



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 16-04043
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Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

02/08/2018

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant mitigated security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of the Case

On November 24, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 1, 2016. (Item 3). After reviewing the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On April 7, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 22, 2017. He admitted the four allegations under Guideline B. The allegations detailed concerns based on his family members who are residents and citizens of South Korea. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on June 28, 2017. (Item 5) Applicant received a complete file of relevant material (FORM) on July 5, 2017, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned the case on December 12, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing 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 September 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.

Procedural issues

Department Counsel requested that I take administrative notice of relevant facts concerning South Korea. The request and supporting documents are attached to the FORM as Item 4. Applicant did not object to the request or the facts. I took administrative notice as requested. The facts concerning South Korea are set out below in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact. Applicant was born in South Korea in 1967. He came to the United States as a 13-year-old minor with his family in September 1980, and became a United States citizen on his own application in September 1987, at age 18. He received most of his high school education in the United States. He received his bachelor's degree from a United States college in May 1991 and a master's degree from a United States university in December 1996. He has been a deputy director for a defense contractor since 1992. Applicant married a South Korean national in December 1994. She has renounced her South Korean citizenship, and is now a U.S. citizen. They have two children who were born in the United States and are U.S. citizens. (Item 2, e-QIP, dated December 24, 2015; Item 3, PSI, dated September 2, 2016)

Applicant's family, consisting of his mother, father, brother, sister, and him, immigrated to the United States in September 1980. All family members became citizens of the United States. Applicant's parents and sister reside in the United States.

His sister lives with his parents. His parents are retired factory workers. They have never had, and do not have now, any association with a foreign government.

Applicant's brother is a U.S. citizen and resides in South Korea as an employee of a United States corporation. Applicant sees his brother once or twice a year in the United States or South Korea, and he talks to his brother by phone about four times a year. Applicant's brother travels on a United States passport. His brother's wife is a South Korean citizen and resident. She is not employed.

Applicant's in-laws are residents and citizens of South Korea. His in-laws are divorced. He has not had any contact with his father-in-law in many years. His mother-in-law is retired. He talks to her about twice a year and sees her when he visits South Korea.

Applicant has contact with friends, business associates, and acquaintances in South Korea. He sees them whenever he visits South Korea; or they visit the United States. Most are professionals and employed by South Korean or United States businesses. Applicant has contact with a cousin and his wife who are residents and citizens of South Korea. He sees them a few times a year when he is in South Korea on business, and he talks to them by phone once or twice a year. Applicant and his family visited South Korea in 2010 and 2012. He met with friends and family members for dinner on his visit. (Item 3, PSI, dated September 1, 2016)

I have taken administrative notice that South Korea is a stable, democratic republic. The United States and South Korea have been close allies since 1950, and have fought communism together 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 frequently conducts joint military operations with South Korea. About 2.3 million Koreans live in the United States. The United States has promised over the next few years to provide \$11 billion in force enhancements in Korea. South Korea is the United States' seventh largest trading partner. The recently signed free-trade agreement between the United States and South Korea will generate billions of dollars in additional economic growth and job creation in both countries.

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

South Korea does not recognize dual citizenship. There have been circumstances where U.S. citizens with connections in South Korea were drafted into the South Korean army.

In recent years, the United States and South Korea have differed in their diplomatic approaches to 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. In 2000, South Korea was listed as one of the seven most active countries engaged in foreign economic collection and industrial espionage against the United States. In 1997, a U.S. company was fined for unlicensed exports to South Korea and that same year a civilian employee of the U.S. Navy passed classified documents to the South Korean Naval Attaché to the United States. On multiple 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 (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The 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 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.

Analysis

Foreign Influence

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. interest 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 interests 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 associate with a risk of terrorism. (AG ¶ 6)

Because of the economic collection and industrial espionage in South Korea, Applicant's family members in South Korea are a security concern, raising the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (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; and
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family member must be considered. The foreign influence security concern 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. Even friendly nations can have profound disagreements with the United States over matters they view as

important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress.

Applicant has contact with family members and friends who are residents and citizens of South Korea. South Korea is one of the countries most actively engaged in foreign economic collection and industrial espionage against the United States. There have been a number of criminal prosecutions against people with South Korean connections and interests for engaging in collection activities against the U.S. South Korea has been the unauthorized recipient of technology controlled under U.S. export control laws. There have been numerous recent criminal cases concerning export enforcement related to proprietary defense information, economic espionage, theft of trade secrets, embargo-related criminal prosecutions involving both private companies and individuals in South Korea. Because of the economic collection and industrial espionage, the U.S. restricts export of sensitive dual-use technologies to South Korea, and industrial espionage relating to South Korea remains a high-profile concern. The economic collection and industrial espionage concerning South Korea and Applicant's relatives and friends who are residents and citizens of South Korea places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

There is a rebuttable presumption that a person has ties of affection for or obligation to immediate family members. Applicant has limited contact with his family members in South Korea except for occasional phone contact with his brother and mother-in-law. He sees other friends and relatives when he occasionally visits South

Korea. This level of contact is not casual or infrequent, and indicates that Applicant's sense of loyalty to the family members is high rather than minimal.

Applicant's ties and sense of loyalty to the United States are extensive. He came to the United States with his family as a teenager, and he completed his high school, college, and professional education in the United States. His entire immediate family are U.S. citizens. He became a U.S. citizen by his own efforts as soon as he could, and he has been a U.S. citizen longer than he has not been a U.S. citizen. He travels on a U.S. passport, and considers himself a U.S. citizen.

Applicant's family members and friends in South Korea can place him in a position to have to choose between the interest of the friends and relatives and the interests of the United States. His brother, who resides in South Korea, is a U.S. citizen employed by a U.S. company. He has limited phone contact with his mother-in-law and no contact with his father-in-law. He has limited contact with other relatives in South Korea. His connection to and loyalty to the United States is so deep and longstanding that he can be expected to resolve any conflict of interest in favor of United States interests. Accordingly, Applicant has met his heavy burden to show that his relationships with his friends and relatives in South Korea family members are not a security concern. I conclude Appellant has mitigated security concerns for foreign influence.

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), the ultimate determination of whether to grant eligibility for access to sensitive information 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 the facts and circumstances surrounding this case. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information. I considered that Applicant immigrated to the U.S. as a teenager, became a U.S. citizen on his own as

soon as he could, and completed his education in the U.S. Applicant, for all intents and purposes, is a U.S. citizen as if he had been born in the U.S.

The presence of Applicant's friends and family members in South Korea creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion on Applicant. However, Applicant's close connection to the U.S. increases the probability that Applicant will recognize, resist, and report any attempts by a foreign person or entity to coerce or exploit him. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. The protection of the national security is the paramount consideration. For all these reasons, I conclude Applicant has mitigated foreign influence concerns based on his family members in South Korea. Access to classified information is granted.

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.

THOMAS M. CREAN
Administrative Judge