



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



In the matter of: )  
)  
) ISCR Case No. 10-02268  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

February 9, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 45-year-old employee of a defense contractor. He has a wife, two brothers, two sisters, a brother-in-law, a mother-in-law, and three friends who are citizens and residents of South Korea. His foreign family members and friends raised a security concern under Foreign Influence. He failed to mitigate the Foreign Influence security concerns. He is also alleged to have a history of indebtedness, including four debts in the approximate amount of \$80,777, raising security concerns under Financial Considerations. Applicant mitigated the Financial Considerations security concerns by showing that the debts were due to identity theft and that he has been disputing the accounts. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 19, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations, and B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding*

*Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR (Answer) on April 19, 2011, and requested a decision based on the record. Department Counsel exercised his right to request a hearing before an administrative judge. The case was assigned to me on August 30, 2011. DOHA issued a notice of hearing on November 17, 2011, scheduling the hearing by video-teleconference for December 6, 2011 (Pacific Standard Time). The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. The Government requested administrative notice be taken of certain facts relating to South Korea as contained in Hearing Exhibit (HE) I. Applicant had no objection and I took administrative notice of the documents. The Applicant offered Exhibits (AE) A through K, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for receipt of additional documentation. On January 4, 2012 Applicant submitted AE L through Q, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 15, 2011.

### **Procedural Matters**

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved to amend the SOR issued to Applicant as follows:

1. Add SOR subparagraphs 2.d and 2.e to read as follows:
  - d. Your wife is a citizen and resident of South Korea.
  - e. Your mother-in-law is a citizen and resident of South Korea.

Applicant had no objection to the amendments and I granted the motion. (Tr. 101-102.)

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. He was born in South Korea and was naturalized as a U.S. citizen in 1992. As a teenager, Applicant was adopted by his aunt and uncle, who were American citizens. He has two step-siblings that live in the United States and are American citizens. (GE 1; AE A; Tr. 94.)

Applicant has worked for his current employer since 2008. He is employed on an overseas military base. He served in the U.S. Army from 1989 to July 1994, when he was honorably discharged. He achieved the rank of Specialist (E-4). During his service, he was awarded the Army Service Ribbon; the National Defense Service Medal; an

Army Good Conduct Medal; an Army Commendation Medal; and an Overseas Service Ribbon. (GE 1; AE A; AE D; Tr. 47-53.)

Applicant has been married two times. His first marriage was from 1992 until approximately 2008, when he got divorced. He had two children with his first wife. His first wife and children are citizens of and reside in the United States. His second marriage occurred in 2010. He has an adult step-son from his second marriage. (GE 1; Tr. 95-98.)

DOHA alleged under Guideline F, Financial Considerations, that Applicant is indebted to four creditors in the total amount of \$80,777. Applicant denied these allegations in his Answer. He contends that each of these debts was incurred through identity theft while he was overseas. Applicant testified that in approximately December 2005, Applicant traveled from South Korea to the United States for two weeks to visit his family.<sup>1</sup> While there, he lost his driver's license. He presented a Certificate of Entry and Exit from the Ministry of Justice of the Republic of Korea and a copy of his U.S. passport to show he was overseas when the debts were incurred. However, the Certificate of Entry and Exit lists Applicant's most recent entry into South Korea as January 2004. Applicant's passport bears multiple re-entry permits stamped into Applicant's passport bearing dates from 2004 through 2011. It is unclear from the documents when he traveled. (SOR; Answer; GE 2; GE 3; AE B; AE C; Tr. 73-85.)

In a letter to the Court, Applicant indicated: "I have had an outstanding credit score with U.S.A. Federal and no one alerted me to any moneys owed to any other financial institution. I was able to conduct standard banking practices with them and had a great credit score until the Security Check was conducted." However, in a personal subject interview conducted on September 30, 2009, Applicant indicated that "at approximately 05/2007 or 06/2007, subject attempted to purchase a car in Korea and was told that the interest rate on the car loan would be higher than expected because his credit report revealed two loans of \$20,000 each were still outstanding." (AE A; GE 2.)

The first debt is on an account that has been charged off in the approximate amount of \$21,759. It was for a "noteloan" opened in January 2006. Applicant testified he disputed this debt with both the creditor and the credit reporting agencies but none of the dispute letters he entered into evidence appear to pertain to this account. Applicant's August 2011 report of credit reflects the status of this debt as "dispute reslvd-cust disagrees." This account is reflected on his December 2011 credit report as "customer disputes after resolution." (GE 2; GE 3; GE 6; GE 8; AE L through AE P.)

The second debt is on an account that has been charged off in the approximate amount of \$25,225. It was for an unsecured loan opened in January 2006. Applicant testified he has disputed this debt with both the credit reporting agency and the creditor. He provided copies of the letters he sent regarding his dispute on this account from

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<sup>1</sup> In some of the documents Applicant indicated he last left South Korea December 23, 2003, through January 13, 2004, consistent with the Certificate of Entry and Exit. (GE 2; AE B.)

March through June 2011. On Applicant's December 2011 credit report, it is reflected as a "charged off account." (GE 2; GE 3; GE 6; AE G; AE L through AE P.)

The third debt is on an account that has been charged off in the approximate amount of \$17,293. It was for a loan opened in February 2008. Applicant testified he has disputed this debt with both the credit reporting agency and the creditor. He provided copies of the letters he sent regarding his dispute on this account in March through June 2011. There was no evidence that this debt has been resolved. (GE 2; GE 3; AE L through AE P.)

The fourth debt is on an account that has been charged off in the approximate amount of \$16,500. It was for a "noteloan" opened in January 2006. Applicant testified he has disputed this debt with both the credit reporting agency and the creditor. He provided copies of the letters he sent regarding his dispute on this account in March through June 2011. Applicant's August 2011 report of credit reflects the status of this debt as "payment after charge off/collection," and lists "dispute reslvd-cust disagrees" in the remarks. (AE G; AE L through AE P.)

Applicant's most recent credit report reflects that he is in good standing on all other accounts. He provided copies of his U.S. Individual Tax Returns for 2006 through 2009 and bank account summaries that show that he has sufficient funds to meet his monthly expenses. Applicant's personal financial statement indicates he has \$1,793.90 left over each month after his bills are paid. He also presented evidence that he successfully made all of his car loan payments. (AEs E through AE K.)

Applicant's friend and co-worker testified on Applicant's behalf. He indicated that he had known Applicant since 2005 and found him to be a "very trustworthy individual." The witness has been actively helping Applicant to contact his creditors and contest the delinquent accounts. He indicated Applicant began addressing the delinquent accounts in 2009 after the security clearance investigation was initiated. (Tr. 47-64.)

DOHA alleged under Guideline B, Foreign Influence, that Applicant's wife, two brothers, two sisters, brother-in-law, and mother-in-law are all citizens and residents of South Korea. Applicant also has contact with four friends who are citizens and residents of South Korea. Applicant admits these allegations. (SOR; Answer; Tr. 101-102.)

Applicant's resides with his wife, who is a citizen and resident of South Korea. Applicant's wife is employed, but he failed to state in what industry. Applicant's wife is emotionally tied to her mother and visits her mother twice a year in a city about a two-hour drive away. Applicant's wife calls her mother approximately once every six months. Her mother is supported through an inheritance from her husband, money sent by her two sons, and a pension. Applicant also testified she received money from the "Korean government, if you [are] more than 60, they give you [a] job, like go outside where it's cold or do something." Applicant's two brothers-in-law also are citizens and residents of Korea. They live approximately a five-hour drive from Applicant. One brother-in-law owns a business and the other works in construction. (Tr. 90-92, 99-100.)

Applicant's two brothers work together in a delivery service business. The business is in no way affiliated with the South Korean government. He failed to indicate how his sisters are supported. In his Answer, he wrote, "I keep a close and continuing contact with my two brothers and two sisters who are Korean citizens and residents of/in Korea." (Answer; GE 5.)

Applicant identified four friends who are South Korean residents and citizens. Of those four friends identified, one is his current wife and one is a childhood friend. The other two are friends from Applicant's work on a United States military base. (GE 4; TR. 87-90.)

Applicant presented documents entitled "Criminal History & Investigation Career" in Korean along with an English translation. They show that Applicant's brother-in-law, two brothers, mother-in-law, son, two sisters, and wife do not have criminal records in South Korea. (AE Q.)

I have taken administrative notice that South Korea is a stable, democratic republic. The South Korean government generally respects the human rights of its citizens. However, South Korea has some reported human right problems including: hazing of military personnel, imprisonment of conscientious objectors, the government's interpretation of laws regulating the internet and telecommunications, and sexual and domestic violence. South Korean National Security Law allows arrest and detention for conduct the Government views as "endangering the security of the State." (HE I.)

I also have taken administrative notice that South Korea and North Korea have a strained relationship. In 2010, relations between the two nations experienced significant setbacks when a South Korean warship was struck by a North Korean torpedo and sunk. Tensions further increased when North Korea fired upon a South Korean island with artillery. (HE I.)

Finally, I have taken administrative notice that South Korea has a history of collecting protected U.S. information. On several occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws. South Korea has been identified as one of the seven most active nations engaging in foreign economic collection and industrial espionage. (HE I.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations.

Applicant has four debts in the approximate amount of \$80,777. Three of the debts have been delinquent since 2006. Applicant was made aware of potential credit issues in 2007, when he attempted to purchase a vehicle in Korea. He is unwilling to satisfy these debts, because he believes they are not his debts. The Government established a case for disqualification under Guideline F.

Three Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant meets significant mitigating factors for financial considerations. The circumstances under which Applicant's financial problems occurred are unlikely to recur. His identity was stolen in 2006 and 2008, but it does not appear that any accounts in his name have been opened since then and he has alerted the credit reporting agencies to the theft. He could not control the identity theft and he acted responsibly by contacting the credit reporting agencies and creditors to dispute the accounts. His actions evidence a good faith effort to resolve the debts. He provided documented proof of his efforts to address the creditors. It does not appear that Applicant was living beyond his means in any regard. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant's financial problems are under control. Aside from the debts which do not belong to him, he is current on all of his accounts. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply.

## Guideline B, Foreign Influence

The security concern for the Foreign Influence guideline is set out in AG ¶ 6:

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.

The guideline notes nine conditions that could raise security concerns under AG ¶ 7. One is potentially applicable in this case:

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

The Government raised concerns over possible foreign influence because of Applicant's ties of affection to his wife, two brothers, two sisters, a brother-in-law, a mother-in-law, and three friends who are citizens and residents of South Korea. Not only does disqualifying condition AG ¶ 7(a) require the presence of foreign contacts, it also requires that a heightened risk be present. Government Counsel introduced sufficient evidence on South Korea's history of collecting protected U.S. information to establish a heightened risk relating to Applicant's family members and friends in South Korea. These contacts raise security concerns under AG ¶ 7(a).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.;

(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 and 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;



Applicant is admittedly close to all of his South Korean relatives. Further, South Korea is known to collect protected U.S. information. Applicant had the burden to present evidence to mitigate the Government's case against him and he failed to present sufficient evidence of mitigation. For instance, Applicant's wife is employed in South Korea, but he failed to state in what industry. It is also unknown how Applicant's sisters are supported. Applicant further testified that his mother-in-law receives some of her support from the South Korean government. Due to the close contacts between Applicant and his family, the nature of the South Korean collection efforts, and the lack of evidence regarding the positions or activities of all of Applicant's family members and friends in South Korea, it is impossible to determine 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. AG ¶ 8(a) does not apply.

Applicant served the United States honorably from 1989 to July 1994, and received a number of honors for his service. He also has an ex-wife, two children, and his adopted family residing in the United States. These certainly represent longstanding relationships and loyalties in the U.S. However, these facts alone are not enough to mitigate his strong family ties in South Korea. Applicant failed to present sufficient information to establish it is unlikely he could be placed in a position of having to choose between the interests of his South Korean family or friends and the interests of the U.S. Further, he did not show that the nature of the relationships with his foreign family and friends are so minimal that he would resolve any conflict of interest in favor of the U.S. AG ¶ 8(b) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments

under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his friend, who testified on his behalf. He has worked diligently to contest debts that were a result of identity theft. He served in the U.S. Army from 1989 to July 1994. His dedication and service, family in the United States, and contacts with the United States are significant, but do not overshadow his close ties of affection in South Korea.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns, but has not mitigated the Foreign Influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant

### **Conclusion**

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge