyalty to his family and the security interests of the U.S. Additionally, Applicant failed to demonstrate that his relationship with his wife, and his wife's relationship with her parents and sisters could not be exploited in a way that could force him to choose between loyalty to his family members and his wife's family members and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005)

Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1, DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant is committed to his wife, parents, and grandparents, relationships that are enduring and familial. These contacts are based on family obligation and affection and are therefore not casual. Applicant speaks on the telephone with his mother frequently. Although his telephone contacts with his grandparents are less frequent, he is aware of their needs and his obligations to them. Recently, when he learned his grandmother was in the hospital, he sent \$500 to help with her medical expenses. Although he is estranged from his birth father and has not communicated with him for a long time, he expressed concern that his father might try to contact him for money, a circumstance that could generate his sense of familial obligation. Accordingly, MC E2.A2.1.3.3 does not apply to Applicant's relationships with his wife, parents, and grandparents, and the four Guideline B allegations of the SOR are concluded against the Applicant.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

The following are my conclusions as to the allegations in the SOR:

Paragraph 1: Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2: Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended.
3. The allegation refers to Applicant's birth mother and birth father, both of whom are citizens and residents of South Korea. Applicant's relationship with his step-father, a U.S. citizen, is not alleged in the SOR.

4. Applicant's grandparents are his birth father's father and step-mother. *See Applicant's Answer to the SOR at 2.*