



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-06668

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

February 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 21, 2011. (Government Exhibit 1). On August 29, 2011, 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 September 15, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on December 1, 2011. A notice of hearing was issued on December 13, 2011, scheduling the hearing for January 17, 2012, by video-conference. At the hearing, the Applicant called two witnesses to testify and offered one exhibit, referred to as Applicant's Exhibit A. He also testified on his own behalf. The

Government offered two exhibits referred to as Government Exhibits 1 and 2, which were received without objection. The record remained open until close of business on January 23, 2012, to allow the Applicant to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, consisting of nine pages, referred to as Applicant's Post-Hearing Exhibits 1 through 4. The transcript of the hearing (Tr.) was received on January 25, 2012. Based upon a review of the case file, 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 15. Applicant had no objection. (Tr. pp. 29-30.) 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 46 years of age, married and has four children. He is the Managing Partner of his company, 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 admits each of the allegations set forth in the SOR, except 1(c). The Applicant was born and raised in the United States. With a desire to serve his country, he joined the Air Force at the age of twenty in 1985. He served honorably for three and a half years until the draw down in April 1988. He then joined the Air Force National Guard and then the Army National Guard. In October 1989, he joined the active duty Army and completed his service in June 1996. He received several achievement medals for his service in the Air Force and the Army. (Applicant's Exhibit A.) During his military service the Applicant held a Top Secret and Secret security clearances. The Applicant has held a security clearance for twenty-six years and has never had a security clearance violation.

In 1996, the Applicant worked for a U.S. defense contractor in Korea. In September 1998, he met his wife, a citizen of South Korea, and they were married in July 1999. The Applicant and his wife then moved back to the United States. The Applicant is estranged from her father in Korea and has limited or no contact with any of

her relatives in Korea. In December 1999, the Applicant's job relocated once again to Korea. His wife currently has a green card and plans to apply for United States citizenship as soon as she is eligible in 2016. (Tr. p. 54.) They have four children, two were born in the United States and two were born in Korea.

In June 2009, while living in Korea and working for a U.S. defense contractor, the Applicant purchased a house in Korea worth approximately \$500,000. (Tr. p. 36.) He currently owes \$475,000 on the mortgage and plans to sell it for \$520,000 or \$530,000. He is currently not collecting rent from the tenants in the house in Korea as it is going to be included in the sales agreement when he sells the house. (Tr. p. 60.) According to Korean law the Applicant must own the house for three years before he can sell it. He will not be able to sell the house until June 2012. It has already been arranged that in June 2012, the current tenants will purchase the house. The only reason the Applicant maintains a Korean bank account with \$2,000 in it, is solely for the purpose of making the payments on the house. He plans to close the bank account once the house is sold.

In April 2008, the Applicant and his partner started their own defense contracting business. Their company is restricted from doing business outside of the United States. (Tr. p. 65.) His partner in the company remains in South Korea and is operating his part of the business from there. In 2010, the Applicant moved his family from Korea to a United States territory. The Applicant has no intentions of returning to Korea. The Applicant plans to purchase a house in the United States once the house in Korea is sold. (Tr. p. 69.) His net worth in the United States is close to a million dollars, which is mainly the value of his company. (Tr. pp. 62 and 66.) He also has a retirement account that contains about \$30,000, bank accounts with approximately \$40,000 to \$50,000 and three vehicles, a jet ski and other miscellaneous assets worth over \$150,000. (Tr. p. 67.)

The Applicant's entire family, which includes his mother, four brothers and sisters, and cousins resides in the United States. (Tr. p. 63.) He has no plans of ever returning to Korea for any reason to live.

A retired Sergeant Major in the Army, who has worked with and spent time with the Applicant during his military career testified to the Applicant's reliability, trustworthiness and good judgment. (Tr. pp. 74 -78.)

The Chief Information Officer, who is also retired military, testified that he met the Applicant in September 2009. He has no knowledge of anything about the Applicant that would be a security risk or any reason why the Applicant should not hold a security clearance. (Tr. pp. 86 -91.)

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. 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. (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.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationship 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 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;

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

8. (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.

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 an acceptable security risk. 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 adverse conduct 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 past conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. 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.

In this case the Government has met its initial burden of proving that the Applicant maybe subject to foreign influence (Guideline B). This evidence indicates unreliability

the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

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.(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* apply.

However, Mitigating Conditions 8.(a) *the nature of the relationship 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 obligations 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*; 8.(d) *the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority*; and 8.(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* are also applicable.

It is noted that the current political situation in South Korea elevates the cause for concern in this case. The Applicant has several Korean assets that raise questions. He owns a home in Korea worth a half million dollars and has a Korean bank account that contains about \$2,000 in it. Since moving to a U.S. territory, however, he is in the process of selling the house and closing the bank account in Korea. He has no other assets in Korea. All of his assets are in the United States that include his part of the business, his retirement accounts, bank accounts and vehicles. His immediate and extended family reside in the United States. Furthermore, his company is restricted from doing business outside of the United States. In the event his company violates this agreement, he will lose his government contract. Although his wife is presently a citizen of South Korea, she plans to apply for American citizenship as soon as she is eligible in 2016. The Applicant and his family intend on living and remaining in the United States. Under the particular facts of this case, the possibility of foreign influence does not exist and there is minimal to no 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. I have also considered his favorable evidence, including the testimony of his two witnesses, his military career and work history.

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
Subpara. 1.c.: For the Applicant
Subpara. 1.d.: 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

