



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02853

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

03/28/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his contacts and interests in South Korea. Accordingly, this case is decided for Applicant.

Statement of the Case

On November 5, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised a security concern under Guideline B for foreign influence.¹ Applicant answered the SOR on November 28, 2016, and requested a hearing to establish her eligibility for access to classified information.

On February 14, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing, and the exhibits offered by the Government at the

¹ The DOD CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

hearing were admitted into the administrative record without objection. (Government Exhibits (GE) 1 and 2; Applicant did not offer any exhibits.) The transcript of the hearing (Tr.) was received on February 23, 2018.

Procedural Issues

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.”² The National Security Adjudicative Guidelines (hereinafter “new adjudicative guidelines” or “AG”), which are found in Appendix A to SEAD-4, are to be used in all security clearance cases decisions issued on or after June 8, 2017.³ In light of this explicit direction (and absent lawful authority to the contrary), I have applied the new adjudicative guidelines. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).⁴ DOD CAF adjudicators reviewed this case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were then in effect. My decision and formal findings under the revised Guideline B would not be different under the 2006 Guideline.

Findings of Fact

The SOR alleged under Guideline B that (1) Applicant’s five siblings and his mother-in-law and sister-in-law are citizens and residents of South Korea; (2) from 1976 until 1983, Applicant worked for a South Korean defense agency and maintains contact with the former director of that agency; (3) Applicant maintains a bank and a stock account in South Korea, each with an approximate value of \$500; and (4) Applicant’s spouse owns an apartment in South Korea worth about \$50,000. Applicant admitted those allegations.

Applicant is 64 years old, was born in South Korea, and earned his bachelor’s degree from a South Korean university. He worked for a South Korean defense agency from April 1976 to June 1983 to fulfill his compulsory military obligation. During one year of that period, from June 1978 to June 1979, Applicant worked at an Air Force base in the United States in a scientific/engineering exchange program. In July 1983, Applicant came to the United States to pursue advanced studies. Between 1983 and 1987, he earned his master’s and his doctoral degrees at a prestigious U.S. technical university.⁵

Applicant has lived in the United States continuously since first arriving in 1983. Applicant became a naturalized U.S. citizen in January 2000. He is married (since 1982)

² SEAD-4, ¶ B, *Purpose*.

³ SEAD-4, ¶ C, *Applicability*.

⁴ See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated: “Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.”)

⁵ Tr. 13-19.

to a naturalized U.S. citizen and has two adult children, both U.S. citizens. He owns his primary residence and a second home in another state. Applicant's primary residence has about \$30,000 in equity, and his second home has about \$190,000 in equity. His total of retirement funds and annuities is about \$500,000. Applicant's total U.S. net worth is about \$750,000.⁶

Applicant has worked in the U.S. defense industry since 1987, over thirty years. This is the first time he has applied for a security clearance. Applicant has not needed a clearance in the past.⁷

Both of Applicant's parents are deceased. Neither one of them worked for the South Korean government or its military. Applicant has five siblings, a brother and four sisters, all of whom are citizens and residents of South Korea. His brother is now retired, and he worked for a private construction company. Applicant does not provide any financial support to his brother. His four sisters are retired. Two of them did not work outside the home. One sister worked for an electronics company as a secretary. The other sister was an elementary school teacher. None of his siblings have any ties to the South Korean government or its military.⁸

Applicant's father-in-law is deceased. His mother-in-law and sister-in-law are citizens and residents of South Korea. His mother-in-law did not work outside the home. She supports herself with what she inherited from her late husband. Applicant's sister-in-law does not work outside the home. Her husband works for a private hospital and has no ties to the South Korean government or its military.⁹

Applicant keeps in contact with his brother telephonically about quarterly. He maintains contact by telephone with two of his sisters about monthly and with his other two sisters about annually. Applicant keeps in contact with his in-laws about quarterly by telephone.¹⁰

Applicant used to keep in contact with the individual who was the director of the South Korean defense agency where Applicant once worked, but he retired about two or three years ago. They were college undergraduate classmates. Applicant and his classmate communicate about once every three to four years to share alumni news, such

⁶ GE 1; Tr. 21-24.

⁷ Tr. 19-21.

⁸ Tr. 24-26.

⁹ Tr. 26-27.

¹⁰ GE 1.

as who has retired or died.¹¹ Other than his family members and his former college classmate, Applicant maintains no other regular contacts in South Korea.¹²

Applicant has a bank account in South Korea, but its balance is zero. It has to be closed in person. He no longer needs a bank account in South Korea. Applicant had a stock account, but he closed that account two years ago when he traveled to South Korea. That account also needed to be closed in person.¹³

Applicant's spouse owns an apartment in South Korea that her late father left to her when he died. She uses it to support her mother. When her mother dies, Applicant's spouse will sell the apartment. The apartment is in Applicant's spouse's name only, not his. It is worth about \$50,000. Neither Applicant nor his spouse own any other property in South Korea.¹⁴

Administrative Notice (Republic of South Korea)

In response to the Government's request, to which Applicant did not object, I have taken administrative notice of the following relevant facts about South Korea:¹⁵

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

The South Korean government has generally respected the human rights of its citizens. Human rights problems, however, have been reported including: the government's interpretations of national security and other laws limiting freedom of expression and restricting access to the internet; official corruption; the lack of comprehensive antidiscrimination laws; sexual and domestic violence; child prostitution; and trafficking in persons.

South Korea is one of the seven countries most actively 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

¹¹ Tr. 27-28; Answer ¶ 1.d.

¹² Tr 31-32.

¹³ Tr. 29.

¹⁴ Tr. 30.

¹⁵ GE 2.

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.

Law and Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

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

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." SEAD-4, Appendix A, ¶ 2(b). See *also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Discussion

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 guideline also notes several conditions in AG ¶ 8 that could mitigate security concerns raised under AG ¶ 7. The following are potentially applicable in this case:

(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; 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 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 is known to conduct intelligence operations against the United States.

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. Because Applicant's siblings and in-laws are citizens and residents of South Korea, which has a record of engaging in foreign economic collection and industrial espionage against the United States, AG ¶ 7(a) applies. Those familial relationships also make AG ¶¶ 7(b) and (e) applicable. Applicant's spouse's ownership of real property in South Korea also triggers AG ¶ 7(f).¹⁶ The next inquiry is whether any mitigating conditions apply.

Applicant has lived continuously in the United States since 1983. He has worked in the U.S. defense industry since 1987. Applicant became a naturalized citizen in 2000. He and his spouse, also a naturalized U.S. citizen, have been married since 1982, and they have two adult children who are both U.S. citizens. Applicant owns his primary residence and a second home in a different state. His total U.S. assets are about \$750,000. Applicant's South Korean relatives have had no ties to the government or the military of South Korea. Applicant and his immediate family have deep and longstanding ties to the United States. It is unlikely that he will be placed in a position of having to

¹⁶ Applicant's contacts with his former college classmate are so infrequent that AG ¶ 8(c) applies.

choose between his South Korean family members and the interests of the United States. In any event, should such a conflict arise, Applicant can be expected to resolve it in favor of the United States. AG ¶¶ 8(a) and (b) apply to mitigate the foreign influence.

The apartment in South Korea owned by Applicant's spouse has an estimated value of \$50,000. That is a mere fraction of the total U.S. assets (\$750,000) owned by Applicant and his spouse. That apartment, therefore, is unlikely to result in a conflict of interest that could be used to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies.

The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.¹⁷ Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him 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 (Foreign Influence): For Applicant

Subparagraphs 1.a-1.g: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge

¹⁷ AG ¶ 2(a)(1)-(9).