DATE: December 3, 2007

In Re:	)	
	)	
----------	)	ISCR Case No. 06-24683
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	
	)	

DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT
Emilio Jaksetic, Esquire, Department Counsel

FOR APPLICANT
John Ki, Esquire

SYNOPSIS

Applicant's financial irresponsibility and deliberate falsification of his clearance applications render him unsuitable for access to classified information. He is not subject to foreign influence because of family members residing in South Korea. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 25 May 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of

financial considerations, foreign influence, and personal conduct .[1] Applicant answered the SOR 20 July 2007, and requested a hearing. DOHA assigned the case to me 24 September 2007, and I convened a hearing 30 October 2007. DOHA received the transcript (Tr.) 9 November 2007.

PROCEDURAL RULINGS

At hearing, I granted Department Counsel's motion to strike SOR 3.c. (Tr. 9-10). I also granted Department Counsel's motion to take administrative notice of certain U.S. Government publications regarding the Republic of Korea (South Korea)(Tr. 22).

FINDINGS OF FACT

Applicant admitted the allegations of SOR 1.b., 1.c., 1.f., 2.a., and 2.d. Accordingly, I incorporate his admissions as findings of fact.

Applicant—a 38-year-old systems engineer employed by a defense contractor since January 2001—seeks to retain the access to classified information he has had since approximately 2002.

When Applicant completed his clearance application in October 2001 (G.E. 1), he failed to disclose any foreign travel within the last seven years (question 16).[2] In fact, he had traveled to the Republic of Korea four times within the last five years: July 1996, May 1998, November 1999, and November 2000. When he completed a second clearance application in March 2006 (G.E. 2), he again failed to disclose any foreign travel within the last seven years (question 18), omitting his November 1999 and November 2000 trips to the Republic of Korea. Applicant's explanation for his omissions—that we was confused about the question and his dates of travel (Tr. 62-64, 78)—is unconvincing, particularly regarding his October 2001 application, when he had traveled to the Republic of Korea within the last year.

Applicant has a history of financial difficulties dating to at least July 2000, when he closed a failed business venture—and found himself unable to keep up the payments on credit accounts he and his wife had opened to fund the business. The SOR alleges seven delinquent debts totaling over $51,000. Record evidence shows that Applicant had paid the account at SOR1.e. in 2003 (A.E. E), that the account at SOR 1.b. and 1.f. are the same account, and that the account at SOR 1.d. and 1.g. are the same account. Accordingly, I find SOR 1.b., 1.e., and 1.g. for Applicant. Applicant denied the debt at SOR 1.a. on th grounds that the account was not his, he was merely an authorized user on a business account of a previous employer. However, his evidence supporting that claim (A.E. G), shows an account number that does not appear on any of the credit reports in the record, and that account number is different from the debts alleged in the SOR, is listed as a joint obligation of

[1]Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

[2]Although not alleged in the SOR, he similarly failed to disclose any financial difficulties he was experiencing as a result of his failed business venture, which he closed in July 2000.

Applicant, and was opened before Applicant went to work for that employer (who was the first employer Applicant went to work for after he closed his business).

Of the three business debts Applicant acknowledges, the debt at SOR 1.c. (A.E. B) and 1.d. (A.E. D) were paid and settled for less than the full amount of the debt by the original creditors successors-in-interest in July 2007—about the time Applicant answered the SOR. The debt at SOR 1.f. was paid and settled for less than the full amount of the debt in September 2007 (A.E. C). Credit reports in the record reflect that Applicant paid off a mortgage on a previous home in 2002, but had been slow to pay his mortgage around 2000-2001 when his business was failing. Nevertheless, he and his wife bought a second home, and a condominium that they rent. He claims to have never been late on those mortgage payments.

Applicant immigrated to the U.S. from the Republic of Korea (South Korea) in 1986, and has resided here since. He married his wife—another native-born South Korean he met in the U.S.—in March 1995. They have two sons, both U.S.-born citizens. Applicant became a naturalized U.S. citizen in April 1997; his wife in February 1998. South Korea does not recognize dual citizenship, and Applicant's wife lost her South Korean citizenship when she filed a report of her U.S. naturalization with South Korean government officials in September 2001 (A.E. H). Applicant and his wife own their home in the U.S. They have no financial interests in South Korea. Applicant has registered with the U.S. Selective Service, as required.

Applicant's brother is a naturalized U.S. citizen, residing in the U.S. His mother, step-father, and step-brother are all legal permanent residents of the U.S., residing in the U.S.. They have all resided in the U.S. over 20 years. His mother has applied for her U.S. citizenship. He has more distant relatives—including an aunt who he has not seen in 10-15 years—who are resident citizens of South Korea.

The South Korean government has an aggressive, effective intelligence-gathering operation that targets economic and proprietary information in the U.S. However, its human rights practices are generally respectful of democratic institutions. There is no evidence that it seeks to obtain economic and proprietary information by pressuring its citizens through their ex-patriot relatives living in the U.S.

Applicant's co-worker considers him an honest employee and recommends him for his clearance. However, he does not appear to be aware of Applicant's financial difficulties or his falsification of his clearance applications.

POLICIES AND BURDEN OF PROOF

The Revised Adjudicative Guidelines lists factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they

represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines F (Financial Considerations), B (Foreign Influence), and E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.[3]

CONCLUSIONS

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect nearly $28,000 of delinquent debt acquired before July 2000, that remained unaddressed until mid-to-late 2007—for practical purposes until the eve of the hearing.[4] Applicant attributes these financial problems to his failed business venture, arguably a circumstance beyond his control. However, as his finances improved, he failed to address the delinquent debts until faced with the security concerns raised by the government. Further, as his finances improved, he chose to purchase a new home and an investment property ahead of addressing his past-due debts.

Applicant meets one of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.[5] While the debts were due to circumstances beyond his control, he did not act responsibly in addressing his debts.[6] There is no evidence that he has sought

[3] *See*, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[4] ¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

[5] ¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

[6] ¶20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

credit counseling or otherwise brought the problem under control.[7] Although he paid his outstanding debts just after the SOR was issued, and just before the hearing, the timing of the payments does not constitute a good-faith effort to satisfy his debts.[8] Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problem behind him. I conclude Guideline F against Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.[9] Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.[10]

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, South Korea and the U.S. enjoy good foreign relations. Although South Korea is actively engaged in the collection of U.S. intelligence, there is no evidence that collection activity makes Applicant or his family likely targets for coercion, duress, or influence.

Considering Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in South Korea. His travel to South Korea raises no independent security concerns, and his contacts with distant relatives there is limited. None of Applicant's close family members have any connection to the South Korean government. Further, all his close family members reside in the U.S., and have for over 20 years. Additionally, Applicant himself has been in the U.S. more than 20 years. His wife and children are here. All his financial interests are here. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in or from South Korea. Accordingly, I resolve Guideline B for Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Although Applicant's travel to South Korea ultimately failed to

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[7] ¶20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

[8] ¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

[9] Revised Adjudicative Guidelines, ¶ 6.

[10] Revised Adjudicative Guidelines, ¶ 7.(a).

establish any security concerns, his failure to disclose that travel had the potential to inhibit the government's evaluation of the potential foreign influence concerns. The language of the travel questions is quite clear. Applicant has offered no credible explanation for his failure to disclose that information. I conclude he deliberately concealed the nature and extent of his foreign travel on his clearance applications.[11] In addition, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. I conclude Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	For Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	For Applicant
Subparagraph f:	Against Applicant
Subparagraph g:	For Applicant
Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Paragraph 3. Guideline E:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Withdrawn

DECISION

In light of all 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 denied

[11] ¶16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . .;

John G. Metz, Jr.
Administrative Judge