



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-00980
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Foreign Influence concern. He has worked for the U.S. Government, as either an employee or a contractor, for over 30 years. He has held a security clearance the entire time without incident, including during periods when his foreign contacts and connections were far more extensive than at present. Clearance is granted.

Statement of the Case

On February 28, 2008, Applicant submitted his most recent security clearance application (SCA). On July 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), notifying Applicant that it was unable to find that it is clearly consistent with the national interest to continue his access to classified information due to the concern under Guideline B (Foreign Influence).¹ On July 29, 2011, Applicant submitted his Answer and requested a hearing.

¹ The SOR is undated and the date is taken from the acknowledgment letter sent with the SOR. DOHA took this action acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense*

On September 22, 2011, Department Counsel indicated the Government was ready to proceed. After coordinating with the parties, I scheduled the hearing for November 18, 2011. At hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel also submitted 16 documents for administrative notice regarding South Korea.² Applicant appeared at the hearing, testified, and submitted Applicant's Exhibits (AE) A through D. These exhibits were also admitted without objection. The transcript (Tr.) was received on November 29, 2011.

Findings of Fact

Applicant is (redacted) years old and was born in South Korea. He was a gifted musician when he was young and immigrated to the United States on a college scholarship in (redacted). He received his undergraduate and graduate degrees in physics in (redacted) and (redacted), respectively. He worked for the U.S. Government, as either an employee or a contractor, from (redacted) to (redacted). He has held a security clearance since (redacted), and has worked on highly sensitive U.S. Government projects. He has never mishandled or otherwise compromised classified information. Since (redacted), he has owned his own consulting company seeking work with the U.S. Government.³

Applicant is married and has two grown children. His wife and children are U.S. citizens, who reside in the United States. Applicant's brothers immigrated to the United States over 40 years ago. They are U.S. citizens, who have built their lives in the United States. Applicant's property and assets are all in the United States. He has only voted in U.S. elections. He has no connection, business or otherwise, to the South Korean government or military.⁴

Applicant's brothers-in-law are citizens and residents of South Korea. Applicant has known his brothers-in-law since he married his wife in (redacted), but still has trouble recalling their names. He has no "personal or professional relationship or direct contact with any of them." His wife's contact with her brothers is also minimal. Applicant cosigned a student loan for his wife's distant cousin, who went to graduate school in the United States. The cousin has been repaying the loan directly to the U.S. bank. He is far younger than Applicant and his wife, and their contact with this distant cousin has been

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

² Department Counsel's summary regarding South Korea, which is taken from Administrative Notice (AN) I – XVI, was marked as Hearing Exhibit (HE) I. The facts administratively noticed are set forth in my findings of fact.

³ Tr. at 21-35, 94-96, 114-115; GE 1; GE 2; AE A; AE B.

⁴ Tr. at 21-35, 143-148; GE 1; GE 2; GE 4; AE A.

sporadic. Applicant disclosed his foreign familial connections to South Korea starting 30 years ago with his first security clearance application.⁵ (SOR ¶¶ 1.a and 1.b).

Applicant's work for the U.S. Government has led to contacts with scientist and officials from South Korea. Most of these individuals are now retired. Applicant speaks with only one of these individuals now on a somewhat regular basis. Applicant was asked, through one of his South Korean professional contacts, to work on a contract for a South Korean company. He declined due to his reading of U.S. export laws. He testified that he would not engage in any type of work that could potentially raise a "conflict of interest situation." He was last invited to give a scientific presentation in South Korea in (redacted). He has fully disclosed his contacts with South Korean scientist and officials to the U.S. Government.⁶ (SOR ¶¶ 1.c – 1.f).

Applicant has been actively engaged with U.S. civic organizations for over two decades. He has met a number of South Korean government officials through his service with these U.S. civic organizations. He does not have a personal friendship with any of these South Korean officials, and his contact with them ceases altogether when they return to South Korea. Applicant has fully disclosed these contacts to the U.S. Government.⁷ (SOR ¶ 1.g).

Applicant's work for the U.S. Government has also led to a number of professional contacts with scientist from around the world, including two Russian scientists. Applicant met one of the Russian scientists (RS1) in about (redacted) at a scientific conference and they became friends due to their common interest in physics. RS1 has a contract through the U.S. military. Applicant last met with RS1 in approximately (redacted) – at another scientific conference. They recently started e-mail communication again in anticipation of participating at another international scientific conference. Applicant reported his contact with RS1 during his previous and current background investigations, including on his SCA. (SOR ¶ 1.h).

Applicant met the other Russian scientist (RS2) in 2005. Applicant researched the background of RS2 and discovered that RS2's family worked for the Russian government. Applicant declined to co-author a book with RS2, because the topic was in his specialized field that he has been working in for the U.S. Government for over 30 years. The U.S. Government recently approved RS2 to conduct research with Applicant on a U.S. military project. Applicant and RS2 have had numerous conversations regarding this U.S. military project. Applicant reported his contact with RS2, including his suspicion that RS2's family worked for the Russian government, on his current SCA and discussed it in detail over the course of several background interviews.⁸ (SOR ¶ 1.i).

⁵ Tr. at 50-71; AE A.

⁶ Tr. at 34-35, 50, 71-106; GE 1; GE 2; GE 3; AE A; AE D.

⁷ Tr. at 106-114; GE 3; AE A.

⁸ Tr. at 33-35, 50-51, 118-142, 156-157; GE 1; GE 2; GE 3; GE 4; AE A; AE C.

Applicant has had extensive foreign travel to various international scientific conferences and symposiums over the years. When required, he has disclosed this travel, sought prior approval from the U.S. Government regarding any presentations he has given, and submitted after action reports to his security manager. He has sought pre-publication review of his material from the proper U.S. authorities before publishing any matters. Applicant has been exceptionally security conscious during his foreign travel and with his foreign contacts.⁹

South Korea is a stable, democratic republic. The United States and South Korea have been close allies since 1950. The United States has thousands of military personnel stationed in South Korea, and frequently conducts joint military operations with South Korea. However, South Korea has a history of intelligence gathering efforts against the United States, and has been the unauthorized recipient of sensitive U.S. technology. The South Korean government generally respects the human rights of its citizens, but has vague rules regarding arrest and detention when national security is involved.¹⁰

“Russia is a federation, but the precise distribution of powers between the central government and the regional and local authorities is still evolving.”¹¹ U.S.-Russian relations have gone through dramatic changes over the past century: from military alliance during World War II, to outright hostility during the Cold War, to its current state of mutual cooperation in areas of shared interest.¹² However, several areas of concern regarding Russia remain. One such area of concern is Russia’s human rights record, due to “numerous reports of governmental and societal human rights problems and abuses during the year.”¹³ The U.S. State Department recently stated that the “[r]ule of law and due process violations remained a problem” in Russia.¹⁴ Another area of vital concern is Russia’s pervasive intelligence gathering efforts against the United States.¹⁵

⁹ Tr. at 29-31, 114-119, 123-127, 144-146, 149-150; GE 1; GE 2; AE A; AE D.

¹⁰ AN I – XVI.

¹¹ See U.S. State Department, *Background Note: Russian Federation*, November 2, 2011, available at www.state.gov. The Government asked that I take administrative notice of facts relating to South Korea. (Tr. at 41). However, the potential for foreign influence from Russia is clearly an important aspect of this case. Thus, I have taken administrative notice of facts regarding Russia from official U.S. Government documents that are publically available.

¹² *Id.* See also U.S. State Department, *200 Years of U.S.-Russia Relations*, also available at www.state.gov

¹³ See U.S. State Department, *Human Rights Report: Russia*, April 8, 2011, available at <http://www.state.gov/documents/organization/160474.pdf>.

¹⁴ *Id.*

¹⁵ See generally Office of the National Counterintelligence Executive, *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, October 2011, available at: http://www.ncix.gov/publications/reports/fecie_all/Foreign_Economic_Collection_2011.pdf.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15.¹⁶ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."¹⁷

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁶ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

¹⁷ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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.”

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth 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.

Applicant’s foreign contacts and connections to South Korea and Russia are sufficient to raise a foreign influence concern, and the following disqualifying conditions under 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; and
- (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.

Applicant’s foreign connections and contacts do not end the foreign influence analysis. Applicant’s relationship with his foreign contacts and, more importantly, his over 30 years of work for the U.S. Government where he has always staunchly safeguarded classified information, establishes the following mitigating conditions under 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 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.; and

- (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's relationship with his family members, friends, and professional acquaintances in South Korea is not close, especially when compared with his relationship with his family, friends, and professional acquaintances in the United States. The vast majority of Applicant's professional acquaintances from South Korea, including those in high government post, have either retired or ceased all contact with Applicant years ago. As for Applicant's Russian contacts, both have been vetted by the U.S. Government and work on U.S. military contracts. This lessens to a degree the danger of foreign exploitation posed by these foreign contacts from Russia. AG ¶¶ 8(a) fully applies to Applicant's foreign connections to South Korea, and partially to his Russian connections.

Applicant's sense of loyalty and obligation to his foreign contacts in South Korea and Russia is minimal. Further, as evidenced by Applicant's past history, he can clearly be expected to resolve any potential conflict of interest in favor of the United States. He has turned down lucrative job offers from his South Korean and Russian contacts, simply because he was concerned that such jobs could potentially involve "gray areas" involving U.S. classified information. He has always reported his foreign contacts and travel. He has conducted his own background checks on his foreign contacts to obviate the potential of foreign exploitation. Applicant has been entrusted with classified information in the past when his foreign contacts and travels were far more extensive and he has never once compromised or mishandled such information. In short, Applicant has exhibited the level of reliability and conscientiousness one would expect of an individual entrusted with this nation's secrets. Security clearance adjudications are predicative judgments, where an applicant's past history is the best indicator of future conduct.¹⁸ Applicant established that he has a long history of safeguarding classified information and there is no reason to doubt his ability to do so going forward.

Applicant's longstanding relationships in and loyalty to the United States is unquestionable.¹⁹ His family, property, and assets are all in the United States. He has

¹⁸ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance decisions are not an exact science, but rather predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances.") [citing to *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988)].

¹⁹ As noted above, security clearance adjudications are not loyalty determinations, but an applicant's "loyalties to the U.S." is a matter that may be considered in mitigation in addressing a Guideline B case.

worked for the U.S. Government, either as an employee or a contractor, for over 30 years. He continues to want to serve the nation. AG ¶¶ 8(b) applies. Applicant met his heavy burden of persuasion and mitigated the foreign influence concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).²⁰ I incorporate my Guideline B analysis herein and note some additional whole-person factors. Starting over 30 years ago, when he was first granted a security clearance, Applicant has been candid about his foreign connections. Since then, he has gone through periodic investigations and has always been upfront about his foreign contacts. I had an opportunity to evaluate his responses and observe his demeanor as he testified. I found him candid and above all else conscientious about his security obligations. These whole-person factors, in conjunction with the favorable matters noted above, fully mitigate the foreign influence concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

²⁰ (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.