



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



In the matter of:

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ISCR Case No. 15-04779

Applicant for Security Clearance

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

02/24/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 17, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 12, 2015, 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; DOD 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 (AG), implemented on September 1, 2006.

Applicant received the SOR on January 12, 2016. He submitted a notarized, written response to the SOR allegations, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 18, 2016. Applicant received the FORM on March 25, 2016. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on January 3, 2017. The Government submitted four exhibits, which have been marked as Items 1-4 and admitted into the record. Applicant's response to the SOR has been marked as Item 5, and the SOR has been marked as Item 1.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to South Korea. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as a finding of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 56 years old, works as a senior architect with a DOD contractor. Applicant began his current employment in February 2006. He has worked for many federal agencies as a contractor both in the United States and abroad. The record lacks any evidence of disciplinary actions or problems with mishandling classified documents. (Answer to SOR)

Applicant was born and raised in the United States. He graduated from high school in the states in 1979. He received a bachelor's and a master's degree from an American university in 1984 and 1994 respectively. Applicant has held a security clearance since about 2003. (Item 2)

Applicant and his wife married in March 1998 in the United States. His wife was born and raised in South Korea. She is now a naturalized United States citizen. There is no record of children. In the last ten years, Applicant has not traveled to South Korea. (Item 2)

Applicant's father-in-law, who is 97 and ill, is a citizen and resident of South Korea, and is retired. His mother-in-law, a citizen and resident of South Korea, is a housewife. His father-in-law does not speak English and his mother-in-law knows some English. His brother-in-law, a citizen and resident of South Korea, works for a university as a professor. His sisters-in-law are citizens and resident of South Korea, and they are house wives. (Item 3) Applicant maintains yearly contact with them by phone or email. They are staunch supporters of the United States. Applicant's wife's nephew worked at the South Korean Embassy in Washington, DC from 2012 until 2014. He currently lives in Nigeria. (Item 3)

From 2014, when the nephew left the United States, Applicant has not had contact with him. (Answer to SOR) The family members do not have any knowledge of the nature of Applicant's work or his security clearance. Applicant was emphatic that he never discussed the nature of his work with his nephew. When he was in any communication with him, Applicant was very careful not to discuss even general matters.

Applicant denied that any of his immediate family members had any affiliation with a foreign government, military, security, defense industry, or intelligence service, with the exception of his wife's nephew who now lives in Nigeria. When the nephew was at the Embassy in Washington DC, Applicant had contact with him, but since he left in 2014 to live in Nigeria, Applicant has no communication. Applicant communicates with his wife's family by email or phone. He does not provide financial support to his family members in South Korea. (Item 3)

Applicant owns his own home. He does not financially support anyone in South Korea. All his assets are located in the United States. He is financially secure with a good income. He has no debts, save a car loan on which he is current. (Answer to SOR) He attends church with his wife and is a member of the church community.

South Korea

I take administrative notice of the following facts related to South Korea. South Korea is currently a stable, democratic republic. The United States and South Korea have been close allies since 1950, and they have fought communism on the Korean peninsula and in Vietnam. The United States, since 1950 and currently, has thousands of U.S. military personnel stationed in South Korea, and it frequently conducts joint military operations with South Korea. South Korea is the United States' seventh largest trading partner.

The South Korean government generally respects the human rights of its citizens. South Korea has some political prisoners, and some rules regarding arrest and detention are vague.

South Korea does not recognize dual citizenship. All South Korean males between the ages of 18 and 35 are subject to compulsory military service. Dual citizens may avoid military service by renouncing their South Korean citizenship by March 31 of the year when they become 18 years old. There have been circumstances where U.S. citizens of South Korean descent were drafted into the South Korean Army when they visited South Korea.

In recent years, the United States and South Korea have differed in their diplomatic approaches towards North Korea. The United States' position is more assertive in its attempts to curtail North Korea's development of advanced military technology, such as ballistic missiles and nuclear weapons. South Korea has emphasized steps towards unification of North and South Korea.

Industrial espionage includes seeking commercial secrets. 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.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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; and

(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.

Applicant's wife is a citizen and resident of the United States. Thus, no security concern is raised by her. Applicant's father-in-law, mother-in-law, sisters-in-law, and brother-in-law are citizens and residents of South Korea. His family relationships are not per se a reason to deny Applicant a security clearance, but his contacts with his family members in South Korea must be considered in deciding whether to grant Applicant a clearance. Contacts with his wife's family members may create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by other entities or could create a potential conflict of interest between his obligations to protect sensitive

information and his desire to help his family members. These factors must be considered when determining if a heightened risk exists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his extended family, as well as the activities of the Government of South Korea and of other entities within South Korea. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his extended family in South Korea raise a heightened risk and a security concern because of the economic espionage by the South Korean government or other entities in South Korea. The evidence of record fails to show that the South Korean Government targets U.S. citizens in the United States or in South Korea by pressuring, or coercing them to obtain protected information. Thus, the concern that the South Korean Government will seek classified U.S. information from individuals is less than it would be with some other nations. The same cannot be said about the South Korean government and other organizations, whose goals are to obtain economic information and technology from companies in the United States.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in South Korea cause security concerns, I considered that South Korea and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the South Korean Government targets U.S. citizens using pressure or coercion for protected classified information. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in South Korea. Based on all these factors, Applicant's contacts raise a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and 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; and

(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.

Applicant's telephone contacts with his wife's family members in South Korea is sufficient to establish more than minimal contacts. He also saw his wife's nephew while he was working in the United States for the South Korean Embassy. AG ¶ 8(c) does not apply. His father-in-law is retired. His mother-in-law and sisters-in-law are housewives. His brother-in-law is a professor in a university. None of these family members has any connections to the South Korean government or terrorist organizations. His wife's nephew is connected to the South Korean Embassy in Nigeria, but does not know the nature of Applicant's work and due to the location in Nigeria, there is little to no communication. His wife's family members are not likely to place Applicant in a position of having to choose between the interests of the United States and of South Korea.

Applicant is an American citizen by birth. His closest family members live in the United States. He has contacts with his wife's family members in South Korea, but they are not dependent upon him for support. These family members are not likely to place Applicant in a position of having to choose between the interests of the United States and of South Korea because the United States is Applicant's home and always has been, and because of the close ties between the United States and South Korea. His foreign contacts are not likely to create a risk of foreign influence or exploitation. All the extended family members live and work quietly. Applicant has no divided loyalties. He was born in the United States to American parents. He has worked and lived in the United States. His professional and personal life are in the United States. He has worked abroad at the direction of the various federal agencies in his contract work. He has a long record of loyalty to the United States. I find that Applicant can be expected to resolve any conflicts of interest in favor of the United States. He has mitigated the Guideline B security concerns under AG ¶¶ 8(a)-(b).

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. Applicant was born, raised, and educated in the United States. His immediate family, including his wife, are citizens and residents of the United States. They have no plans to return to South Korea to live. Their decisions over the last 18 years reflect active choices to support the United States. In reviewing the evidence of record as a whole, there is little likelihood that Applicant can be coerced or pressured to reveal classified information or mishandle sensitive materials. If there were any occasion, Applicant would resolve any issue in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence under Guideline B.

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.d: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge