



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 10-09079
)	
Applicant for Security Clearance)	

Appearances

For Government: Phillip J. Katauskas, Esquire, Department Counsel
For Applicant: John F. Mardula, Esquire

October 24, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by her ties to persons and interests in South Korea. She also mitigated security concerns about outside activities and about a large past-due debt. Based upon a review of the pleadings, exhibits, and transcript, Applicant’s request for a security clearance is granted.

On April 8, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her job with a defense contractor. After the ensuing background investigation was completed, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories¹ to clarify or augment information obtained in through the investigation. After reviewing the results of the background investigation and Applicant’s responses to the interrogatories, DOHA adjudicators were unable to make a preliminary

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

affirmative finding² that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. On April 15, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ for foreign influence (Guideline B), outside activities (Guideline L), and finances (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on June 15, 2011. Pursuant to a Notice of Hearing issued on June 29, 2011, I convened a hearing on July 22, 2011. The Government presented two exhibits that were admitted without objection as Government Exhibits (Gx.) 1 and 2. The Government also provided documents for administrative notice, which are included in the record as Gx. 3. Applicant testified, presented one witness, and offered 14 exhibits, which are included as Applicant's Exhibits (Ax.) A - N. DOHA received a transcript (Tr.) of the hearing on August 1, 2011.

Findings of Fact

Under Guideline B, the Government alleged that Applicant has a sister, an uncle, and two cousins who are citizens of and reside in South Korea (SOR 1.a); that her brother is a South Korean citizen who lives in the United States (SOR 1.b); that she maintains a checking account in South Korea (SOR 1.c); that she traveled to North Korea in 2004 (SOR 1.d); that since 1998 she worked for an independent council that reports to the South Korean president (SOR 1.e); and that between July 2000 and July 2005, she was a member of another South Korean organization (SOR 1.f).

Under Guideline L, the Government cross-alleged the SOR 1.e allegation. Under Guideline F, the Government alleged that Applicant was delinquent on a \$16,500 debt for an unpaid civil judgment.

Applicant denied with explanation all of the SOR allegations. However, aside from her denial of SOR 3.a, her explanations made clear that she admitted the facts alleged. The facts established through Applicant's answer are incorporated in my findings of fact. Having reviewed the pleadings, the transcript, and exhibits, I make the following additional findings of fact.

Applicant was born and raised in South Korea. She came to the United States in 1974, when she was 21 years old, and she was naturalized as a U.S. citizen in February 1980. Applicant is now 59 years old and employed by a defense contractor as an information analyst, a job she has held since January 2010. Applicant fully disclosed numerous facts in her application for a security clearance that required investigation for possible foreign influence, adverse financial issues, and outside activities.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

Applicant and her husband, a U.S.-born American citizen, have been married since December 1978. They have two grown children, both of whom were born in the United States. Applicant and her husband have lived in the same house since September 1989. (Gx. 1)

Applicant has also worked for the sheriff's department where she lives, and she has a long record of community activity and volunteer work. She has been active in a local Kiwanis Club chapter, in civic groups concerned about gang violence and at-risk youth, and in groups organized for the mutual professional benefit of other Korean-Americans and their businesses, such as the Korean Women's Association.

Applicant's father died in South Korea in 1974. Her mother came to the United States in 1980 and is a naturalized U.S. citizen living in the same city as Applicant. (Gx. 1; Gx. 2; Tr. 53) Applicant has four younger siblings – two sisters and two brothers. Both brothers and one sister live in the United States. One brother is a permanent resident alien who has been in the United States for at least 25 years. (Tr. 55 - 56) Her other brother and one sister are naturalized U.S. citizens. All three have been living in the United States for almost 30 years. (Tr. 59 - 60)

Applicant's other sister is a citizen of South Korea and still resides there with her husband, a shoe manufacturer, and their children. (Tr. 58 - 59) None of Applicant's relatives works for the South Korean government. The only such affiliation has been the two years of mandatory military service in the South Korean Army required of all South Korean males between age 18 and 35. Applicant's brothers completed their service in the 1970s. (Gx. 2)

Applicant also has extended family in South Korea. An uncle and two cousins are South Korean citizens who reside there, but Applicant has had little contact with them over the past 20 years. (Gx. 2; Tr. 54 - 55) Applicant's contact with her siblings over most of the past 20 years has been sporadic at best. Even her contact with her mother, who lives nearby, has been irregular. Applicant attributes the lack of regular communication or personal contact with her family members to each family member, including Applicant, having their own busy lives to live. The most recent contact she has had with family members was in preparation for her hearing in this matter when she contacted her siblings to update their information (occupations, addresses, and so on). (Tr. 108 - 109) As discussed below, Applicant also enlisted the aid of one of her cousins in South Korea to close Applicant's checking account in South Korea. (Ax. C; Ax. D)

After Applicant immigrated to the United States in 1974, she did not return to South Korea until about 2000. At that time, she made the first of several return trips to South Korea for various reasons, most related to her participation in the National Unification Advisory Council (NUAC). Applicant also belonged to the Korean Overseas Foundation, an international networking and support group for expatriate Koreans. NUAC is a non-governmental organization of Korean citizens who are working for the peaceful reunification of the Korean peninsula. (Ax. H - L) There are several chapters in the United States who meet periodically to discuss issues related to possible reunification. Each year there are conferences in South Korea, which Applicant has attended at her own expense. The leadership of these chapters communicates with

officials of the South Korean government. Applicant has resigned her position in both organizations. However, her role in both the NUAC and the Korean Overseas Foundation was negligible. She was not an officer of either and her activities carried no weight in the organizational decision making. At no time did her participation in either organization bring her into contact with officials of the South Korean government. (Tr. 65, 75, 79 - 80. 98 - 99)

Applicant also traveled to South Korea to work as a translator during the 2002 World Cup soccer tournament. At that time, to help with expenses, she opened a checking account with a South Korean bank. When she traveled to South Korea after that, she would deposit American currency in that account for conversion to Korean currency. The account was not intended for major financial transactions in South Korea. It currently contains the equivalent of about \$400. Applicant wants to close the account, but she must do so in person. Rather than pay \$2,000 to fly to South Korea, she has asked the bank to let her cousin represent her in closing the account. (Tr. 20 - 21)

During a trip to South Korea in 2004 for a NUAC conference, Applicant went on a group bus tour of Kungang mountain, a tourist site in North Korea just north of the Demilitarized Zone (DMZ). Trips to Kungang became available to tourists in 1998. Applicant's trip there was a routine event for tourists arranged by the South Korean government and heavily controlled by North Korean authorities, who prohibited any interaction between the tourists and North Korean citizens. Applicant never left the bus during the 30 minutes the group was actually at the tourist site, and she never had any contact with North Korean citizens or officials from that country. (Gx. 1; Gx. 2; Ax. E - G; Tr. 41, 66 - 70)

The Republic of Korea is a modern, highly developed democratic republic. Its government is freely elected and modeled after Western democracies consisting of executive, legislative, and judicial branches. Crime rates are lower there than in the United States and the Korean government has an excellent human rights record. There is no indication that the government oppresses or tries to otherwise manipulate its citizens through force or illegal detention. The United States and South Korea have had strong ties in financial, diplomatic, and military matters since Korean War hostilities ended in 1953. Both militaries conduct large-scale joint exercises every year. South Korea has also been a staunch ally in the Global War on Terror since 2001. However, despite this close relationship, South Korea is aggressive in its efforts to acquire information about U.S. information, aerospace, and nuclear technologies. The United States has implemented restrictions on the export to South Korea of technology related to missile systems, encryption software, night vision products, and so forth. (Gx. 3)

In 2009, Applicant sold a small business she and her daughter had owned. The purchaser sued Applicant after the sale and won a civil judgment against Applicant. The judgment went unpaid until May 2010 when Applicant and the plaintiff reached a settlement, whereby Applicant paid \$16,500 through two payments. (Answer to SOR; Ax. A; Ax. B; Tr. 81 - 83)

Applicant has significant financial assets in the United States. Other than the \$400 balance in her Korean bank account, she has no financial or property interests

overseas. She and her husband have over \$400,000 in retirement savings and have owned their house since 1989. There is no indication that they have ever had any financial problems. (Gx. 2; Tr. 84 - 88)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive. 6.3.

⁶ Directive, E3.1.14.

⁷ See *Egan*, 484 U.S. at 528, 531.

“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.⁸

Analysis

Foreign Influence

The Government established that Applicant, who was born and raised in South Korea, has close relatives who are citizens of that country. Some of them still reside there. This information raises a security concern about possible foreign influence that is addressed at AG ¶ 6 as follows:

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.

More specifically, the Government’s information requires consideration of the disqualifying condition at AG ¶ 7(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 presence of Applicant’s relatives (a sister, and uncle, and two cousins) in a foreign country is a potential source of concern because of the possibility that the country’s government or other foreign entities might try to leverage Applicant’s security clearance through Applicant’s relatives.

The fact that South Korean society is open and governed in a democratic fashion, and that there is no indication that the South Korean government oppresses its citizens, mitigates against a finding of heightened risk here. However, South Korea’s aggressive approach to collection of U.S. technologies is sufficient to support application of AG ¶ 7(a).

Nonetheless, despite being actively engaged in efforts to obtain U.S. industrial information and military technology, the stable character of South Korea’s society and South Korea’s strong alliance with the United States greatly undermine the probability that South Korea would try to coerce Applicant through her ties of affection there. Thus, the record also supports application of the mitigating condition at AG ¶ 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*

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.). The allegations at SOR 1.a and 1.b are resolved for Applicant.

Information about Applicant's membership in or affiliation with NUAC and the Korean Overseas Foundation requires consideration of the disqualifying condition at AG ¶ 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*). However, the record shows that those groups are not governmental entities, there was no contact with South Korean officials, and that Applicant's participation in those groups was negligible. The Government presented substantial administrative notice materials, but did not provide any information about NUAC or any of the other Korean-American interest groups in which Applicant has participated. Thus, it was not established that those groups might present a conflict of interest should Applicant receive a security clearance, and AG ¶ 7(b) does not apply.

Further, in an abundance of caution, Applicant has resigned from the NUAC. Available information supports application of the mitigating condition at AG ¶ 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 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*). The allegations at SOR 1.e and 1.f are resolved for the Applicant.

The allegation about Applicant's South Korean bank account is not disqualifying. Applicant's net worth in the United States is several thousand times greater than the \$400 remaining in her account there. Thus, the disqualifying condition at AG ¶ 7(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*) does not apply. The allegation at SOR 1.c is resolved for Applicant.

Finally, Applicant's travel to North Korea is not disqualifying. Trips to the Kumgang tourist site are routine. Also, Applicant was part of a group of tourists whose trip was tightly controlled by both North and South Korean officials. She had no contact with anyone from North Korea, and she never left the bus. The allegation at SOR 1.d is resolved for Applicant.

The totality of information bearing on the whether Applicant's ties to South Korea could be used to compromise national security shows that it is not very likely. She has lived in and been a citizen of the United States longer than she lived in her native land. All of her personal, professional, and financial interests are in the United States. She has a significant record of positive community activity where she has lived since 1989. On balance, she has mitigated the security concerns about possible foreign influence.

Outside Activities

The Government's information about Applicant's NUAC membership raised security concerns addressed at AG ¶ 36, as follows:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Of the specific disqualifying conditions listed under this guideline, the record requires consideration of AG ¶ 37(a) (*any employment or service, whether compensated or volunteer, with: ... (2) any foreign national, organization, or other entity*). On its face, AG 37(a) applies. Applicant's participation in NUAC activities was voluntary. She even paid her own way to South Korea for NUAC conferences. However, it was not established that the NUAC was a part of the South Korean government. At most, recommendations discussed at the membership level may be passed up to more senior levels of the NUAC for discussion with South Korean government officials. But the record does not show that Applicant was involved with any such discussions or that she had any contact with South Korean government officials as part of her NUAC activities. This information, along with the fact that Applicant resigned from the NUAC, supports application of the mitigating conditions at AG ¶38(a) (*evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States*) and AG ¶38(b) (*the individual terminates the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities*). Based on the foregoing, and for the same reasons discussed regarding SOR 1.e and 1.f, above, the allegation at SOR 2.a is resolved for Applicant. The security concerns about outside activities is mitigated.

Financial Considerations

The Government presented information that showed Applicant owed a \$16,500 debt from a civil suit stemming from the sale of Applicant's business in 2009. At the time of the SOR, this debt had not been paid. However, with her Answer, Applicant presented information showing that the debt was paid. Further, a personal financial statement submitted in response to the DOHA interrogatories showed that Applicant has a positive monthly cash flow and significant financial assets, but no unpaid or past-due debts. Insofar as no other adverse financial information was presented, there is no support for application of this guideline. The allegation at SOR 3.a is resolved for Applicant.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 59 years old and has been an upstanding member of her community as an American citizen since arriving in this

country. She has lived in and been a citizen of the United States longer than in her native South Korea. She fully disclosed all of her foreign contacts and activities, some of which required examination through the adjudicative process. However, the great weight of her interests and activities is in the United States. Her familial relationships are close by definition. However, her contacts with those persons is infrequent and do not put her in a vulnerable position with respect to the interests of a foreign government. Applicant's interest in South Korean affairs is understandable. However, the record as a whole shows that she is not susceptible to pressure from another government and that her activities do not conflict with her obligations to protect the interests of the United States. A fair and commonsense assessment of all of the available information shows that Applicant has mitigated the security concerns raised by the Government's information.

Formal Findings

Formal findings 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 - 1.f:	For Applicant
Paragraph 2, Guideline L:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge