DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 10-06997
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Eugene DeLaGarza, Personal Representative

06/27/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant and his spouse have several family members living in South Korea. His spouse is a South Korean citizen and resident of the United States. Applicant has visited South Korea over the last ten years. Foreign influence concerns raised by his connections to South Korea are mitigated because he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Access to classified information is granted.

Statement of the Case

On April 25, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (hereinafter SF-86). On March 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). The action was taken 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The

SOR 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 him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 23, 2011, Applicant responded to the SOR. On March 14, 2012, Department Counsel was prepared to proceed. On March 28, 2012, the case was assigned to me. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 17, 2012. The hearing was held as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 15), and Applicant offered seven exhibits. (Tr. 19; AE A-G) I admitted GE 1-3 and AE A-G. (Tr. 16, 19) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) I held the record open until May 25, 2012. (Tr. 69-70, 87, 92) After the hearing, Applicant provided 23 exhibits, which were admitted without objection. (AE H-DD) On June 1, 2012, I received the hearing transcript.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning South Korea. (Tr. 15; Administrative Notice Request, February 1, 2012) Applicant did not object to the documents. (Tr. 17-18) Department Counsel provided supporting documents to show verification, detail, and context for facts relating to South Korea's relationship with the United States in his Administrative Notice request. I also took administrative notice of the facts requested by Department Counsel. (Tr. 18)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). *See* the South Korea section of the Findings of Fact of this decision, *infra*, for additional material facts concerning South Korea.

Findings of Fact[1]

Applicant admitted the facts alleged in SOR ¶¶ 1.a to 1.h. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

[1]The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or his June 7, 2010 Officer of Personnel Management (OPM) investigative personal subject interview (PSI). (GE 2)

Applicant is a 47-year-old employee of a defense contractor, who is seeking a security clearance. (Tr. 20; GE 1) In 1985, he graduated from high school in South Korea. (Tr. 22) In 2010, he earned his bachelors of science degree in web technology in the United States. (Tr. 22-23) He has completed more than half the credits necessary for his master's degree in information computer technology. (Tr. 23-24) He married in 1992 and was divorced in 1997. (Tr. 25; GE 1) He married his spouse in 1997, and his children are ages 8, 12, and 13 years old. (Tr. 27-28; GE 1) His three children were born in the United States, live in the United States, and attend U.S. schools. (Tr. 28, 32) His spouse has a green card (permanent resident alien), and she plans to become a U.S. citizen. (Tr. 26, 32) Her citizenship application has been delayed because of her difficulties with the English language. (AE DD)

Applicant worked for a South Korean company from 2000 to 2003 and from July 2006 to November 2008. (AE B) He worked for a U.S. company from 2003 to 2006. (GE 1; AE B) He is currently a field engineer, and has been employed by his DoD contractor employer since February 2009. (Tr. 24)

Foreign Influence

Applicant lived the first 27 years of his life in South Korea. (Tr. 30) He served in the South Korean military from 1985 to 1990. (Tr. 28) His rank in the Korean Army in 1990 was sergeant first class (E-7). (Tr. 28-29) While serving in the South Korean army, he attended computer classes. (Tr. 31) He does not have any obligation to the South Korean military. (Tr. 29) In 1991, Applicant came to the United States on a student visa. (Tr. 29-30) He became a naturalized U.S. citizen in 2007. (Tr. 30)

Applicant's spouse, his mother, one brother, one of two sisters, his mother-in-law, and a friend are South Korean citizens, and all except his spouse are residents of South Korea. (Tr. 33; SOR response for ¶¶ 1.a-1.c, 1.f, and 1.h; GE 1, 2) His other sister, who is a citizen of South Korea, has lived in the United States more than 30 years. (Tr. 40; SOR response for ¶ 1.e)

On June 7, 2010, he told an Office of Personnel Management (OPM) investigator that he is close to his mother and communicates with her approximately twice a month. (GE 2) At his hearing, Applicant said he communicates with his mother four times a year. (Tr. 33, 56) She is retired from her restaurant business. (Tr. 35) He held a bank account in South Korea for the benefit of his mother. (Tr. 34) His father did not work for the South Korean Government, and his father has passed away. (Tr. 36)

Applicant's 50-year-old brother is a bank manager in South Korea. (Tr. 38-39) He has worked for the bank for all of his working life. (Tr. 39) The bank is closely associated with the South Korean Government. (GE 2; response to SOR ¶ 1.d) The Korean Government owns 65 percent of the bank. (GE 2)

Applicant's older sister owns a restaurant in South Korea. (Tr. 38) His older brother and sister are married and have children living in South Korea. (Tr. 40) He communicates with his sister about every two months, and his brother about twice a

year. (Tr. 41; GE 2) Later during the hearing, he said his communication was once a year.[2] (Tr. 56)

Applicant visited South Korea in 2000, 2002, twice in 2004, twice in 2005, from November 2007 to April 2008, in August 2011, and he plans to return to visit South Korea in the summer of 2012. (Tr. 36, 45-47) He said his visits from 2000 to 2008 were on behalf of a South Korean business that had been employing him (Tr. 48); however, he may have misunderstood the question because for much of that period he was employed by a U.S. business. (AE B) When he went to South Korea in 2011, his spouse and three children went with him. (Tr. 46, 49) He visits his family and his spouse's family, when they go to South Korea.

When Applicant's children were born, Applicant's mother-in-law visited him in the United States for three months. (Tr. 41-42) His wife is close to her mother, and she communicates with her mother about four times a year and on holidays. (Tr. 42) Applicant's father-in-law was a teacher. (Tr. 43) She has four siblings living in South Korea. (Tr. 42) All of her siblings are married and have children. (Tr. 42) One of her brothers works for the South Korean Government in a clerical capacity. (Tr. 43) She talks to her siblings when "she has something troubling the brother." (Tr. 44)

When Applicant lived in South Korea from November 2007 to April 2008, he opened a bank account in South Korea. (Tr. 50) The value of the account is about $16,700. (Tr. 52; SOR response for ¶ 1.g; AE I) He has not added money to the account since April 2008. (Tr. 50) He is the only one authorized to disburse money from the account. (Tr. 50) He has not taken any money out of the account to support his mother because she has not needed it. (Tr. 50) His family does not send money to South Korea to support their families in South Korea. (Tr. 51) However, the money in the fund is available in case she has a medical emergency.

Applicant has a friend in South Korea that he has known since they were in elementary school together. (Tr. 51, 67-68) His friend does not work for the South Korean Government. It the last 10 years he has communicated with his friend on about one occasion. (Tr. 51-52, 68)

Applicant's investments in the United States are worth about $103,000, and he has about $13,000 equity in his home. (Tr. 52, 63-65; AE I) He has about $7,000 in his U.S. bank accounts. (AE I) His equity in his vehicles is about $15,000. (AE I) His timeshare is valued at about $21,000. (AE I) He estimated that about 10%-15% of his net worth is in South Korea. (Tr. 53, 57; AE I) He has registered to vote in the United States; however, he has not voted in a U.S. election. (Tr. 58) His U.S. salary is about $90,000, and his spouse's U.S. salary is about $15,000. (Tr. 63; AE I) He plans to live the rest of his life in the United States. (Tr. 66) On June 7, 2010, he told an OPM investigator that the account in South Korea is important to him; however, he is willing to

[2] I attribute these discrepancies to Applicant's inability to fully comprehend the English language. I note that Applicant had difficulty understanding and responding to questions asked during his hearing.

close the account if necessary. (GE 2) At his hearing, he said he would close the South Korean bank account when he goes to South Korea this summer. (Tr. 91)

Applicant's supervisors and coworker observe his work performance on a daily or frequent basis. (Tr. 71-87; AE C-F) They describe Applicant as an outstanding employee with excellent integrity, dependability, honesty, and professional expertise. (Tr. 71-87; AE C-F) Applicant has some difficulty communicating in English. (Tr. 77-78) He received some cash performance bonuses. (Tr. 78; AE G) Their statements and performance evaluations strongly support approval of Applicant's security clearance. (Tr. 71-87)

There is no derogatory information concerning Applicant's police records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

South Korea

South Korea is currently a stable, democratic republic. The United States and South Korea have been close allies since 1950, and have fought communism on the Korean peninsula and in Vietnam. The United States, since 1950 and currently, has thousands of U.S. military personnel stationed in South Korea, and frequently conducts joint military operations with South Korea. About 2.3 million Koreans live in the United States. The United States has promised over the next four years to provide $11 billion in force enhancements in Korea. South Korea is the United States' seventh largest trading partner. The recently signed free trade agreement between the United States and South Korea will generate billions of dollars in additional economic growth and job creation in both countries.

The South Korean government generally respects the human rights of its citizens. Criminals violate the human rights of some South Korean citizens. South Korea has some political prisoners, and some rules regarding arrest and detention are vague.

South Korea does not recognize dual citizenship. There have been circumstances where U.S. citizens with connections to South Korea were drafted into the South Korean army (Appellant is beyond the South Korean draft age limit of 35).

In recent years, the United States and South Korea have differed in their diplomatic approaches towards North Korea. The United States' position is more assertive in its attempts to curtail North Korea's development of advanced military technology, such as ballistic missiles and nuclear weapons. South Korea has emphasized steps towards unification of North and South Korea. However, in March 2010, a North Korean warship sank a South Korean warship and in November 2010, North Korea fired artillery upon a South Korean island.

Industrial espionage includes seeking commercial secrets. South Korea has a history of collecting protected U.S. information. In 2000, South Korea was listed as one of the seven most active countries engaged in foreign economic collection and industrial

espionage against the United States. In 1997, Lockheed Martin was fined for unlicensed export to South Korea and that same year a civilian employee of the U.S. Navy passed classified documents to the South Korean naval attaché to the United States. A 2008 annual report indicates that major foreign collectors remain active. On multiple occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v.*

Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> 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.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying 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;
>
> (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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply because of Applicant's relationship with his spouse and through her with her family living in South Korea, who are also citizens of South Korea. He is also close to his mother, who is a citizen of South Korea and lives in South Korea. He has a financial interest in his South Korean bank account, which is valued at about $16,000.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, who is a citizen of South Korea, and through her to her South Korean family. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Although Applicant does not have direct ties of affection to his in-laws living in South Korea, he has affection for his spouse, and she has affection for her family living in South Korea. So an indirect tie remains between Applicant and his in-laws living in South Korea.

Indirect influence from Applicant's in-laws living in South Korea, through Applicant's spouse to Applicant, could result in a security concern. Applicant's spouse's communications with her family living in South Korea are not fully described in the record, and there is insufficient evidence to rebut the evidentiary presumption. Applicant is close to his mother, who lives in Korea. Applicant and his spouse's relationships with family living in South Korea are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Their relationships with residents of South Korea create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse and their relatives who are in South Korea. For example, if agents of South Korean companies in South Korea wanted to expose Applicant to coercion, they could exert pressure on his in-laws or mother in South Korea. Applicant would then be subject to coercion through his spouse and mother and classified information could potentially be compromised.

The mere possession of close family ties with relatives or in-laws living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See Generally* ISCR Case

No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States.

Industrial espionage by South Korean companies against United States companies places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his mother and his spouse's relationships with her relatives living in South Korea do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his mother or his spouse and her family living in South Korea. Analysis of this case requires particular attention to the potential threat of inducements or coercion by aggressive South Korean companies attempting espionage by targeting U.S. classified and sensitive information.

While there is no evidence that intelligence operatives from South Korea seek or have sought classified or economic information from or through Applicant, or his in-laws or family living in South Korea, it is not possible to rule out such a possibility in the future. Applicant's visits and communication with his mother and his spouse's communications and visits with her family living in South Korea are sufficiently frequent, to demonstrate their obligations to and affection for their family living in South Korea. Their concern for their family is a positive character trait that increases their trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a), 8(c), and 8(f) have full applicability to Applicant's siblings and friend living in South Korea, and to his bank account in South Korea. Applicant had infrequent contact with his siblings and friend living in South Korea. AG ¶ 8(f) applies to mitigate the concern raised by his South Korean bank account. His bank account is only about 10 to 15 percent of his total net worth. It is not of sufficient magnitude to raise the possibility of improper influence.

Applicant's relationship with his spouse, and through her with her family living in South Korea and with his mother, who is living in South Korea is more problematic. He frequently traveled to South Korea. His contact with his mother is frequent, and he clearly has affection for his spouse and mother. The amount of contacts between an applicant or the applicant's spouse and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of his spouse's connections to her family living in South Korea and his own contact with his mother in South Korea, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of South Korea] could create a risk for foreign influence or exploitation." His spouse's visits to her family in South Korea show that she feels an obligation to her family's welfare.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. In 1991, Applicant came to the United States on a student visa. He became a naturalized U.S. citizen in 2007. In 2010, he earned his bachelor's of science degree in web technology in the United States. He has completed more than half the credits necessary for his master's degree in information computer technology at a U.S. university. His three children were born in the United States, and they are U.S. citizens. They attend U.S. schools. His spouse is a permanent resident of the United States and she intends to become a U.S. citizen. He and his spouse are employed in the United States, and 85 to 90 percent of his assets are in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's relationships with her family living in South Korea, and her South Korean citizenship, as well as his relationship to his mother. There is no evidence that terrorists, criminals, the South Korean Government, or those conducting espionage have approached or threatened Applicant or his in-laws in South Korea to coerce Applicant or his in-laws for classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' very positive relationship with South Korea, South Korea's human rights violations, and most of all the aggressive behavior of some South Korean companies seeking classified or sensitive information. The conduct of South Korean companies makes it more likely that such companies would attempt to coerce or influence Applicant through his in-laws or mother living in South Korea, if South Korean companies determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with his spouse, mother, or in-laws living in South Korea. Applicant is not required to report his contacts with his spouse, mother, or in-laws living in South Korea.

In sum, the primary security concern is Applicant's close relationship with his spouse and through her to her relatives, who live in South Korea and his close relationship with his mother, who lives in South Korea. Her family living in South Korea is readily available for coercion or improper inducements. Although the South Korean government's failure to follow the rule of law in some instances further increases the risk of coercion, the major cause of concern is the possibility of industrial espionage in South Korea. Nevertheless, Applicant has "such deep and longstanding relationships and loyalties in the U.S.," which clearly outweigh his connections to South Korea, that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." Foreign influence concerns are fully mitigated under AG ¶ 8(b).

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 the 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

The whole-person concept supports mitigation of security concerns. Applicant is 47 years old. He is mature and responsible. He has strong connections to the United States. In 1991, Applicant came to the United States on a student visa. In 2007, he became a naturalized U.S. citizen. He swore allegiance to the United States, as part of the naturalization process. In 2010, he earned his bachelor's of science degree in the United States. He has completed more than half the credits necessary for his master's degree a U.S. university. He and his spouse are employed in the United States, and 85 to 90 percent of his assets are in the United States. His three children were born in the United States, and they are U.S. citizens. They attend U.S. schools. His spouse is a permanent resident of the United States, and she intends to become a U.S. citizen.

Applicant's supervisors and coworker describe Applicant as an outstanding employee with excellent integrity, dependability, honesty, and professional expertise. He received some cash performance bonuses. His good character statements and performance evaluations support approval of Applicant's security clearance. There is no derogatory information concerning Applicant's police records, any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States, and he considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

A Guideline B decision concerning South Korea must take into consideration the geopolitical situation in South Korea, as well as the dangers existing in South Korea.[3] South Korea is a long-standing ally of the United States. U.S. military bases in South Korea have provided crucial support for decades to the defense of the United States and South Korea. The efforts of North Korea to pressure South Korea and North

[3] See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Korea's ongoing exertions to obtain nuclear weapons and missile technology tend to increase the importance of the continuing alliance between South Korea and the United States. The danger of coercion of Applicant's relatives in South Korea by the South Korean government is relatively low in comparison to some countries, and Applicant's connections to the United States are strong. South Korea and the United States are allied militarily, diplomatically, and through trade. Foreign influence concerns are mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole-person. I conclude Applicant has fully 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 B:	For APPLICANT
Subparagraphs 1.a to 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert J. Tuider
Administrative Judge