



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



In the matter of:

ISCR Case No. 15-02170

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Alexandra Baj, Esq., and Stewart A. Baker, Esq.

08/28/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's sister, parents-in-law, and father are citizens and residents of South Korea. He frequently communicates with his sister and to a lesser extent with his other relatives. He had casual and infrequent contacts with an important official in the South Korean Government from 2011 to 2015, and there is no reason for his contacts with the official to resume. He has resided in the United States for 50 years and been a U.S. citizen for 40 years. Foreign influence security concerns are mitigated by his strong connections to the United States. Allegations of falsification of his May 16, 2013 Questionnaire for National Security Positions (e-QIP) (SF 86) (SCA) (Government Exhibit (GE) 1) are refuted, and personal conduct security concerns are mitigated. Access to classified information is granted.

Statement of the Case

On May 16, 2013, Applicant completed and signed his SCA. (Government Exhibit (GE) 1) On June 10, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under the foreign influence and personal conduct guidelines. (HE 2)

On July 19, 2016, Applicant responded to the SOR. (HE 3) On September 14, 2016, Department Counsel was ready to proceed. On April 7, 2017, the case was assigned to me. On April 12, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 3, 2017. (HE 1) Applicant's hearing was held as scheduled.

Department Counsel offered two exhibits; Applicant offered 16 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 17-18, 22-26; GE 1-2; AE-AE P) On May 15, 2017, DOHA received a copy of the hearing transcript.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Issues

Department Counsel requested administrative notice of facts concerning South Korea. (Tr. 18-19; Administrative Notice Request) Applicant provided a document for administrative notice from the U.S. Department of State website, U.S. Bilateral Relations Fact Sheets, *U.S. Relations With South Korea* (Jan. 25, 2017), <http://www.state.gov/r/pa/ei/bgn/2800.htm>, which was accepted for administrative notice without objection. (Tr. 19; HE 5) The parties' documents provided verification, detail, and context for facts relating to South Korea's relationship with the United States. (Tr. 19)

I have also taken administrative notice of a document from the U.S. State Department website: *Background Note South Korea* (Apr. 12, 2012) <http://www.state.gov/outofdate/bgn/southkorea/200974.htm>. (Tr. 20-21, 122; HE 6)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). See the Republic of Korea or South Korea section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning South Korea.

Findings of Fact²

Applicant admitted or partially admitted the allegations in SOR ¶¶ 1.a through 1.h, 2.a, and 2.b. (HE 3) He also provided extenuating and mitigating information. (HE 3) I have accepted his admissions as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 63-year-old expert in information technology, and he has been employed for 22 years by a non-profit entity that provides independent, objective advice to the DOD and other U.S. Government entities. (Tr. 33, GE 1) He graduated from high school, and he received a bachelor's degree and a master's degree in business administration in the United States. (Tr. 72)

In 1992, Applicant married. (Tr. 70) His spouse was born in South Korea in 1967; she emigrated from South Korea to the United States when she was 13; and in 2003, she was naturalized as a U.S. citizen. (Tr. 31, 70) She is a renowned musician who has performed all over the world, including at numerous South Korean charitable events. (AE I) He has one child; she was born in the United States; and she attends a university in the United States. (Tr. 31) His daughter has not applied to South Korea for recognition of her South Korean citizenship. (Tr. 71)

Applicant owns a home in the United States. (Tr. 31; AE A) He has a retirement account valued at more than \$1.7 million in the United States, and his employer has contributed more than \$700,000 to this account. (Tr. 32; AE B) His annual salary is over \$280,000. (AE D) He is active in his church. (Tr. 32) He votes in U.S. elections. (Tr. 33; AE C) He has held a U.S. security clearance since 1978. (Tr. 33) All of his performance evaluations have been positive. (Tr. 34) No unauthorized person has ever requested classified information from him, and if someone did, he would report the request to his security officer. (Tr. 35-36)

Foreign Influence and U.S. Connections

Applicant was born in South Korea. (Tr. 27, GE 1) In 1967, he emigrated from South Korea to the United States. (Tr. 27) He has lived in the United States for 50 years.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

(Tr. 29) In 1977, he became a U.S. citizen, and his South Korean citizenship terminated. (Tr. 29)³

Applicant's mother died 13 years ago. (Tr. 115) She worked for 20 years at a U.S. Army medical center, and she is buried in the United States. (Tr. 115; SOR response) Applicant's grandfather is also buried in the United States. (SOR response) His 94-year-old father is a citizen and resident of South Korea. (Tr. 36; SOR ¶ 1.a) He was a senior officer in the South Korean Army until 1961. His father was closely associated with the U.S. Army, and in 1962, he emigrated from South Korea to the United States because some political elements in South Korea wanted to distance South Korea from the United States. (Tr. 28-29; SOR response) His family followed him to the United States over the next five years. (SOR response) After his father came to the United States, he became a professor at a U.S. university. (Tr. 36-37) The U.S. Army awarded three Legion of Merit medals to him. (Tr. 37; AE F) His father is currently living in a nursing home in South Korea. (Tr. 37) His father does not receive a pension from the South Korean Government. (Tr. 38) He does not communicate with his father because his father is deaf and suffering from early dementia. (Tr. 38) His health is failing, and he is unlikely to live more than eight months. (Tr. 38) Applicant intends to visit his father in May 2017, and Applicant anticipates this will be his last visit with his father. (Tr. 38) His father intends to be buried in the United States near Applicant's mother. (SOR response) Applicant reported this May 2017 planned trip to his security officer. (Tr. 38)

Applicant's sister is a naturalized U.S. citizen who currently resides in South Korea. (Tr. 39; SOR ¶ 1.b) She is not employed outside her home. (Tr. 40, 73) Applicant does not provide financial support to his sister. (Tr. 75) Her husband is a retired professor, and he does not receive a South Korean Government pension. (Tr. 40, 73-74) Her two daughters are citizens and residents of the United States. (Tr. 40, 77) Applicant communicates with his sister about once a month. (Tr. 41, 75) He sends five or six emails a month to her. (Tr. 75) He uses her to convey information to his father. (Tr. 75) Several emails have been about making funeral arrangements for his father. (Tr. 76) His sister and her husband intend to return to the United States to resume living in their U.S. home after his father passes away. (Tr. 41; SOR response)

Applicant's brothers are citizens and residents of the United States; however, they frequently travel to South Korea and sometimes reside in South Korea. (Tr. 42, 77; SOR response) They own property in the United States. (Tr. 42) One of his brothers has children, and those children are citizens and residents of the United States. (Tr. 42, 79) Applicant has two aunts and two uncles living in South Korea. (Tr. 80) They are in their 80s. (Tr. 81) He occasionally communicates with them about his father's health. (Tr. 81)

Applicant's mother and father-in-law are citizens and residents of South Korea. (Tr. 43; SOR ¶ 1.c) They are in their 80s, and both of them are retired. (Tr. 43, 79) His father-in-law was a local law enforcement officer when he was employed, and he receives a

³ See South Korean Immigration Bureau website (stating that in order to retain South Korean citizenship, he or she needed to report willingness to retain Korean nationality to the Justice minister within six months of acquisition of U.S. citizenship, according to the second paragraph of Article 15 of the Korean Nationality Act), http://www.immigration.go.kr/HP/IMM80/imm_04/imm_0406/imm_406010.jsp.

pension from the South Korean Government. (Tr. 44, 79-80) He briefly communicates with his parents-in-law several times a year. (Tr. 44)

Around 2011, Applicant met a high-level South Korean Government official (O) when Applicant went to the South Korean Embassy with his spouse so that she could provide a concert. (Tr. 45; SOR ¶ 1.d) Applicant's spouse befriended O's spouse. (Tr. 46) In early 2013, O left his South Korean Government position. (Tr. 46) O was employed in a leadership position in a South Korean trade association from 2013 to 2015, and Applicant's spouse continued her relationship with O's spouse. (Tr. 47) In 2015, after O left the trade association, O and his spouse stayed at Applicant's residence. (Tr. 47) Applicant spent little time with O in 2015 because O had a separate busy schedule from Applicant's busy schedule. (Tr. 87) Applicant did not have a personal friendship with O. (Tr. 47) He received an email from O later in 2015 after O stayed in Applicant's home. (Tr. 49, 88; SOR response) From 2012 to 2015, he did not have substantive communications with O. (Tr. 49) O's spouse and Applicant's spouse are friends, and Applicant considers O to be a family friend, but not a "personal friend." (Tr. 49) Their relationship is more correctly described as acquaintances and not friends. (Tr. 49) O has not been an employee of the South Korean Government since early 2013. (Tr. 66) O has the reputation of scrupulously avoiding impropriety, and he is unlikely to ask a U.S. citizen to act inappropriately. (Tr. 67)

SOR ¶ 1.e alleges Applicant maintains contacts with two friends who are citizens and residents of South Korea. Applicant met a South Korean reporter at a concert in 2012 or 2013. (Tr. 52) He did not maintain contact with the reporter. (Tr. 52) He had some contacts with O's spouse; however, as previously indicated the contacts were infrequent and casual. (Tr. 52) He does not consider them to be his friends. (Tr. 52)

In 2013 and 2015, Applicant traveled to South Korea. (Tr. 89) In 2013, Applicant attended a meeting in South Korea and made a presentation about his organization. (Tr. 53-54, 100-102; SOR ¶ 1.f) He also visited his father. (Tr. 89) His supervisor reviewed his presentation before Applicant made it. (Tr. 55) The presentation was basic information from his organization's public website. (Tr. 55; AE G) After the trip, Applicant provided an after-action report to his organization. (Tr. 55; AE H) In 2015, he went to South Korea to visit his father. (Tr. 89-90) He always reports his foreign travel to security. (AE L)

Applicant served on a committee to award scholarships. (Tr. 56-57; SOR ¶ 1.g) The committee had meetings at the South Korean Embassy. (SOR response) When Applicant learned that the DOD CAF believed this committee membership raised a security concern, he resigned from the committee. (AE P)

Applicant's spouse has provided several concerts at the South Korean Embassy. (Tr. 57) Her most recent concert at the embassy was in 2011. (Tr. 58) His spouse contracted a disease; she is medically unable to provide high-level musical performances; and she cannot provide concerts at the South Korean Embassy. (Tr. 59)

Applicant does not own any property or investments in South Korea. (Tr. 32, 90-91) He received a letter of commendation from the governor of his state for his

contributions to the state. (AE I) He does not send any money to anyone in South Korea. (Tr. 91) The only passport he has ever held after becoming a U.S. citizen is a U.S. passport. (SOR response)

Personal Conduct

Applicant's May 16, 2013 SCA asked, "Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years** with whom you, or your spouse, or cohabitant are bound by affection, influence, common interests, and/or obligation?" Applicant answered, no, and did not disclose his relationship with O, O's spouse, and the reporter in SOR ¶ 1.e discussed previously. (SOR ¶ 2.a)

Applicant did not believe his relationships with O, O's spouse, and the reporter in SOR ¶ 1.e were close or continuing, and he was **not bound to them** by "affection, influence, common interests, and/or obligation." (Tr. 60) He was never reluctant to discuss his relationships with O, O's spouse, and the reporter. (Tr. 61) During his Office of Personnel Management personal subject interview (OPM PSI), the investigator asked about Applicant's foreign contacts, and Applicant disclosed information about his relationships with O, O's spouse, and the reporter in SOR ¶ 1.e. There is no evidence Applicant is bound to any non-family residents of South Korea.

Applicant's May 16, 2013 SCA asked, "Have you or any member of your immediate family **in the past seven (7) years** had any contact with a foreign government, its establishment (such as embassy, consulate, agency, military service, intelligence or security service, etc.) or its representatives, whether inside or outside the U.S.?" Applicant responded, yes, and disclosed his involvement in the scholarship committee as described in SOR ¶ 1.g, his spouse's relationship with O, and his spouse's concerts in the South Korean Embassy. SOR ¶ 2.b alleges Applicant had a "personal friendship" with O, and that Applicant failed to disclose his contact with O after 2012. Applicant contended his response was accurate because his spouse primarily had a relationship with O as O arranged her concerts at the embassy, and to Applicant, O was an acquaintance not a personal friend. (Tr. 63) O left the United States in early 2013, and Applicant did not remember any contacts with O in 2013. (Tr. 82) In 2013, Applicant's spouse communicated with O's wife. (Tr. 83)

Applicant indicated in his OPM PSI that he had contact with O on about an annual basis, and O was a friend; however, he was not being careful or precise about the definition of "friend," and he erred when he used the word "friend" to describe his relationship with O. (Tr. 65, 84, 93) His annual contact with O described in the OPM PSI probably involved his spouse talking to O or O's spouse, and she would sometimes hand the telephone to Applicant, and he would say hello. (Tr. 84) He was unsure if he had a contact with O in 2013 before he completed his May 16, 2013 SCA. (Tr. 85) He did not consider a brief conversation such as saying "hello" to be the kind of contact for which the SCA question was seeking information. (Tr. 86) He expressed his regret about this oversight or error in his OPM PSI. (Tr. 65-66) His goal in the OPM PSI was complete transparency, and he told the OPM investigator he had annual contact with O to ensure

he disclosed information about that possibility. (Tr. 84, 87) He has not spoken to O in the last two years. (Tr. 66)

Character Evidence

The chief operating officer of the entity employing Applicant has worked with Applicant for 18 years and directly supervised him since 2011. (Tr. 95-97) He has not reviewed the SOR. Applicant is committed to the protection of security and classified information. (Tr. 99) He aggressively and diligently acts to safeguard classified information. (Tr. 99-100) He is committed to supporting his employer and the U.S. Government, and he is not vulnerable to foreign influence. (Tr. 103-104) Applicant is loyal to the United States, and he supports Applicant's continued access to classified information. (Tr. 103-104)

Applicant's colleague and friend has known Applicant for 17 years. (Tr. 109, 112-113) He has not reviewed the SOR. (Tr. 114) He describes Applicant as trustworthy, loyal to the United States, and having excellent integrity. (Tr. 110-111) He recommends Applicant for continued access to classified information. (Tr. 111)

Applicant received excellent performance evaluations from his employer. (AE D) Six character witnesses provided statements describing their frequent or close contacts with Applicant primarily through his employment. (AE J-AE O; SOR response) The general sense of the character evidence is that Applicant is an asset to his employer, professional, careful, conscientious, thorough, diligent, reliable, honest, and trustworthy. He is well-trained in security matters, and he is sincere and serious about protecting security.

Applicant emphasized his long residency in the United States, his loyalty to the United States over all other countries, and his contributions to the U.S. Government. There is no evidence of security violations, arrests, illegal drug possession or use, or alcohol-related incidents.

Republic of Korea (R.O.K.) or South Korea

South Korea is a republic with powers shared between the president, the legislature, and the courts. Its population is 48,754,657 (July 2011 estimate). South Korea is one of the United States' closest military and diplomatic allies. Over two million Koreans have immigrated to the United States. The United States has more troops stationed in South Korea than any other foreign country, except for Germany. This heavy U.S. troop commitment has continued since the North Korea invasion of South Korea in 1950.

The January 25, 2017 State Department Fact Sheet provides in part:

The United States and R.O.K. share a long history of friendship and cooperation based on common values and interests. The two countries work together to combat regional and global threats and to strengthen their economies. The United States has maintained Army, Air Force, Navy, and

Marine personnel in R.O.K. in support of its commitment under the U.S.-R.O.K. Mutual Defense Treaty to help R.O.K. defend itself against external aggression. In 2013, the two countries celebrated the 60th anniversary of the U.S.-R.O.K. alliance. A Combined Forces Command coordinates operations between U.S. units and R.O.K. armed forces. The United States and R.O.K. coordinate closely on the North Korean nuclear issue and the denuclearization of the Korean Peninsula. As R.O.K.'s economy has developed (it joined the OECD in 1996), trade and investment ties have become an increasingly important aspect of the U.S.-R.O.K. relationship.

In recent years, the U.S.-R.O.K. alliance has expanded into a deep, comprehensive global partnership, and R.O.K.'s role as a regional and global leader continues to grow. The R.O.K. hosted the 2010 G-20 Summit, the 2011 Fourth High-Level Forum on Aid Effectiveness, the 2012 Nuclear Security Summit, the 2013 Seoul Conference on Cyberspace, and the 2014 International Telecommunication Union Plenipotentiary Conference. In 2017, the R.O.K. will assume the chairmanship of the Global Health Security Agenda Steering Group. The R.O.K. is a committed member of various international nonproliferation regimes, including the Proliferation Security Initiative (PSI) and the Global Initiative to Combat Nuclear Terrorism (GICNT). . . .

People-to-people ties between the United States and R.O.K. have never been stronger. The R.O.K., on a per capita basis, sends the highest number of students to the United States to study of any industrialized country. Educational exchanges include a vibrant Fulbright exchange program as well as the Work, English Study, and Travel (WEST) program that gives a diverse group of Korean students the opportunity to learn more about the United States. . . .

Bilateral Economic Relations

Over the past several decades, the R.O.K. has achieved a remarkably high level of economic growth and is now the United States' sixth-largest goods trading partner with a trillion-dollar economy. Major U.S. firms have long been leading investors, while the R.O.K.'s top firms have made significant investments in the United States. There are large-scale flows of manufactured goods, agricultural products, services, and technology between the two countries. The landmark Korea-U.S. Free Trade Agreement (KORUS FTA) entered into force on March 15, 2012, underscoring the depth of bilateral trade ties. Under KORUS, 95 percent of all goods are duty free. . . . The agreement has boosted exports by billions of dollars annually for both sides and created new export-related jobs in both the R.O.K. and the United States.

The Republic of Korea's Membership in International Organizations

The R.O.K. and the United States belong to a number of the same international organizations, including the United Nations, G-20, Organization for Economic Cooperation and Development, Asia-Pacific Economic Cooperation forum, Association of Southeast Asian Nations (ASEAN) Regional Forum, International Monetary Fund, World Bank, and World Trade Organization. The R.O.K. hosts the Green Climate Fund, an international organization associated with the United Nations Framework Convention on Climate Change. The R.O.K. also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe and an observer to the Organization of American States. (HE 4)

The Government's Administrative Notice request provides as follows:

- The 2000 *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, issued by the National Counterintelligence Center, ranks South Korea as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States. The Annual Report released in 2008 indicates that the major foreign collectors remain active.
- South Korea has a history of collecting protected U.S. information. The 1996 Interagency OPSEC Support Staff, Intelligence Threat Handbook notes that South Korea has targeted the United States with intelligence gathering programs, and 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. . . .
- The U.S. restricts the export of sensitive, dual-use technologies that can have civilian uses, as well as military uses, or to build weapons of mass destruction. South Korea has been the unauthorized recipient of technology controlled under U.S. export control laws, including: material that could be used in missile delivery/reentry systems, encryption software, optics and prism data, and infrared detectors and camera engines.
- Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies. In 2015, a South Korean industrial company pleaded guilty to a conspiracy to steal a U.S. company's trade secrets involving Kevlar technology, which is used in a wide range of commercial applications including body armor and fiber optic cables. In July 2014, a South Korean chemical company, agreed to pay a criminal penalty of over \$2 million to resolve an investigation into the company's attempted theft of a U.S. company's trade secrets regarding a meta-aramid fiber used in protective fabrics, electrical insulation, and lightweight structural support for

aircraft. Sources have also reported that South Korea may have attempted to compromise protected technology of U.S. F-15 fighters that it purchased.

- The South Korean government has generally respected the human rights of its citizens. However, reported human rights problems include: the government's interpretation of national security and other laws limiting freedom of expression and restricting access to the internet; official corruption; the absence of a comprehensive antidiscrimination law; sexual and domestic violence; child prostitution; and trafficking in persons. The South Korean National Security Law grants authorities the power to detain, arrest, and imprison persons believed to have committed acts intended to endanger the "security of the State." (HE 6)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared 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.

AG ¶¶ 7(a), 7(b), and 7(e) apply because of Applicant's relationship with his family, which includes his spouse's relationships with her parents, who are citizens and residents of South Korea. There is also evidence of his relationship with O, who held an important position in the South Korean Government until early 2013.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Although Applicant does not have direct ties of affection to his in-laws living in South Korea, he has affection for his spouse, and there is a presumption that she has affection for her family living in South Korea. Thus, an indirect tie remains between Applicant and his in-laws living in South Korea.

Indirect influence from Applicant's in-laws living in South Korea could result in a security concern. Applicant's spouse's communications with her family living in South Korea are not described in the record, and there is insufficient evidence to rebut the evidentiary presumption that his spouse has affection for her parents. His relationships with family living in South Korea are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with residents of South Korea create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives who are in South Korea. For example, if entities in South Korea wanted to expose Applicant to coercion, they could exert pressure on his relatives in South Korea. Applicant would then be subject to indirect coercion through his relatives in South Korea and classified information could potentially be compromised.

The mere possession of close family ties with relatives or in-laws living in South Korea is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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 or inducement. 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, or the country is known to conduct intelligence collection operations against the United States. The relationship of South Korea with the United States places a burden of persuasion on Applicant to demonstrate that his relationships to relatives living in South Korea do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family living in South Korea.

While there is no evidence that intelligence operatives, terrorists, or other entities from South Korea seek or have sought classified or economic information from or through Applicant, or his family living in South Korea, it is not possible to rule out such a possibility in the future. Applicant and his spouse’s communications and visits with family living in South Korea are sufficiently frequent to demonstrate obligations to them and affection for family living in South Korea. Concern for family is a positive character trait that increases trustworthiness; however, it also increases concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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 United States;
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant had frequent communications⁴ with his sister living in South Korea, and his spouse is presumed to have a close relationship with her parents living in South Korea. The amount of contacts between an applicant or the applicant's spouse and relatives living in a foreign country are not the only test for determining whether someone could be coerced or exploited through their relatives. Because of connections to family living in South Korea, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of South Korea] could create a risk for foreign influence or exploitation." Visits to or from family provide additional evidence of concern for family and obligation to family welfare.

⁴ See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

Applicant has “deep and longstanding relationships and loyalties in the U.S.” He has strong family connections to the United States. He, his spouse, and his daughter are U.S. citizens. He was educated in the United States, has lived in the United States 50 years, and an entity closely related to the U.S. Government has employed him for the previous 22 years. In 1977, he became a U.S. citizen, and his South Korean citizenship terminated. See note 3 *supra*.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by relationships with family living in South Korea and his relationship with O. There is no evidence that terrorists, criminals, the South Korean Government, or those conducting espionage have approached or threatened Applicant or his family in South Korea for classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ very positive relationship with South Korea, South Korea’s human rights violations, and most of all the 67-year history of close military and diplomatic connections between South Korea and the United States.

AG ¶ 8(d) does not apply. AG ¶ 8(e) applies. Applicant provided required after action reports after his travels to South Korea. He is not required to report his contacts with family living in South Korea.

AG ¶ 8(f) does not fully apply; however, his strong financial connections to the United States provide some mitigation. He owns a home in the United States. He has a retirement account valued at more than \$1.7 million in the United States, and his employer has contributed more than \$700,000 to this account. His annual salary is over \$280,000. In contrast, Applicant does not own any property or have any investments in South Korea. He is not receiving any income from entities in South Korea.

In sum, the primary security concern is Applicant’s relationships with his family, including his parents-in-law and O, who are residents and citizens of South Korea. His communications and limited relationship with O ended two years ago, and he never had frequent or substantive contacts with O. Those family members living in South Korea are readily available for coercion; however, there is no evidence that the South Korean Government or industrial entities have engaged in coercion of South Korea-United States dual citizens. Applicant has “deep and longstanding relationships and loyalties in the U.S.,” which clearly outweigh his connections to South Korea, that he “can be expected to resolve any conflict of interest in favor of the U.S. interest.” He was educated in the United States, has lived in the United States for 50 years, his spouse and daughter are U.S. citizens, and his investments and employment are in the United States. Foreign influence concerns are fully mitigated under AG ¶ 8(b). Even if foreign influence concerns were not mitigated under Guideline B, they would be mitigated under the whole-person concept, *infra*.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . ." ⁵ Applicant's May 16, 2013 SCA asked, "Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years** with whom you, or your spouse, or cohabitant are bound by affection, influence, common interests, and/or obligation?" Applicant answered, no. His May 16, 2013 SCA also asked, "Have you or any member of your immediate family **in the past seven (7) years** had any contact with a foreign government, its establishment (such as embassy, consulate, agency, military service, intelligence or security service, etc.) or its representatives, whether inside or outside the U.S.?" Applicant responded, yes, and disclosed his involvement in the scholarship committee as described in SOR ¶ 1.g, his spouse's relationship with O, and his spouse's concerts in the South Korean Embassy.

Applicant believed he was not "bound" to any nonfamily member in South Korea. He contended his response was accurate because his spouse primarily had a relationship with O, who arranged her concerts at the embassy, and to Applicant, O was an acquaintance not a personal friend. O left the United States and his South Korean Government position in early 2013, and Applicant did not remember any contacts with O in 2013. Applicant's spouse communicated with O's wife after O's family left the United States. In Applicant's follow-up OPM PSI, he elaborated on his relationship with O and O's spouse, which is an indication he was not attempting to conceal information from security officials.

⁵ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant's statements that he honestly and sincerely believed his answers to questions on the SCA were accurate and appropriate to the best of his ability are credible. He disclosed enough information on his SCA to highlight areas that an OPM investigator could and did further examine in the OPM's follow-up interview. He did not intend to deceive security officials about his relationships with citizens and residents of South Korea. He has refuted the allegation that he intentionally failed to disclose information about his contacts and relationships with citizens and residents of South Korea. Personal conduct security concerns are mitigated.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 63-year-old expert in information technology, and he has been employed for 22 years by a non-profit entity that provides independent, objective advice to the DOD and other U.S. Government entities. He received a bachelor's degree and master's degree in business administration in the United States. In 1977, he became a U.S. citizen, and his South Korean citizenship terminated.

In 1992, Applicant married. His spouse was born in South Korea in 1967; she emigrated from South Korea to the United States when she was 13; and in 2003, she was naturalized as a U.S. citizen. She is a renowned musician who has performed all over the world, including at numerous South Korean charitable events. He has one child; she was born in the United States; and she attends a university in the United States.

Applicant is active in his church. He votes in U.S. elections. He has held a U.S. security clearance since 1978. No unauthorized person has ever requested classified information from him, and if someone did, he would report the request to his security officer. He received excellent performance evaluations from his employer. His character

witnesses provided statements describing their frequent or close contacts with Applicant primarily through his employment. The general sense of the character evidence is that Applicant is an asset to his employer, professional, careful, conscientious, thorough, diligent, reliable, honest, and trustworthy. He is well-trained in security matters, and he is sincere and serious about protecting security and classified information and to the support of his employer and the U.S. Government. He aggressively and diligently acts to safeguard classified information.

Applicant and his spouse have relatives who are citizens and residents of South Korea, and he had an acquaintance with O, who was an important South Korean Government official until early 2013. His incidental, non-substantive, and infrequent contacts with O were due to his spouse's prominence as a musician. He has not communicated with O for two years, and he has no intention of communicating with O in the future. Applicant has strong connections to the United States, including his 50-year residence in the United States, his loyalty to the United States over all other countries, his 22-year employment with an entity providing support to the U.S. Government, his financial connections to the United States, and his family's residence in the United States. There are no allegations of security violations, arrests, illegal drug possession or use, or alcohol-related incidents.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that foreign influence and personal conduct security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

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 through 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.b:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge