



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-11252
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Alan V. Edmunds, Attorney At Law

October 28, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on July 24, 2006. (Government Exhibits 1 and 2). On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on June 2, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 8, 2009. A notice of hearing was issued on July 13, 2009, scheduling the hearing for August 20, 2009. Applicant requested an earlier date, and the matter was rescheduled on July 15, 2009, and set for August 19, 2009. The Government offered three exhibits referred to as Government Exhibits 1 through 3, which

were received without objection. Applicant called three witnesses and offered fifteen exhibits, referred to as Applicant's Exhibits A through O, which were admitted into evidence without objection. She also testified on her own behalf. The transcript of the hearing (Tr.) was received on August 26, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in South Korea that were set forth in Administrative Notice documents 1 through 15. Applicant had no objection to documents 1 through 8 and 12, 13 and 15. (Tr. pp. 18, 19, 20, 21, 22, 24, and 25). Applicant objected to Administrative Notice documents 9 through 11 and 14, but was overruled. (Tr. pp. 23, 25, 26, 27 and 28). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR testimony and the exhibits. The Applicant is 29 years of age and has a Master's of Science degree in Aeronautics and Astronautics. She is employed as a Guidance and Control Engineer by a defense contractor and seeks to obtain a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the United States in 1980, to parents from South Korea. She is not a dual citizen of Korea and possesses only a United States passport. (Applicant's Exhibit E). She is married to an American citizen. She was raised in the United States, and obtained her Bachelor's and Master's degrees from a prestigious University in the United States. (Applicant's Exhibits I and J). She considers herself independent and self-sufficient. She participates in the political process in the United States, and her loyalties lie with the United States.

The Applicant's mother, father and grandmother are citizens and residents of South Korea. Her mother is and has always been a housewife. Although she resides in Korea, her mother became a naturalized United States citizen in 1987. Applicant's father is currently the Chief Executive Officer for a large Korean pharmaceutical corporation. The Applicant stated, "My father's job and his life is separate from my own. It is

understood in my family that I have no obligations toward them, financial or otherwise.” (Tr. p. 68). The Applicant communicates with her mother about two to three times a week. Her contact with her father is not as frequent, about once or twice a month by telephone. She maintained contact with her grandmother in Korea up until she started her current job. Due to her busy schedule now, she no longer maintains regular contact with her grandmother. She last contacted her grandmother in 2007, and has not talked to her since then. (Tr. p. 65). The Applicant has aunts and uncles in South Korea, but talks to them at most about once a year by telephone. The Applicant has one sister who is a jewelry designer who resides in Paris, France. (Tr. p. 70). The Applicant has told none of her family in South Korea that she is applying for a security clearance with DoD and has no intentions of ever discussing the issue with them. None of her family members in South Korea are associated with the Korean Government in any way.

The Applicant’s parents visit the United States about once a year on average. In two years, when the Applicant’s father retires from his position, her parents plan to permanently move to the United States to be near the Applicant and her family here.

In 1999, at the age of eighteen, the Applicant applied for and was accepted to a program that was sponsored by a Korean-American Scientist and Engineering Association for a summer internship with the Korean Aerospace Research Institute in South Korea. She applied for the program in order to learn more about the Korean culture. (Tr. p. 66).

Since 1999, the Applicant has traveled to South Korea on an annual basis to visit her parents. Her most recent trip was in December 2007. She has no future plans to travel to Korea. She understands her responsibilities to the United States Government while holding a security clearance. During her trips to Korea in the past, at no time was she approached, contacted, or received requests or threats from or by any person or organization from Korea or any other foreign country. (Tr. p. 61). She would report any such contact to her security department and/or the proper authorities. The Applicant has always complied with her employer’s travel reporting requirements. (Tr. p. 70). She does not discuss her job in the United States with her parents. (Tr. p. 59).

A manager, who has daily contact with the Applicant at work testified that the Applicant is a “stellar performer.” Out of 40 employees that he is in charge of, the Applicant is considered to be one of his top performers. She is described as, “honest and reliable.” She exhibits no vices or lapses in personal behavior. This manager has no reservations about recommending her for a position of trust. (Tr. pp. 36 - 44).

A section leader, who has input in the Applicant’s annual performance appraisal, testified that the Applicant is one of the highest ranked for her skill level in the organization. (Tr. p. 47).

The Applicant’s spouse testified that because of his wife’s patriotism and love for the United States, her country, he does not believe that she would ever inappropriately disclose classified information to anyone under any circumstances. (Tr. p. 53).

Letters of recommendation from the vice president of engineering, managers, friends and other professional colleagues of the Applicant attest to her dedication, enthusiasm and hardworking nature. She is said to be a woman of honesty, reliability and integrity in all aspects of her life. She is considered to be a valuable member of the group and is recommended for a position of trust. (Applicant's Exhibits A, B, C, D, L and M).

Performance appraisals of the Applicant for 2006, 2007 and 2008, reflect that she "meets" or "exceeds" performance requirements in every category, except one where she rates in the outstanding category. (Applicant's Exhibits F, G and H).

I have taken administrative notice of the current political conditions in South Korea. Following the Korean War, South Korea has experienced political turmoil that included autocratic leadership, restriction of political freedoms, military coups, declarations of martial law, and violent confrontations. Currently, South Korea is a stable, democratic republic. The South Korean Government has generally respected the human rights of its citizens, however, reported human rights problems include: societal discrimination against women, persons with disabilities and minorities, domestic violence and rape, child abuse, and trafficking in persons. South Korea has a history of collecting protected U.S. information and in the past has centered its collection efforts on computer systems, aerospace technologies and nuclear technologies, and its activities have included stealing information from computerized databases maintained by U.S. government agencies.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

8. (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;

- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must

be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Conditions 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*, and 7.(b) *connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information* apply. However, Mitigating Conditions 8.(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*, 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*, and 8.(c) *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* also apply.

It is acknowledged that the Applicant's mother, father, grandmother and extended family members are citizens of and reside in South Korea. Although her contact with her parents occurs more frequently than with her other relatives, she has clearly established that those contacts are casual and pose no security risk whatsoever. Her mother is a United States citizen and her father, although a Chief Executive Officer for a Korean corporation, plans to retire in the United States in two years. Her sister in Paris, France and her extended family members in Korea, have no association with, or any allegiance to the Korean Government, nor does the Applicant. It is noted that the current political situation in South Korea elevates the cause for concern in this case. However, in this case, the Applicant is a native born American citizen who has lived in the United States her entire life. Her husband is also an American citizen. Her parents just happen to be Korean. The Applicant is a product of the American culture and its values. Under the particular facts of this case, the possibility of foreign influence does not exist nor could it create the potential for conduct resulting in the compromise of classified information. I

find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. The Applicant is a bright young engineer who has a promising future with the Defense Department. Her favorable evidence, including testimony and letters from her manager and other professional associates, her performance appraisals and her overall integrity gleaned from her own testimony, demonstrate her trustworthiness. She has presented sufficient evidence in mitigation to demonstrate that she is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: For the Applicant.
- Subpara. 1.a.: For the Applicant
- Subpara. 1.b.: For the Applicant
- Subpara. 1.c.: For the Applicant
- Subpara. 1.d.: For the Applicant
- Subpara. 1.e.: For the Applicant
- Subpara. 1.f.: For the Applicant
- Subpara. 1.g.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

