



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-06640

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Joseph Testan, Attorney At Law

May 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 23, 2010. (Government Exhibit 2). On January 18, 2012, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on February 7, 2012, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on March 12, 2012. A notice of hearing was issued on March 13, 2012, scheduling the hearing for April 11, 2012. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were received without objection. The Applicant called four witnesses and offered five exhibits, referred to as Applicant's

Exhibits A through E, which were admitted into evidence without objection. He also testified on his own behalf. The transcript of the hearing (Tr.) was received on April 20, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in South Korea that were set forth in Administrative Notice documents 1 through 16. Applicant had no objection to the documents, but correctly noted that some of the information is over fifteen years old and should be considered when deciding on the weight to give the document. (Tr. pp. 17 and 22.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR testimony and the exhibits. The Applicant is 52 years of age and has a PhD in Electrical Engineering. He is employed as a Senior Engineer by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

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

The Applicant admitted each of the allegations set forth under this guideline. The Applicant was born in Seoul, South Korea in 1958, to parents from South Korea. To follow his dream of studying and living in the United States, he immigrated with his parents to the United States in 1982, at the age of twenty-four with the intent of making it his permanent home. From 1983 to 1989, he attended graduate school in the United States and obtained his master's degree and PhD in Electrical Engineering. He became a naturalized United States citizen in 1988. (Government Exhibit 2.) He is not a dual citizen of Korea and possesses only a United States passport. (Government Exhibit 2.) He got married in 1985 to an American citizen and they have two native born American children. He has never worked for the Korean government and has no intentions of ever doing so. Since 1989, he has worked in the defense industry, and has held a security clearance all but one year of that time. He has never been cited for a security violation. He began working for his current employer in 1997. (Government Exhibit 2.) His loyalties lie with the United States and he states that he plans to retire here. (Tr. p. 86.)

The Applicant's father is deceased. His mother is a permanent resident of the United States, is 87 years old, suffers from Alzheimer's disease and resides with the Applicant. The Applicant has five sisters and no brothers. Four of his sisters, and their children, which number 11 nieces and nephews, are all United States citizens and reside in the United States. They have no connection to the Korean Government or the South Korean military in any way.

The Applicant's fifth sister and brother-in-law are citizens and residents of South Korea. His sister is a housewife. His brother-in-law is employed by the South Korean Intelligence Agency. The Applicant currently has no contact whatsoever with his sister or brother-in-law. The last time he has physical contact with her was in 2003 when he went to South Korea to bring home his father's ashes. (Tr. p. 79.) His last communication with his sister or brother in law was in 2006 or 2007, when his sister called to inform him of his uncle's death. (Tr. p. 80.) The conversation lasted less than half a minute. He has had no contact with his sister or brother-in-law since then. (Tr. p. 81.) He has no intentions of having any further contact with his sister or brother-in-law in South Korea again. (Tr. p. 81.) He states that he has no ties of affection toward his sister in South Korea, and feels no obligations toward either one of them. (Tr. p. 81.) Furthermore, he has no intentions of visiting South Korea. (Tr. p. 82.)

The Applicant further stated that he and his sister are very different and have nothing in common. He does not have a good relationship with sister. At some point she unfairly criticized his wife, which he has not forgotten. She is also a member of a religious cult that practices exorcism. He is a Christian conservative presbyterian. (Tr. pp. 90 - 92.)

The Applicant was asked why, in response to Section 19 of the security clearance application, which asks about foreign contacts and foreign activity, did he not put down his brother-in-law. (Tr. p. 99.) He stated,

It didn't come to my mind actually - - I have very minuscule relationship with them, so when I filled - - if I remember correctly, I think that is the first part there are some questions about my siblings, so I filled out everything. Then when I have this question, it didn't come to me. It only happened that the interviewer asked me about all these kinds of things in detail. The time of the information, so at the time I could not - - because that information came to me at the time, so I couldn't deny that fact. That's why I told everything to my interviewer then. So I gave that information to her that I know. (Tr. p. 100.)

During the course of his security clearance investigation, the Applicant was asked to find out the status of his brother-in-law in South Korea, since he had no information about him. The Applicant asked his wife to make contact with his sister to follow up with the instructions he had received from the Government investigator. His wife subsequently called the Applicant's sister and found out information about their brother-

in-law, and the information was given to the Applicant who in turn gave it to the investigator. (Tr. p. 102.)

When asked if, in the unlikely event someone were to put pressure on the Applicant to reveal United States classified or sensitive information by threatening his sister in South Korea, what would he do, the Applicant stated, “. . . my company has the security training every year and they provide a Hot Line. So if it happens I will report it immediately to my Security Manager or the Hot Line.” (Tr. p. 85.) He was also asked if someone were to call him from South Korea, whether it be his brother-in-law or someone else and say that they were holding his sister hostage, unless he revealed classified information to them and that they were going to harm her, what would he do. The Applicant stated that he would report it to his security manager. (Tr. p. 86.)

The Applicant has no financial assets of any kind in Korea. His net worth in the United States is more than one million dollars. (Applicant’s Exhibits C and D, and Tr. pp. 87- 88.)

Four witnesses testified on behalf of the Applicant, including his supervisor of fifteen years, a close friend of twelve years with whom he attends church, his wife, and a brother-in-law (not the one who lives in South Korea). Each of these individuals stated in different terms that the Applicant is a reliable, trustworthy, responsible person who uses good judgment. He is grateful to the United States for the opportunities it has afforded him. He plans to remain in the United States and retire here. (Tr. pp. 24 - 68.)

Letters of recommendation from the Applicants’s pastor, church associates, friends and family attest to his reliability, good judgment and trustworthiness. (Applicant’s Exhibit A.)

Letters of recommendation from his supervisor, coworkers and other professional associates indicates, that he is a hard worker, a talented problem solver and great asset to the organization, open and honest, and they have no reason to mistrust his loyalty to the United States. He is recommended for a security clearance. (Applicant’s Exhibit B.)

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

POLICIES

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

Foreign Influence

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

Conditions that could raise a security concern:

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

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

7. (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.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country

are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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

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

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

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

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

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The

adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

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

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

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

Under Foreign Influence, Disqualifying Conditions 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*; 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*, and 7.(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* apply. However, Mitigating Conditions 8.(a) *the*

nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; 8.(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and 8.(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation also apply.

It is acknowledged that the Applicant's sister and brother-in-law are citizens of and reside in South Korea, and that his brother-in-law works for the South Korean Intelligence Agency. Under ordinary circumstances this fact could disqualify the Applicant from access to classified information. However, this is not an ordinary case. Here, the Applicant has no contact with his sister or his brother-in-law in South Korea. In fact, he does not get along with his sister. He has not spoken to her or his brother-in-law in over six years and has no intentions of communicating with her in the future.

It is noted that the current political situation in South Korea elevates the cause for concern in this case. In this case, the Applicant has everything to lose and nothing to gain by engaging in any further communications with his sister in South Korea. Everything that he has worked for and everything that he stands for will be destroyed. The Applicant has resided in the United States for the past thirty years. He has long standing ties and deep relationships here. All of his family, including his mother, and four sisters and their families are citizens of and residents of the United States. The Applicant is married to an American citizen and they have two native born American children. His mother resides with him in the United States and suffers from a mental illness. The United States is the Applicant's permanent home and he has adopted the American culture and its values. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. The Applicant is an intelligent, senior engineer with an excellent work record for the Defense Department. His favorable evidence, including the testimony and letters from his professional associates and friends that know him well, in addition to his overall integrity gleaned from his own

testimony, demonstrate his trustworthiness. He has presented sufficient evidence in mitigation to demonstrate that he is not a security risk.

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

FORMAL FINDINGS

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

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant

DECISION

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

Darlene Lokey Anderson
Administrative Judge