

DATE: May 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12412

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in South Korea, became a United States citizen in 1998. His wife also became a U.S. citizen, and they have three children, who are citizens of the United States. Applicant's parents and in-laws are citizens and residents of South Korea. His parents plan to move permanently to the United States. His sisters are U. S. citizens, who reside in South Korea. None of these family members belong to, or are active with any government agency of South Korea. They are not in a position to be exploited by South Korea in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to 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), issued a Statement of Reasons (SOR), dated March 30, 2005, to 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

Applicant filed a notarized Response to the allegations set forth in the SOR, dated February 1, 2005, and he requested a hearing before a DOHA Administrative Judge. On March 14, 2005, the case was assigned to me to conduct a hearing, and pursuant to formal notice, dated March 30, 2005, a hearing was conducted on April, 12, 2005.

At the hearing, Department Counsel offered 4 documentary exhibits (Government Exhibits 1- 4) and no witnesses were called. Applicant offered 5 documentary exhibits (Exhibits A-E) and offered his own testimony. The transcript (TR) was received on April 22, 2005.

FINDINGS OF FACT

The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members. The SOR contains four allegations, 1.a., through 1.d., under Guideline B. Applicant admitted SOR allegations 1.a. through 1.c., and denied 1.d. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 33 years old. He is employed as a Materials and Process Engineer by a United States defense contractor that wants him to have a security clearance.

Applicant was born in South Korea in 1957 and first emigrated with his family to the United States in 1986. His parents and he moved back to Korea after a year and a half, because his grandmother in Korea was ill, but his two older sisters remained in this country. After three years in Korea, he moved back to the U. S., and in 1998, he became a naturalized U. S. Citizen. Applicant is married, and he and his wife have three children, who were all born in the United States and are U. S. citizens. He received both a Masters and a Ph.D. degree in Mechanical Engineering from a United States university.

(Guideline B - Foreign Influence)

The Government alleges that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation, who are not citizens of the United States, or may be subject to duress.

Applicant's parents are South Korean citizens. They reside approximately seven months of the year in South Korea and the rest of the year in the United States. They plan to move to the U. S. permanently, as soon as Applicant's father is granted permanent alien status. Both of them are retired. His father was a pharmacist, who owned his own pharmacy in South Korea, and his mother was a homemaker. Neither of them ever worked for, or had any affiliation with, the South Korean Government. Applicant rarely communicates with his parents when they are in Korea, but he sees them regularly when they are in the United States.

Applicant has two sisters, who were born in South Korea, but educated in the United States. They are United States citizens, but both of them now reside in South Korea with their husbands. One sister is a pediatrician and the other is a music and piano instructor. Neither of them, nor their husbands, has ever worked for or had any affiliation with the South Korean Government. Applicant speaks to each of his sisters one or two times a year.

Applicant's parents-in-law are citizens and residents of South Korea. His father- in-law was a senator from South Korea, but he is 75 years old, and he has been retired for many years. Applicant's mother- in-law was a homemaker. Applicant may speak to his in-laws one time a year; his wife talks to them one time a month.

Applicant's wife also was born in South Korea. She came to the United States in approximately 1987, and she became a naturalized U. S. Citizen in June 2004.

Since Applicant came to the United States, he has traveled to South Korea on five occasions from 1996 to his last visit in April 2003. The primary reason for these visits was to see his family, and to attend family weddings, including his own.

Applicant was not aware of receiving any inheritance or other financial interest from South Korea. He has estimated his financial holdings in this country to be worth \$670,000.

Applicant introduced letters from his supervisor and a co-worker. Both individuals indicated that they believed Applicant was honest, trustworthy and reliable (Exhibits A and B).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guideline B:

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant's parents are citizens and residents of South Korea, and his sisters reside in Korea. The South Korean citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The evidence of existence of immediate family members, who are citizens of and reside in South Korea comes within DC (E2.A2.1.2.1), immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country.

Based on the nature of the overall record and the totality of the evidence, including: the lack of South Korean government involvement of Applicant's parents, sisters and other family members, currently and in the past, the fact that his wife is now a United States citizen, his devotion to his children, his history since coming to the United States, and

his strong feelings concerning this country, I have determined that his family in South Korea do not constitute an unacceptable security risk, and Mitigating Conditions (MC) (E2.A2.1.3.1.), a determination that the immediate family members 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, applies.

After considering all of the evidence of record on Guideline B , I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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.

Martin H. Mogul

Administrative Judge