



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



In the matter of:

ISCR Case No. 16-02410

Applicant for Security Clearance

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: Pro se

January 29, 2018

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On October 15, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on October 31, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 26, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, was mailed to Applicant, and received by him on July 6, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM on August 1, 2017 and submitted a 115 page submission. Applicant did not object to

Items 1 through 7, and they were admitted into evidence. Applicant's response to the FORM was also admitted into evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the countries of South Korea and Russia. Department Counsel provided a 5 page summary of the facts, supported by six Government documents pertaining to South Korea, identified as Government Exhibit 6. She also provided a ten page summary of the facts supported by 20 government documents pertaining to Russia, identified as Government Exhibit 7. The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 21 years old and unmarried. He is currently a full time college student at an American university in South Korea. He is applying for a security clearance in connection with his employment with a defense contractor. He hopes to work for the same defense contractor as does his father and brother.

Applicant is a United States citizen who was born in 1995 in the United States. He is currently a resident of South Korea as a military and contractor dependent. He has been living in the Republic of Korea, since 2001. He is currently working for a defense contractor under an A-3 Visa pursuant to the United States-Republic of Korea Status of forces Agreement (SOFA). Applicant graduated from Seoul American High School in 2014. He is now a full-time student at the University of Maryland University College, Asia. Both are located on the U.S. military installation in South Korea.

Applicant's father, brother, and some acquaintances whom Applicant listed on his e-QIP are U.S. citizens and residents of the U.S., are serving or working for the United States Armed Forces and the U.S. Federal government in Korea on A-3 Visas. His step-mother and step-sister are Russian citizens and also residents of Korea on A-3 Visas.

Applicant's close family members living in South Korea include his mother, father, brother, stepmother and stepsister. Several of his family members are citizens and residents of South Korea, while two of his family members are citizens of Russia, living in South Korea.

Applicant's father is a U.S. citizen who has served in the United States military for over 19 years. He was honorably discharged in 2007. He is currently working for a U.S. defense contractor located on the military installation from which he retired. With his retirement pay and current income from the defense contractor, he files his annual U.S. income tax returns to the Internal Revenue Service and does not pay taxes to South Korea.

Applicant's mother is a citizen and resident of South Korea. She is and always has been a homemaker. She took care of Applicant growing up during her marriage to Applicant's father. She is no longer married to Applicant's father. She does receive a portion of his father's military retirement due to her 17 years of marriage to him. She uses that money to live on. She does not work for any U.S. and or Korean corporation, institution or government.

Applicant's brother is a United States citizen, and a resident of South Korea. He was born and raised on the U.S. military base in South Korea. He has been exposed to the American environment on base and has received the same education as Applicant. He currently works for the same defense contractor as the Applicant's father. He has no financial or political interest in South Korea.

Applicant's step-mother and step-sister are Russian citizens and residents of South Korea. They are lawful permanent residents of the U.S. and Russian citizens staying in South Korea with the A-3 Visas. They obtained their status by his step-mother being married to a U.S. citizen, namely the Applicant's father. Applicant's stepmother is a housewife. His stepsister is a sophomore at a Korean University. Once his stepsister completes her degree, she aspires to get a good paying job in the United States. Applicant's father plans to apply for his stepmother's and stepsister's U.S. citizenship.

I have taken administrative notice concerning the country of South Korea and the country of Russia. South Korea, officially the Republic of Korea is a self-governing state located in the southern part of the peninsula of Korea. The United States and South Korea share a long history of friendship and cooperation based on shared values and interests. The two countries work together to combat regional and global threats and to strengthen their economies. South Korea is now the United States' sixth-largest trading partner with a trillion-dollar economy. The longstanding relationship between the U.S.

and South Korea has brought positive rewards to the U.S. economy including more job opportunities for American.

South Korea and Russia are two of the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. Although South Korea is considered an ally, they have 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 July 2014, a South Korean chemical company agreed to pay a criminal penalty of over 2 million dollars 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.

Russian intelligence services also continue to target U.S. and allied personnel with access to sensitive computer network information. Russia seeks data on advanced weapons systems and proprietary information from U.S. companies and research institution that deal with energy, finance, the media, defense, and dual use technology. Russia remains one of the top two most aggressive and capable collectors of sensitive U.S. economic information and technologies in cyberspace. Two trends that may increase Russia's threat over the next several years is that (1) many Russian immigrants with advanced technical skills work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services, and (2) a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States. Russia is assuming a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations even when detected and under increased public scrutiny. Russian cyber operations are likely to target U.S. interests to support several strategic objectives: intelligence gathering to support Russian decision making the Ukraine and Syrian crises, influence operations to support military and political objectives, and continuing preparation of the cyber environment for future contingencies.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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 AG ¶ 2 describing the adjudicative process. The

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 use will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline 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. Three 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; 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.

Applicant's foreign family members include his mother and brother, who are citizens and residents of South Korea, and his stepmother and stepsister who are citizens of Russia, but reside in South Korea. They do not threaten or influence Applicant's choice of interest as a United States citizen. Applicant is an American citizen by birth, who grew up as a U.S. military dependent. Since 2001, he has been living overseas with his immediate family. He is an American citizen who strongly expresses his interest in dedicating himself to his country, either by serving in the military, like his father, or working as a civilian in Government service, also like his father. He has indicated that his short term goal is to finish his college education. Once completed, he aspires to continue his education at the graduate level in the United States and work in the field of computers and networking for the U.S. government or the U.S. military in some capacity. Under the particular circumstances here, Applicant's contacts with his family in South Korea do not create a security risk. Applicant is not subjected to a heightened risk of foreign influence or exploitation or personal conflict of interest from his connection to his family in South Korea or his family from Russia. However, the evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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; and

The nature of the relationships with his family do not pose a security risk. There is no conflict of interest. No one in his family is associated with the South Korean government, nor do they show any interest in the Applicant or his work. Applicant is a United States citizen and his relationship with his family does not result in a divided allegiance. There is nothing here that may manipulate or induce the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests. Applicant's father has served his entire life working for the U.S. government. Applicant expresses a strong desire to begin his career and develop a deep and long-standing relationship and loyalty to the United States. Based upon this history, he will always resolve any situation in favor of the United States. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has been 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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under

Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

As a child of a veteran of the United States armed forces, and now the child of a civilian employee for the U.S. Defense Department, Applicant has displayed loyalty and a commitment to the U.S. with hopes to provide valuable service to the U.S. in the future. Applicant has no history of misconduct or security violations. His South Korean connections do not pose a risk to the U.S. government. Applicant obviously has the level of judgment required to access classified information as evidenced by his longstanding commitment to our country.

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 Foreign Influences security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge