



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



In the matter of:)
)
) ISCR Case No. 11-14056
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: Alan K. Hahn, Esq.

04/15/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 13, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. DOHA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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) effective within the Department of Defense on September 1, 2006.

Applicant answered (Answer) the SOR on September 24, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 25, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 7, 2013, and the hearing was convened as scheduled on March 13, 2013. DOHA received the transcript of the hearing (Tr.) on March 22, 2013.

Procedural and Evidentiary Rulings

Withdrawal of SOR Allegations

On December 31, 2012, Department Counsel amended the SOR by withdrawing the allegations stated in ¶¶ 1.a, 1.d, 1.f, 1.h, 1.i, 1.j, 1.k, 2.a, and 3.a. This amendment was made pursuant to ¶ E.3.1.13 of the Directive. For clarity, I decided against renumbering the remaining allegations. I will enter findings in favor of Applicant on those allegations that were withdrawn through the amendment.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about The Republic of Korea (South Korea). No objection was raised and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 through 2, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as HE II. Applicant testified and offered Exhibits (AE) A through E, which were admitted without objection. Applicant's exhibit index is marked HE III.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He was born a U.S. citizen to Korean parents who were residing in the U.S. territory of Guam at the time. Because of his parents' South Korean citizenship, he is a dual citizen of South Korea and the United States. He has a doctorate degree in engineering. He is married to a South Korean citizen, who is currently a resident alien. They were married in December 2005 in the United States. They have one child who is a native-born a U.S. citizen. He is seeking a security clearance for the first time.¹

Applicant's father worked as a banker for the Korean Exchange Bank at the time of Applicant's birth. His father was not a South Korean government official even though the bank was a quasi-government entity. The purpose of the bank was to provide capital to South Korean businesses located throughout the world. Applicant lived in various places in the world as a result of his father's job. He attended high school and college in Korea. In 1994, he came to the United States to pursue advanced educational degrees. He obtained a master's degree and a Ph.D. from U.S. universities. He has remained and lived in the United States since 1994. After receiving his Ph.D., he was hired by the company for whom he currently works. He has achieved great success working for the company. He currently earns an annual income of about \$140,000, exclusive of

¹ Tr. at 24, 29; GE 1; Answer.

bonuses which vary in amount. He has a 401(k) retirement plan worth about \$260,000. He also has other investments totaling about \$50,000. He owns a home that he currently rents to someone else. He and his family reside in a leased home. He moved from his own home because he wanted to live in a better school district. He owed more on his home than what he could sell it for, so he decided to rent his home and become a renter himself until the market conditions improved. He has voted in every federal and state election since moving here in 1994. He has never voted in any South Korean elections. Applicant admitted that his mother, father, mother-in-law, father-in-law, brother-in-law, and some friends are citizens and residents of South Korea.²

Applicant met his wife in 2005 when he was visiting South Korea. They were married in December 2005 and she moved to the United States with him. She received an MBA degree from a U.S. university. Their son, who was born in 2008, is not a dual South Korean-U.S. citizen.³

Applicant's mother is 78 years old. She worked as a school teacher in the 1960s, but has not worked outside the home since then. She does not have any government affiliations. Applicant communicates with her about once a week.⁴

Applicant's father is 82 years old. He is a retired banker. He supports himself and his wife with his investments and real estate holdings. He does not have any government affiliations. Applicant has contact with him weekly.⁵

Applicant's mother-in-law is 64 years old. She is a homemaker and has no connection to the South Korean government. His wife has contact with her about every two weeks.⁶

Applicant's father-in-law is 69 years old. He owned a small business, but is now retired. He has no connection with the South Korean government. Applicant and his wife have contact with him about every two or three weeks.⁷

Applicant's brother-in-law (his sister's husband) works for private industry. He has no connection with the South Korean government. Applicant is in contact with him once every few months.⁸

² Tr. at 25-28; AE B-D; Answer.

³ Tr. at 40-41.

⁴ Tr. at 33-34.

⁵ Tr. at 34-35.

⁶ Tr. at 35-36.

⁷ Tr. at 36.

⁸ Tr. at 37-38.

Applicant's friend is from his high school years. The friend has no connection to the South Korean government. Applicant is in contact with him about once a year.⁹

Applicant's brother is a South Korean citizen who is a legal resident alien in the United States. He is an attorney who works for a large national law firm. Applicant denies the allegation in the SOR that his brother is currently a trade consultant to the South Korean Foreign Ministry. His brother stated that his law firm was retained by the South Korean government to represent it in connection with the passage of a trade agreement between the United States and South Korean governments, which was ratified in March 2012. His brother's role in the representation included lobbying for the passage of the agreement. His law firm registered their activities under applicable law. Applicant and his brother do not discuss each other's business.¹⁰

Applicant admitted that he owned property in South Korea that was valued at approximately \$400,000, but now is probably worth about \$800,000. The property was acquired by his father some time ago. It is a residential condominium. His father gave him the property as a future inheritance. Applicant did not pay anything for the property, nor has he collected any rental income from it. Any rental income has gone to his father. Currently, Applicant's sister and her family reside there, rent free, and will remain there for at least the next three years while her children are still in school. Applicant has thought very little about the property, letting his father deal with it during his lifetime.¹¹

Applicant attempted to renounce his South Korean citizenship some time ago, but because he was of military service age, South Korean law would not let him renounce. Applicant presented character letters from several coworkers, including company officers, such as the president and two vice presidents, and former colleagues. Universally, Applicant is held in great esteem for his integrity, trustworthiness, reliability, and good judgment. He has been exposed to sensitive proprietary and personnel information and has treated this information with the utmost care.¹²

South Korea

I have taken administrative notice that South Korea is a stable, democratic republic. The South Korean government generally respects the human rights of its citizens. However, South Korea has some reported human right problems including: hazing of military personnel, imprisonment of conscientious objectors, the government's interpretation of laws regulating the Internet and telecommunications, and sexual and

⁹ Tr. at 38-39.

¹⁰ Tr. at 41-42; AE A.

¹¹ Tr. at 42-46; Answer.

¹² Tr. 32, 61-62; AE E.

domestic violence. South Korean National Security Law allows arrest and detention for conduct the Government views as “endangering the security of the State.”¹³

I also have taken administrative notice that South Korea and North Korea have a strained relationship. In 2010, relations between the two nations experienced significant setbacks when a South Korean warship was struck by a North Korean torpedo and sunk. Tensions further increased when North Korea fired upon a South Korean island with artillery.¹⁴

Finally, I have taken administrative notice that South Korea has a history of collecting protected U.S. information. On several occasions, South Korea has been the unauthorized recipient of sensitive technology in violation of U.S. export control laws. South Korea has been identified as one of the seven most active nations engaging in foreign economic collection and industrial espionage.¹⁵

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate,

¹³ HE I.

¹⁴ HE I.

¹⁵ HE I.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. 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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for Foreign Influence is set out in AG ¶ 7 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Four are potentially applicable 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 regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial property interest in a foreign country.

Applicant's father, mother, father-in-law, mother-in-law, brother-in-law, and friend are citizens and residents of South Korea. His wife and brother are citizens of South Korea, but reside in this country. South Korea is a strong ally of the United States, but it has engaged in industrial espionage in the past. The presence of Applicant's relatives in South Korea creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. He also lives with his wife who is a citizen of South Korea and his brother's law firm has represented the interests of South Korea. He owns a substantial property interest in South Korea. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(f) the value or routine nature of the property interest is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's contact with his South Korean relatives is normal. None of his relatives are affiliated with the South Korean government. The South Korean government is a stable, democratic government that generally respects human rights. It is also a very supportive ally of the United States. Consequently, given the nature of the relationship Applicant has with his relatives, it is unlikely Applicant will be put in a position of having to choose between his relatives' interests and those of the United States. AG ¶ 8(a) applies.

Applicant was born a U.S. citizen and has lived in this country since 1994. He attended graduate school here, obtained his first job here, and is raising his family here. He attempted to renounce his South Korean citizenship, but was unable to do so because of Korean law. He is respected as a loyal employee with good judgment who has been exposed to sensitive information and has always properly safeguarded it. His brother's representation of South Korean interests was a typical attorney-client relationship properly documented under U.S. law. His wife has assimilated to the lifestyle and culture in this country. I find Applicant's obligations to his relatives are minimal and he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any potential conflict of interest in favor of the United States. Both AG ¶¶ 8(b) and 8(d) are applicable.

Applicant's property interest, although substantial in value, is not important enough to him to cause a conflict in his loyalty to the United States. His father essentially controls the property and his sister lives in it. He does not collect any rent from the property and never has. These circumstances make it extremely unlikely that the property could be used to influence, manipulate, or pressure him to betray interests of the United States. AG ¶ 8(f) applies.

Analysis

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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and his nearly 20 years living in this country. I also considered the totality of Applicant's ties to South Korea. 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."¹⁶ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Applicant is a loyal U.S. citizen who has strong ties to his community. South Korea is a strong, reliable ally of the United States. It has a democratic government and respects human rights.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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-1.k:	For Applicant (¶1.a, 1.d, 1.f, 1.h-1.k withdrawn)
Paragraph 2, Guideline C:	FOR APPLICANT (Withdrawn)
Subparagraph 2.a:	For Applicant (Withdrawn)
Paragraph 3, Guideline J:	FOR APPLICANT (Withdrawn)
Subparagraph 3.a:	For Applicant (Withdrawn)

¹⁶ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Conclusion

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

Robert E. Coacher
Administrative Judge