



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 15-01071

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

February 3, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2014. (Government Exhibit 1.) On December 2, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 17, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared

to proceed on February 4, 2016. The case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 17, 2016. I convened the hearing as scheduled on June 22, 2016. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant testified on his own behalf. I granted Applicant's request to leave the record open until July 29, 2016, to permit him to submit additional evidence. On July 25, 2016, he submitted Applicant Exhibit A. Department Counsel had no objection, and the exhibit was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on June 30, 2016.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Korea (Korea). (Tr. 16-17.) The request and the referenced 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

Applicant is a 46-year-old employee of a defense contractor, and is applying for a security clearance in connection with this employment. He has a bachelor's degree. He is married to his third wife, who is a Korean national. He has two children from his prior marriages. His children are American citizens and live in the United States, as do his parents. (Government Exhibit 1 at Section 18; Tr. 43-44.)

Paragraph 1 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign connections that may show divided loyalties, or make him vulnerable to pressure or coercion. Applicant admitted all the factual allegations under this paragraph, with explanations. He supplied additional evidence to support his request for access to classified information.

Applicant was born in 1970 in what was then West Germany. At that time his father was a senior non-commissioned officer in the United States Air Force (USAF). His mother was, and still is, a German national. Applicant served honorably in the United States Army from 1992 to 2000. He moved to Korea as a civilian employee of the USAF in 2008, and has lived there since that time. He began work for his defense contractor employer in 2014. Applicant is well aware of his security responsibilities, given that he is the son of a military member and a former member of the armed forces himself. He has taken required security awareness training. (Government Exhibit 1 at Sections 1, 13A, 15; Tr. 42-43.)

Applicant met his current wife in about 2011. They were married in 2012. She is a Korean national. Applicant's wife lived in the United States for many years when she was younger, while her father was stationed in the United States as a member of the Korean armed forces working with American forces. Her father retired in 2013 as a senior commissioned officer in the Korean armed forces. He currently works for a private company in Korea. Applicant's mother-in-law is a housewife with a very limited understanding of English. Applicant is not close with either one of them, and his contacts with them are of a routine nature. Applicant's sister-in-law, though a Korean national, resides in the United States and has for many years. None of them have asked Applicant about his job, or about any sensitive information. (Tr. 31-39, 45-46.)

Applicant's wife, as a Korean national, is entitled to medical and other benefits while living in Korea. She is not currently employed, but previously worked on the base where Applicant is employed. She has an account with a small balance in a Korean bank, which she uses to pay her bills. Applicant and his wife intend to move to the United States once his current contract ends. According to Applicant, her desire is to become an American citizen. (Tr. 27-30, 40-41, 48-49.)

Applicant has no assets in Korea. He has about \$45,000 in cash in an American bank. (Applicant Exhibit A at 11.)

Mitigation

Letters of recommendation were submitted for Applicant from people who know him, personally and professionally. They include three senior civilian employees of the USAF, as well as two co-workers. The writers described Applicant as a "hard-working, conscientious person," with "the highest integrity." (Applicant Exhibit A at 6-10.)

Administrative Notice

Applicant has contacts with Korea. Accordingly, it is appropriate to discuss the current situation in Korea.¹ The United States and Korea have been allies since 1953, when a Mutual Defense Treaty was signed. This treaty, according to the State Department, is "the foundation for the comprehensive alliance that endures today." In addition, "The United States and [Korea] share a long history of friendship and cooperation based on shared values and interests." In the realm of defense, "A Combined Forces Command coordinates operations between U.S. units and R.O.K. [Korean] armed forces."² Korea also has a history of collecting protected United States Government

¹All of the following statements in this paragraph are supported by the documents submitted by the Department Counsel in support of her request for administrative notice and its attachments, except as otherwise stated.

²U.S. Department of State, Bureau of East Asian and Pacific Affairs, *Fact Sheet: U.S. Relations With the Republic of Korea*, <https://www.state.gov/r/pa/ei/bgn/2800.htm> (January 25, 2017.) See U.S. Department of Defense, From a White House News Release, *Obama, South Korean President Reaffirm U.S.-South Korea Alliance*, <https://www.defense.gov/News/Article/Article/935222/obama-south-korean-president-reaffirm-us-south-korea-alliance>. (September 16, 2016.)

information. This includes foreign economic collection and espionage. Korea generally respects the human rights of its citizens, but there are some issues that are of concern to the United States.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Paragraph 1 (Guideline B – Foreign Influence)

The concern under Guideline B is styled as follows at AG ¶ 6:

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 has family connections to Korea, specifically his wife and in-laws, which can be viewed under a heightened risk standard. The following Disqualifying Conditions apply to this case 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;
- (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; and
- (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.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this case, given his particular background:

(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; and

(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.

Applicant proved that he is a conscientious and patriotic citizen, and member of the defense industry. As a veteran, long-time civilian employee of the USAF, and now as a contractor, he is knowledgeable about security and understands his responsibilities. Applicant has substantial family in the United States, including his parents and children, and all of his assets are in American funds. Applicant's wife has a minimal amount in her Korean bank account. Co-workers and senior civilian employees of the USAF vouch for his loyalty and ability to safeguard classified information.

Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his wife and in-laws being Korean. The security significance of his father-in-law is seriously reduced by the fact the father-in-law is retired from the Korean military, which is an ally of the United States, and has expressed no interest in Applicant's job. Guideline B is found for Applicant.

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 pertinent facts and circumstances surrounding this case. I specifically considered the intelligence activities of Korea. I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign connections and is eligible for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.h: For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge