KEYWORD: Foreign Influence

DIGEST: Applicant, a U.S. citizen, is employed by a U.S. government contractor in South Korea and has lived in South Korea since 1996. His wife, sister, mother-in-law, and two brothers-in-law are citizens and residents of South Korea. Applicant's seven-year-old son is a dual citizen of South Korea and the United States. One of Applicant's brothers-in-law served in the South Korean national legislature from approximately 1981 to 1985. Applicant owns an apartment in South Korea valued at approximately $170,000 USD. Applicant failed to mitigate Guideline B security concerns. Clearance is denied.

CASE NO: 04-11943.h1

DATE: 05/19/2006

DATE: May 19, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 04-11943

DECISION OF ADMINISTRATIVE JUDGE

JOAN C. ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a U.S. citizen, is employed by a U.S. government contractor in South Korea and

has lived in South Korea since 1996. His wife, sister, mother-in-law, and two brothers-in-law are citizens and residents of South Korea. Applicant's seven-year-old son is a dual citizen of South Korea and the United States. One of Applicant's brothers-in-law served in the South Korean national legislature from approximately 1981 to 1985. Applicant owns an apartment in South Korea valued at approximately $170,000 USD. Applicant 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 July 27, 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 B (Foreign Influence) of the Directive. Applicant answered the SOR in writing August 9, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me December 21, 2005. On January 27, 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 two exhibits for admission to the record (Ex. 1 and Ex. 2), and offered four documents for administrative notice, which were enumerated I through IV. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant called no witnesses and offered seven exhibits for admission to the record. Applicant's exhibits were marked as Ex. A through G and were admitted to the record without objection. On February 6, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct under Guideline B, Foreign Influence. Applicant admitted the seven Guideline B allegations. Applicant's admissions are incorporated as findings of fact.

Applicant is 45 years old and employed by a government contractor in the Republic of Korea (South Korea). He has held a security clearance since1988. (Ex. 1; Tr. 69.)

Applicant was born and received his early education in South Korea. He immigrated to the U.S. in 1979, at the age of nineteen. He completed high school in the U.S. and spent an additional year learning English. He then attended college and received a degree in electrical engineering in 1987. (Tr. 45-46.) He became a U.S. citizen in 1986. (Ex. 1; Tr. 47.)

Applicant was the youngest child in his family, and he is fourteen years younger than his next oldest sibling. (Tr. 71-72.) Applicant's parents and three of his siblings became U.S. citizens and reside in the U.S. One of Applicant's sisters is a citizen and resident of South Korea. As a young woman, she worked for a South Korean intelligence organization, where she met her husband, who is also a citizen and resident of South Korea. Applicant's sister's husband served in the South Korean national legislature from approximately 1981 to 1985. In 1987 the sister and her husband immigrated to the U.S. They returned to South Korea in 1991, where they now live as retirees. (Tr. 57-61.) Applicant sees his sister and brother-in-law approximately once a month at family gatherings. (Ex. 2 at 7.)

In 1988 Applicant was admitted to the U.S. Navy officer candidate school. He was commissioned and served on active duty as a junior officer from 1988 to 1992. From 1992 to 1996 he served as a Navy reserve officer. (Ex. 1; Tr. 47-49.)

Applicant returned to South Korea in 1992 and worked for South Korean employers. He married his wife, a resident and citizen of South Korea, in 1998. Applicant's wife's mother and brother are also citizens and residents of South Korea. (Ex. 1 at 5-6; Tr. 61-62.) In 1999, Applicant and his wife became the parents of a son. (Tr. 49-50.)

Applicant decided he wanted his son to grow up as an American, and so he sought employment with the U.S. military in South Korea. From approximately 1999 to 2001, he sold cars on a U.S. military base in South Korea. (Ex. 1; Tr. 50-51.) In 2001 he accepted a position as a video teleconference technician for a government contractor. Since that time he has also done work on local area networks and computer simulation. (Tr. 51-52.) One of the benefits of Applicant's employment as a government contractor was that his son was eligible to attend kindergarten at a U.S. school on the military base. (Tr. 51.)

In November 2005, Applicant's wife applied for U.S. citizenship. (Ex. G; Tr. 38.) In an April 27, 2004 , statement to a special agent of the Defense Security Service, Applicant asserted his son held dual U.S. and South Korean citizenship and would continue to hold dual citizenship status until his 18th birthday. (Ex. 2 at 4-5.) At his hearing, Applicant stated that in October 2005, he and his wife had resigned his son's South Korean citizenship.[(3)] (Tr. 40-41.) Applicant offered a document written in the Korean language to show he and his wife had renounced his son's South Korean citizenship.

While Applicant testified as to the content of the document, he withdrew his request that the document be admitted into evidence. (Tr. 41-42.)

In 2002, Applicant, using his own resources and a loan from his sister who is a U.S. citizen, purchased for cash an apartment in South Korea valued at approximately $170,000 USD. Applicant, his wife, and child lived in the apartment for two years. When Applicant obtained employment on a U.S. military base in South Korea, he and his family moved near the base to lessen his commute. Currently the apartment is leased and Applicant holds the property for investment. (Tr. 63- 65.)

In 2005, Applicant lost his interim clearance and, as a consequence, his son was no longer eligible to attend the U.S. school on the military base. (Tr. 51, 53.) In November 2005, Applicant's wife and son came to the U.S. temporarily so the child could attend a U.S. school. Applicant's career goal is to work full-time for a U.S. contractor in South Korea. (Tr. 51-54.)

Applicant submitted letters of character reference from his program manager, his supervisor, and three co-workers. All of the letters attested to Applicant's technical expertise, good character, and personal integrity. (Ex. A, B, C, D, and E.)

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, August 2005: Document I for Administrative Notice at 1-2.)

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 I 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 June 16, 2005, at14-15: Document III 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. In its 2000 annual report, the National Counterintelligence Center identified South Korea as one of the seven countries most active in economic espionage against the U.S. (Document IV 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 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 B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife is a citizen and resident of South Korea (¶ 1.a.); that Applicant's son is a dual citizen of South Korea and the United States currently residing in South Korea (¶ 1.b.); that Applicant's sister is a citizen and resident of South Korea (¶ 1.c.); that Applicant's mother-in-law is a citizen and resident of South Korea (¶ 1.d.); that Applicant's two brothers-in-law are citizens and residents of South Korea (¶ 1.e.); that Applicant's brother- in-law served as a legislator in the South Korean government from approximately 1980 to 1984 (¶ 1.f.); and that Applicant owns an apartment in South Korea (¶ 1.g.).

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 five possible Guideline B security concerns. Applicant's wife, sister, mother-in-law, and two brothers-in-law are all citizens and residents of South Korea. His son is a dual citizen of the U.S. and 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 mother and brother, thus raising the potential for foreign influence or duress, a security concern under E2.A2.1.2.2. of Guideline B. Applicant also shares living quarters with his son, who holds dual U.S. and South Korean nationality, raising still another concern under E2.A2.1.2.2. of Guideline B.

Applicant's brother-in-law served as a legislator in the government of South Korea from approximately 1981 to 1985, raising a concern under E2.A2.1.2.3. Applicant owns an apartment in South Korea valued at approximately $170,000, raising a concern under E2.A2.1.2.8. that this substantial financial interest could make him vulnerable to foreign influence. Additionally, Applicant's ownership of a significant property interest in South Korea, his frequent contact with his sister and brother-in-law with former connections to the South Korean government, and his status as a U.S. citizen residing in South Korea raise concerns under E2.A2.1.2.6. that this conduct could increase his vulnerability and that of his family members in South Korea to 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. itigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's wife, mother-in-law, sister, and two brothers-in-law 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. Even though Applicant's brother-in-law is retired and has not been a national legislator for over 20 years, Applicant failed to demonstrate that this relationship could not be exploited for the purpose of foreign influence or duress. Additionally, Applicant failed to demonstrate that his relationship with his son and wife, and his wife's relationship with her mother and brother 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's is committed to his wife and son, relationships that are enduring and familial. His contacts with his wife's mother and brother are based on family obligation and affection and are therefore not casual. His contacts with his sister and brother-in-law in South Korea are frequent and familial. Accordingly, MC E2.A2.1.3.3. does not apply to Applicant's relationships with his wife, son, mother-in-law, sister, and two brothers-in-law.

An applicant may mitigate a foreign financial interest if he can show that it is minimal and not sufficient to affect his security responsibilities. Applicant failed to show that his financial interest in a South Korean apartment valued at $170,000 was minimal and insufficient to influence or affect his security responsibilities. Accordingly MC E2.A2.1.3.5. is inapplicable. The seven 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 B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: 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.

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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. Applicant also asserted that under South Korean law, his son would be required to renounce either his U.S. or his South Korean citizenship when he reached his 18th birthday. (Tr. 42-43.)