DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-06586
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 24, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 14, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 1, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the

FORM on June 10, 2016. Applicant did not respond to the Government's FORM. The case was assigned to me on May 4, 2017.

Procedural and Evidentiary Rulings

New Adjudicative Guidelines

On June 8, 2017, the DOD implemented new AG under the Directive.[1] Accordingly, I have applied the June 2017 AG.[2] However, because the September 2006 AG were in effect when the SOR was issued, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

Evidence

The Government's documents identified as Items 1 through 3 are admitted in evidence without objection. Other than his Answer to the SOR admitted in evidence as Item 1, Applicant did not submit any additional documentation.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about South Korea. The request was included in the record as Item 4. Applicant did not object. The request is not admitted in evidence but I have taken administrative notice of the facts contained in Item 4. The facts administratively noticed are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the SOR allegations. He is a 44-year-old hardware engineer employed by a defense contractor since April 2015. He has never held a DOD security clearance.[3]

Applicant was born in South Korea and immigrated to the United States in 1999. He obtained a bachelor's degree from a South Korean university in 1996, a master's and doctorate degree from U.S. universities in 2001 and 2005, and a master's degree

[1] On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security AG, which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

[2] ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

[3] Items 1-3.

from a university in the United Kingdom in 2014. He was naturalized as a U.S. citizen and obtained a U.S. passport in 2013. He is married to a South Korean citizen, and has two children who are dual, native-born U.S. and South Korean citizens. He has owned his home in the United States since May 2011.[4]

Applicant's spouse is a citizen of South Korea residing in the United States. She is 42 years old and was born in South Korea. Applicant married her in June 1999 in South Korea. Applicant indicated that his spouse plans on becoming a U.S. citizen and renounce her South Korean citizenship. She was a housewife until January 2015, when her father in South Korea legally signed over his manufacturing company in Mexico to her. The company in Mexico is one of multiple subsidiary companies under a parent manufacturing company in South Korea, all of which is owned by Applicant's father-in-law, with the exception of the company in Mexico. Applicant accompanied his father-in-law and brother-in-law to Mexico in June 2012, at his father-in-law's request, to check on the company. Applicant traveled to Mexico in May and June 2014, also at his father-in-law's request, to check on the company.

Applicant discovered in June 2015 that his father-in-law gave Applicant's spouse stock in his companies in South Korea. Neither the stock in the South Korean companies nor the company in Mexico are in Applicant's name. Applicant's wife is trying to determine the value of her stock in the South Korean companies and her company in Mexico. As of June 2015, Applicant stated that they had not received any money from either, and they do not have any other foreign financial interests.[5]

Applicant's two children are dual, native-born U.S. and South Korean citizens, residing in the United States. They are ten and eight years old. Applicant's wife petitioned for their South Korean citizenship so that they could obtain South Korean passports, for ease of traveling to South Korea. As South Korean citizens, they are eligible to receive medical assistance in South Korea, though they have never utilized this benefit. Applicant indicated that he can have his daughters become solely U.S. citizens.[6]

Applicant's sister, age 41, is a citizen of South Korea residing in the United States. She is pursuing her U.S. citizenship. She works for an insurance company. Applicant stated that he does not have a strong relationship with her. He indicated that he has quarterly telephonic and electronic contact with her. As of June 2015, he last saw her at her wedding in 2008.[7]

Applicant's second sister, age 39, is a citizen and resident of South Korea. Applicant stated that he does not have a strong relationship with her. He stated that

[4] Items 1-3.

[5] Items 1-3.

[6] Items 1-3.

[7] Items 1-3.

they grew apart because of the distance between them. Applicant indicated that after their parents died, he tried to get her to move to the United States but she did not want to. As of May 2015, he last contacted her in May 2010. At that time, she worked as a teacher in South Korea. In his response to the SOR, Applicant stated that he does not know where this sister lives, what she does, or how to contact her.[8]

Applicant's parents-in-law are citizens and residents of South Korea. His father-in-law is 70 years old, and his mother-in-law is 68 years old. As previously discussed, Applicant's father-in-law owns a parent manufacturing company with multiple subsidiaries in South Korea. Applicant indicated that his mother-in-law takes care of one of the subsidiary companies in South Korea. Applicant stated that his wife sparsely contacts them. He indicated that he has telephonic and electronic contact with his father-in-law once every four months to annually, and last saw his father-in-law during their June 2012 trip to Mexico. He indicated that he has telephonic contact with his mother-in-law once every four months to two years, and in-person contact once every four years. As previously stated, at his father-in-law's request, Applicant traveled to Mexico twice in 2014 to check on the company in Mexico.[9]

Applicant's brother-in-law, age 38, is a citizen and resident of South Korea. As of June 2015, Applicant indicated that his brother-in-law was taking over his father-in-law's companies in South Korea. Applicant indicated that he has annual telephonic and electronic contact with his brother-in-law, and last saw him during their June 2012 trip to Mexico.[10]

Applicant has a bank account in South Korea. When Applicant lived and worked in South Korea from 2009 to 2011, he opened the bank account so that his employer could deposit his pay into the account. When Applicant moved back to the United States, he took out most of the money and left a minimal balance in the account. He indicated that he forgot about the account because he had not accessed it in a long time, and he planned to close the account.[11]

Applicant stated that his unique engineering background coupled with a security clearance would allow him to more fully contribute to the work that he does.[12]

South Korea

South Korea has a history of collecting protected U.S. information. The 1996 Interagency OPSEC Support Staff Intelligence Threat Handbook notes that South Korea

[8] Items 1-3.

[9] Items 1-3.

[10] Items 1-3.

[11] Items 1-3.

[12] Item 1.

has targeted the United States with intelligence gathering programs, and has centered its collection efforts on computer systems, aerospace and nuclear technologies, and its activities have included stealing information from computerized databases maintained by U.S. government agencies. The 2000 *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, issued by the National Counterintelligence Center, ranks Korea as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States. The 2008 Annual Report indicates that the major foreign collectors remain active. Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies.

The United States restricts the export of sensitive, dual-use technologies that can have civilian and military uses, or that can be used 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.

While the South Korean government has generally respected the human rights of its citizens, 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."

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 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(a), 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."

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." 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 Exec. Or. 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* Exec. Or. 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 ¶ 6:

> 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant's two children, while dual, native-born U.S. and South Korean citizens, are minors residing with Applicant and his spouse in the United States. Applicant stated that he can have them become solely U.S. citizens. Applicant's 41-year-old sister, while a South Korean citizen, resides and works in the United States and is pursuing U.S. citizenship. The record does not contain any evidence that Applicant's two children and one sister have any other ties to South Korea. Given these facts, none of the disqualifying conditions under AG ¶ 7 apply, and I find SOR ¶¶ 1.b and 1.c in Applicant's favor.

Applicant's bank account in South Korea contains a minimal balance. Applicant opened the account in 2009 when he lived and worked in South Korea, and he took out most of the money when he moved back to the United States in 2011. He forgot about the account because he had not accessed it in a long time, and he planned to close the account. The record does not contain any evidence that Applicant has any other foreign financial interests. Neither the stock in the South Korean companies nor the company in Mexico are in Applicant's name. Compared to the home Applicant has

owned in the United States since 2011, Applicant's South Korean bank account does not constitute a substantial foreign financial interest. I find that AG ¶ 7(f) is not established, and I find SOR ¶ 1.g in Applicant's favor.

Applicant's spouse is a South Korean citizen, and his 39-year-old sister, parents-in-law, and brother-in-law are citizens and residents of South Korea. 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. The 2000 *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* ranks Korea as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States. The 2008 Annual Report indicates that the major foreign collectors remain active. In addition, South Korea has been the unauthorized recipient of technology controlled under U.S. export control laws.

Applicant's ties to South Korea through his spouse and his 39-year-old sister create a potential conflict of interest and a heightened risk of exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b) 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 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; 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.

Concerning Applicant's family in South Korea, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). Applicant indicated that he does not have a strong relationship with his sister in South Korea. They grew apart after their parents died. As of May 2015, he last contacted her in May 2010. In his response to the SOR, Applicant stated that he does not know where this sister lives, what she does, or how to contact her. I find AG ¶ 8(c) is established as to Applicant's sister in South Korea, and I find SOR ¶ 1.d in Applicant's favor.

Applicant's spouse is a citizen of South Korea, and she resides with Applicant in the United States. Her parents and brother are citizens and residents of South Korea. Applicant saw his father-in-law and brother-in-law in 2012, and traveled to Mexico twice in 2014 at his father-in-law's request to check on the company in Mexico. He has telephonic and electronic contact with his father-in-law once every four months to annually. He has telephonic contact with his mother-in-law once every four months to two years, and in-person contact once every four years. While Applicant indicated that his spouse sparsely contacts her family in South Korea, her father signed over his company in Mexico to her and gave her stock in his South Korean companies in 2015; and, as of June 2015, the South Korean companies have been taken over by her brother. AG ¶ 8(c) is not established.

Applicant has lived in the United States since 1999, though he did return to live and work in South Korea between 2009 and 2011. He received a master's and doctorate degree in the United States. He has worked as an engineer in the United States from 2005 to 2009, and since 2015. He became a naturalized U.S. citizen in 2013. His children were born in the United States, and he has one sister who lives in the United States and is pursuing her U.S. citizenship. He has owned his home in the United States since May 2011. These are factors that weigh in Applicant's favor.

However, Applicant's ties to his spouse, and to his family in South Korea through his spouse, are equally as strong. Applicant failed to meet his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

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(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), 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 have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guideline B,

and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his spouse who is a citizen of South Korea residing with him in the United States, and his parents-in-law and brother-in-law who are citizens and residents of South Korea. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

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:	Against Applicant
Subparagraphs 1.a, 1.e – 1.f:	Against Applicant
Subparagraphs 1.b – 1.d, 1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Candace Le'i Garcia
Administrative Judge