



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
XXXX, Xx Xxxx	)	ISCR Case No. 08-00970
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro se*

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 30 July 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, E and F.<sup>1</sup> Applicant answered the SOR on 25 August 2008, and requested a decision without hearing. DOHA assigned the case to me 3 March 2009. The record in this case closed 22 January 2009, the day Applicant’s response to the government’s File of Relevant Material (FORM) was due. Applicant did not respond to the FORM.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Revised Adjudicative Guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## Findings of Fact

Applicant admitted the foreign influence allegations of SOR paragraph 1, denied the falsification allegations of paragraph 2 and 3.b., and admitted the financial allegation of 1.a. He is a 33-year-old IT project manager employed by a U.S. defense contractor located in South Korea since January 2007. He has not previously held a clearance.

In April 2000, Applicant opened a credit card account at a nationally-recognized federal credit union. He did so at the behest of a friend who needed Applicant's help with his start-up company, and with the help of the friend's brother, who was in the credit union membership pool. Applicant opened the account because the friend could not pay Applicant for his work, and Applicant needed a funding source for everyday expenses. Applicant has not explained how or when he expected to be paid for his work on his friend's company. Applicant's clearance application reflects that during the time he was doing consulting work for his friend, he was employed full time by two different companies, neither of which is his friend's company. In any event, Applicant used the credit card account for its stated purpose, and for a time was able to keep up with minimum payments. However, eventually the payments became too great, and Applicant defaulted on the account in September 2003, with an initial delinquent balance of over \$16,000. The record reflects no extraordinary circumstances contributing to Applicant's inability to pay.

In August 2002, Applicant opened a line of credit with the same credit union to purchase a condominium. As with the credit card, he made payments for a time, but defaulted in August 2003, with a delinquent balance of nearly \$18,000. Applicant ultimately settled both accounts with a lump-sum payment of \$30,000 in April 2008. The record does not indicate where Applicant got the \$30,000 to make the payment.

Applicant disclosed these two delinquent accounts on an April 2004 clearance application, but falsely asserted that the accounts had been "satisfied" in November 2003. He disclosed these two delinquent debts on a January 2006 public trust questionnaire, but falsely asserted that the accounts were "resolved" on an unspecified date. He also disclosed these two delinquent accounts on an April 2007 clearance application, but falsely asserted that they had been "satisfied" in April 2007, by which he meant that they were "in the process of being settled." However, Applicant provided no corroboration of the claimed efforts to contact the credit union during 2007. Nor has he corroborated any of his claimed partial payments. As noted above, Applicant settled the accounts in April 2008.

Applicant is also alleged to have misrepresented the status of these two delinquent debts during a March 2006 subject interview, during which he is recorded as claiming to have agreed on a settlement figure and made the payment in March 2004. Although the recorded statement was not true, the investigator notes that Applicant's statement was an unsworn declaration. Applicant denied misrepresenting the status of his accounts during this interview, and both his December 2004 sworn statement and

his June 2007 subject interview conducted under oath accurately report the status of those accounts at the time the statements were made.

Applicant was born in the Republic of Korea (South Korea) in September 1975. He immigrated to the U.S. with his parents in 1986. They obtained their green cards but returned to South Korea in 1989, while Applicant remained in the U.S. However, Applicant also returned to South Korea in 1994, and attended a South Korean university from 1995 to 1999. He attended college in South Korea because his father's employer, Korean Airlines, paid his tuition. After college, Applicant returned to the U.S., but not before he married in May 1999.

Applicant resides in South Korea with his wife, a resident citizen of South Korea, and his children, who are U.S. born citizens. His parents are both resident citizens of South Korea, who lived with Applicant until recently. They remain legal permanent residents of the U.S. His mother-in-law is also a resident citizen of South Korea. He has regular contact with his parents and his mother-in-law.

Applicant lives in South Korea because he is employed by a company that works for U.S. Forces Korea. He began looking for a jobs with U.S. Forces Korea, in December 2004, but it was not until December 2006 that he obtained such employment and moved to South Korea. Applicant and his wife wanted to live in South Korea so that his parents would be close to their grandchildren.

Applicant's father was a pilot for Korean Airlines and Asiana Airlines. He retired as pilot in 2004-2005. In December 2004, his father lived with Applicant's brother in the U.S. In March 2006, he lived with Applicant in the U.S. and worked as an advisor for a siding company.

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.

### **Policies**

The Revised Adjudicative Guidelines (RAG) list 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 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 RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where 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 Guideline B (Foreign Influence), Guideline E (Personal Conduct), and F (Financial Considerations).

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.<sup>2</sup>

### **Analysis**

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.<sup>3</sup> 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 or foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>4</sup>

The government raised security concerns under Guideline B because of his close and continuing contacts with his parents and mother-in-law. The fact that Applicant lives in South Korea with his wife and children also raises the potential for foreign influence. Finally, his father's employment with the state-owned airline and his benefitting from that connection with the free tuition, creates a greater possibility that Applicant is known to the South Korean government. Although South Korea is not known to specifically target its citizens to obtain U.S. information, it aggressively pursues such information.<sup>5</sup>

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

Applicant's residence in South Korea with his family and his parents puts him in a much more vulnerable position than if he resided outside South Korea. In his current circumstances he presents a potential target of opportunity that presents an unacceptable risk of being influenced to provide information. I resolve Guideline B against Applicant.<sup>6</sup>

The government also raised security concerns under Guideline E. Applicant had two substantial debts, the status of which he deliberately misstated on three different clearance applications. However, the government did not make its case regarding Applicant's unsworn declaration in March 2006. Applicant disputed the contents of that declaration, which was recorded by the investigator and not certified by Applicant at the time, when DOHA sought to have Applicant adopt the declaration in response to May 2008 interrogatories. Nevertheless, Applicant falsified multiple clearance applications. None of the mitigating conditions for personal conduct apply. I resolve Guideline E against Applicant.

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Opening a credit card account to handle everyday expenses, with no assurances that his friend would be able to pay him and with no clear plan for paying the credit card debt is financially irresponsible and displays poor judgment.<sup>7</sup> But he also held two full-time jobs while doing the consulting work. He never explained why his full-time jobs failed to provide sufficient income to pay the credit card and line of credit, or indeed, why this income was insufficient to cover his living expenses. His stated reasons for his indebtedness discloses no precipitating event that might excuse or explain his inability to pay.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are recent.<sup>8</sup> The debts were not due to circumstances beyond his control and he has not acted responsibly in addressing his debts.<sup>9</sup> There is no evidence

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<sup>6</sup>The government stated concern because Applicant tried to obtain employment in South Korea with a contractor for U.S. Forces Korea in December 2004, but this fact fails to raise a security concern. Seeking employment in support of U.S. Forces Korea did not expose him to foreign influence by the South Korean government. Put another way, if he had never obtained the job he has now, the fact that he had looked for such a job in the past while remaining in the U.S. would have been of no importance. It is his physical presence in South Korea now, not the fact of his seeking or obtaining employment with a U.S. sponsored entity, that raises the security concern. Similarly, the status of Applicant's parents when they were in the U.S. in the late 1980s or of his father when in the U.S. in 2004 and 2006 fails to raise a security concern vis-a-vis the South Korean government.

<sup>7</sup>¶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; . . .

<sup>8</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>9</sup>¶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;

that he has sought credit counseling or otherwise brought the problem under control.<sup>10</sup> Although he settled the debts in April 2008, this does not constitute a timely, good-faith effort.<sup>11</sup> Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

### Formal Findings

Paragraph 1. Guideline B:           AGAINST APPLICANT

    Subparagraph a-b:           Against Applicant  
    Subparagraph c:           For Applicant  
    Subparagraph d:           Against Applicant  
    Subparagraph e-g:         For Applicant  
    Subparagraph h-j:         Against Applicant

Paragraph 2. Guideline E:         AGAINST APPLICANT

    Subparagraph a:           Against Applicant  
    Subparagraph b-c:         For Applicant  
    Subparagraph d-e:         Against Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

    Subparagraph a:         Against Applicant  
    Subparagraph b:         For Applicant

### Conclusion

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.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>10</sup>¶20 (c) 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;

<sup>11</sup>¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.