DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 17-01139
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2018

Decision

HARVEY, Mark, Administrative Judge:

The statement of reasons (SOR) alleges Applicant's spouse maintains contacts with officials at a South Korean Consulate. The contacts were part of a cultural group's meeting, and it was not recent. Applicant has close connections to the United States. Foreign influence security concerns are mitigated. Access to classified information is granted.

Statement of the Case

On May 1, 2015, Applicant completed and signed a Questionnaire for National Security Positions (e-QIP) (SF 86) (SCA). Government Exhibit (GE) 1. On May 24, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Hearing Exhibit

(HE) 2. Specifically, the SOR set forth security concerns arising under the foreign influence guideline. HE 2.

On June 7, 2017, Applicant responded to the SOR. HE 3. On August 15, 2017, Department Counsel was ready to proceed. On August 28, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 1, 2017. HE 1. Applicant's hearing was held as scheduled.

Department Counsel offered two exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 14-15; GE 1-2. On December 18, 2017, DOHA received a copy of the hearing transcript.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *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 on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.[1]

Procedural Issues

Department Counsel requested administrative notice of facts concerning South Korea. Tr. 15-16; HE 4 (Administrative Notice Request). I have also taken administrative notice of two documents from the U.S. State Department website: *U.S. Bilateral Relations Fact Sheets*, *U.S. Relations With South Korea* (Jan. 25, 2017), http://www.state.gov/r/pa/ei/bgn/2800.htm, and *Background Note South Korea* (Apr. 12, 2012) http://www.state.gov/outofdate/bgn/southkorea/200974.htm. Tr. 15-16; HE 5; HE 6. There were no objections to the administrative notice documents. Tr. 15-16. I have block quoted from these documents, made minor corrections, and deleted the footnotes.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). *See* the Republic of Korea or South Korea section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning South Korea.

[1] Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

Findings of Fact[2]

Applicant denied the allegation in SOR ¶ 1.a. HE 3. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 51-year-old systems engineer who has been employed by a DOD contractor since 2006. Tr. 5, 8; GE 1. He was educated from age 11 in the United States. In 1984, he graduated from high school. Tr. 5-6. In 1988, he received a bachelor's degree in electrical engineering. Tr. 6. In 1993, he was awarded a master's degree in computer science. Tr. 6. He served in the U.S. Air Force from 1989 to 1997; he received an honorable discharge; and he was a captain when he left active duty. Tr. 7. He did not serve overseas. Tr. 7. His Air Force specialty was computer systems analyst. Tr. 22.

In 1966, Applicant was born in South Korea. Tr. 17. In 1977, Applicant's parents, Applicant, and his siblings immigrated to the United States. Tr. 18, 30; GE 2. Applicant's aunt, who was a U.S. citizen, sponsored their immigration to the United States. GE 2. In 1983, Applicant's parents and Applicant were naturalized as U.S. citizens. Tr. 18. Applicant's siblings are U.S. citizens. Tr. 30. Applicant has not returned to South Korea since 1977. Tr. 19, 29. Applicant and his spouse's net worth in the United States is about $1.9 million. Tr. 28. Applicant and his spouse's annual salaries with bonuses is about $265,000. Tr. 28-29.

In 1992, Applicant married, and his children are ages 18 and 21. Tr. 8. His children were born in the United States, and they are attending college in the United States. Tr. 8, 18, 27. When his spouse was 11 years old, she immigrated from South Korea to the United States. Tr. 18. From 2011 to 2017, she has been employed as a physician's assistant. Tr. 23. His spouse's parents have visited South Korea for about half of the year for the last four or five years; she communicates with her family in South Korea when they are staying there; and she has extended family living in South Korea. Tr. 19-21, 27. Her parents own property in South Korea. Tr. 20. Her father was a programmer in the manufacture of machines, and her mother did not work outside the home. Tr. 21. Her parents are retired. Tr. 21. Her parents do not have connections with the South Korean Government. South Korea does not have dual citizenship. Tr. 20. Applicant, his spouse, his parents, and his children are solely U.S. citizens.

Applicant's spouse is a member of a South Korean social entity that promotes cultural and ethnic awareness of South Korea including traditional dress, food, and music. Tr. 24. She was previously an officer in the entity. On a couple of occasions, members of the entity as a group, including Applicant's spouse, went to the South Korean Consulate in a nearby city. Her most recent visit to the South Korean Consulate was four or five years ago. Tr. 26. There are no dues. Tr. 30. Applicant does not know whether she made a donation to the entity in the past several years. Tr. 30.

[2]The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Republic of Korea (R.O.K.) or South Korea

South Korea is a republic with powers shared between the president, the legislature, and the courts. Its population is 48,754,657 (July 2011 estimate). South Korea is one of the United States' closest military and diplomatic allies. Over two million Koreans have immigrated to the United States. The United States has more troops stationed in South Korea than any other foreign country, except for Germany. This heavy U.S. troop commitment has continued since the North Korea invasion of South Korea in 1950.

The January 25, 2017 State Department Fact Sheet reads in part:

The United States and R.O.K. share a long history of friendship and cooperation based on common values and interests. The two countries work together to combat regional and global threats and to strengthen their economies. The United States has maintained Army, Air Force, Navy, and Marine personnel in R.O.K. in support of its commitment under the U.S.-R.O.K. Mutual Defense Treaty to help R.O.K. defend itself against external aggression. In 2013, the two countries celebrated the 60th anniversary of the U.S.-R.O.K. alliance. A Combined Forces Command coordinates operations between U.S. units and R.O.K. armed forces. The United States and R.O.K. coordinate closely on the North Korean nuclear issue and the denuclearization of the Korean Peninsula. As R.O.K.'s economy has developed (it joined the OECD in 1996), trade and investment ties have become an increasingly important aspect of the U.S.-R.O.K. relationship.

In recent years, the U.S.-R.O.K. alliance has expanded into a deep, comprehensive global partnership, and R.O.K.'s role as a regional and global leader continues to grow. The R.O.K. hosted the 2010 G-20 Summit, the 2011 Fourth High-Level Forum on Aid Effectiveness, the 2012 Nuclear Security Summit, the 2013 Seoul Conference on Cyberspace, and the 2014 International Telecommunication Union Plenipotentiary Conference. In 2017, the R.O.K. will assume the chairmanship of the Global Health Security Agenda Steering Group. The R.O.K. is a committed member of various international nonproliferation regimes, including the Proliferation Security Initiative (PSI) and the Global Initiative to Combat Nuclear Terrorism (GICNT). . . .

People-to-people ties between the United States and R.O.K. have never been stronger. The R.O.K., on a per capita basis, sends the highest number of students to the United States to study of any industrialized country. Educational exchanges include a vibrant Fulbright exchange program as well as the Work, English Study, and Travel (WEST) program that gives a diverse group of Korean students the opportunity to learn more about the United States. . . .

Bilateral Economic Relations

Over the past several decades, the R.O.K. has achieved a remarkably high level of economic growth and is now the United States' sixth-largest goods trading partner with a trillion-dollar economy. Major U.S. firms have long been leading investors, while the R.O.K.'s top firms have made significant investments in the United States. There are large-scale flows of manufactured goods, agricultural products, services, and technology

between the two countries. The landmark Korea-U.S. Free Trade Agreement (KORUS FTA) entered into force on March 15, 2012, underscoring the depth of bilateral trade ties. Under KORUS, 95 percent of all goods are duty free. . . . The agreement has boosted exports by billions of dollars annually for both sides and created new export-related jobs in both the R.O.K. and the United States.

The Republic of Korea's Membership in International Organizations

The R.O.K. and the United States belong to a number of the same international organizations, including the United Nations, G-20, Organization for Economic Cooperation and Development, Asia-Pacific Economic Cooperation forum, Association of Southeast Asian Nations (ASEAN) Regional Forum, International Monetary Fund, World Bank, and World Trade Organization. The R.O.K. hosts the Green Climate Fund, an international organization associated with the United Nations Framework Convention on Climate Change. The R.O.K. also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe and an observer to the Organization of American States.

The Government's Administrative Notice request provides as follows:

- The 2000 *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, issued by the National Counterintelligence Center, ranks South Korea as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States. The Annual Report released in 2008 indicates that the ten major foreign collectors, including both allies and adversaries, account for the bulk of the collection activity directed against the United States.

- South Korean government collection activities are also evidenced by several U.S. criminal espionage prosecutions. In May 1997, Robert Chaegon Kim, a civilian employee for the U.S. Department of Navy, Office of Naval Intelligence, pled guilty to "conspiracy to commit espionage for South Korea." Mr. Kim had passed classified documents to an officer in the South Korean navy, serving as the South Korean naval attache to the U.S. In 2011, Kue Sang Chun, an employee of the National Aeronautical and Space Administration, Glenn Research Center, pled guilty to exporting defense articles on the U.S. Munitions List, specifically Infra-Red Focal Plane Array detectors and Infra-Red camera engines, to South Korea without first obtaining an export license or written authorization for such export.

- The U.S. restricts the export of sensitive, dual-use technologies that can have civilian uses, as well as military uses, or 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.

- Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies. In 2015, a South Korean industrial company pled guilty to a conspiracy to steal a U.S. company's trade secrets involving Kevlar technology, which is used in a wide range of commercial and dual-use applications including body armor

and fiber optic cables. In July 2014, a South Korean chemical company, agreed to pay a criminal penalty of over $2 million 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.

- The primary human rights problems reported were government interpretation and application of the National Security Law, libel laws, and other laws to limit freedom of speech and expression and restrict internet access; and the continued jailing of conscientious objectors to military service. Corruption was also a problem. Choi Soon-sil, a long-time friend and close confidante of President Park Geun-hye, was arrested and indicted on charges of fraud, coercion, and abuse of power. In light of the scandal, lawmakers voted 234-56 to impeach President Park in December 2016, and she was removed from office. Other human rights problems included the absence of a comprehensive antidiscrimination law, sexual and domestic violence, and trafficking in persons including sex trafficking of children.

- According to the U.S. Department of Justice, there have been numerous recent criminal cases concerning export enforcement related to proprietary defense information, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both private companies and individuals in South Korea.

- ***Military-Grade Accelerometers to South Korea*** - In December 2014, a citizen of South Korea and president and CEO of a company located in Seoul, South Korea was charged with violations of the Arms Export Control Act and the International Emergency Economic Powers Act. According to the indictment, [the defendant] exported military grade accelerometers from the U.S. to Iran without first obtaining a license from the Treasury Department. Beginning in Dec. 2007 to Mar. 2010, [the d]efendant conspired with individuals located in China and Iran to procure U.S.-origin aircraft parts that were used in the navigation systems of aircraft and missiles and to export the parts from the U.S. to Iran.

- ***Infrared Military Technology to South Korea*** - On Dec. 20, 2011, EO System Company, Ltd, located in Inchon, South Korea, and several defendants [...] all citizens and residents of South Korea, were indicted on five counts of illegally exporting defense articles to South Korea. According to court documents, while working as an electrical engineer for NASA, [a defendant] also operated a business out of his home through which he illegally exported U.S. munitions to the South Korea and performed consulting services for Korean businesses. On occasion, [Defendant] used his NASA e-mail address to order sensitive items from U.S. manufacturers, falsely asserting that they would be used for NASA projects in the United States, when in fact, they were to be exported to South Korea.

- ***Military Technical Data to South Korea*** - On May 16, 2011, a former Vice President at Rocky Mountain Instrument Company (RMI), based in Colorado, pled guilty in the District of Colorado to violating the Arms Export Control Act. The defendant caused the

illegal export to South Korea of technical data related to prisms that are useful in guidance or targeting systems in Unmanned Aerial Vehicles, AC-130 gunships, tanks and missile systems. RMI, the company, pleaded guilty on Jun. 22, 2010, to one count of violating the Arms Export Control Act and was immediately sentenced to five years' probation and ordered to forfeit $1 million.

- ***Rocket Propulsion Systems, Engines and Technology to South Korea*** - On Oct. 20, 2010, a naturalized U.S. citizen of Korean origin, was sentenced after pleading guilty to attempting to illegally export defense articles to South Korea, including components for a 20 mm gun, known as the M61 Vulcan; components for a SU-27 Russian fighter jet; and RD-180 rocket propulsion systems, and related technology without the required State Department licenses.

- ***Carbon Fiber and Other Materials to Iran and China via South Korea*** - On July 10, 2013, an Iranian citizen pled guilty to violating International Emergency Economic Powers Act (IEEPA), Title II of Pub. L. 95–223, 91 Stat. 1626, by trying to export helicopter component parts from the U.S. to Iran, via South Korea.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part,

on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying 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.

Foreign influence security concerns arise because of Applicant's spouse's contacts with employees at the South Korean Consulate. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e).

Applicant's spouse's relationships with employees at the South Korean Consulate are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships create a concern about Applicant's "obligation to protect sensitive information or technology." For example, if entities in South Korea wanted to expose Applicant to coercion, they could use employees at the South Korean Consulate to approach Applicant's spouse. In turn, she could ask Applicant to compromise national security.

The mere possession of ties with employees at the South Korean Consulate is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has such a relationship, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Guideline B 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in

the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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 or inducement. 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 collection operations against the United States. The relationship of South Korea with the United States places a burden of persuasion on Applicant to demonstrate that his spouse's relationships with employees at the South Korean Consulate do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse.

While there is no evidence that intelligence operatives, terrorists, or other entities from South Korea seek or have sought classified or economic information from or through Applicant, or his spouse, it is not possible to rule out such a possibility in the future. Applicant's spouse's communications and visits with employees at the South Korean Consulate are sufficient to raise a security concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 indivual'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;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

> (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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 DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have some applicability. Applicant's spouse had limited contacts with employees at the South Korean Consulate. Nevertheless because of these contacts, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of South Korea] could create a risk for foreign influence or exploitation."

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. Applicant, his spouse, his children, his parents, and his siblings are citizens and residents of the United States. He and his spouse were educated in the United States, and he has lived in the United States since 1977. His spouse has lived in the United States since the age of 11. Applicant has never visited South Korea.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's meetings as part of a group with employees at the South Korean Consulate. There is no evidence that terrorists, criminals, the South Korean Government, or those conducting espionage have approached or threatened Applicant or his spouse for classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' very positive relationship with South Korea, South Korea's human

rights violations, and most of all the 67-year history of close military and diplomatic connections between South Korea and the United States.

In sum, the primary security concern is Applicant's spouse's contacts with employees at the South Korean Consulate. Employees of an embassy could be a conduit for foreign intelligence services seeking classified or sensitive information. However, there is no evidence that the South Korean Government or industrial entities have engaged in coercion of former South Korean citizens to obtain sensitive or classified U.S. information. Applicant has "deep and longstanding relationships and loyalties in the U.S.," which clearly outweigh his spouse's connections to South Korea, that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He was educated in the United States, has lived in the United States for most of his life, his children, parents, and siblings are U.S. citizens. He served in the U.S. Air Force for eight years. Foreign influence concerns are fully mitigated under AG ¶ 8(b). Even if foreign influence concerns were not mitigated under Guideline B, they would be mitigated under the whole-person concept, *infra*.

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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant's spouse joined a South Korean entity that focuses on South Korean history and culture. A group from this entity, including Applicant's spouse, visited the South Korean Consulate on several occasions, but those visits were not recent. There is no evidence that she met one-on-one with any South Korean diplomatic or intelligence officials. Balanced against these contacts is Applicant's close and continuing relationships and connections with the United States.

Applicant is a 51-year-old systems engineer, and a DOD contractor has employed him since 2006. In 1977, he immigrated with his parents and siblings to the United States. He was awarded a bachelor's degree in electrical engineering and a master's degree in computer science. He served honorably for eight years in the U.S. Air Force, and he was a captain when he left active duty. His Air Force specialty was computer systems analyst.

Applicant, his spouse, children, and parents are citizens and residents of the United States. South Korea does not have dual citizenship. Applicant, his spouse, and his children are solely U.S. citizens. Applicant has not visited South Korea since he left in 1977. Applicant and his spouse's net worth in the United States is about $1.9 million. Applicant and his spouse's annual salaries with bonuses is about $265,000.

A Guideline B decision concerning South Korea must take into consideration the geopolitical situation and dangers there.[3] Some South Korean citizens have a history of economic espionage against the United States, including export violations and selling sensitive U.S. technology to Iran. Balanced against this illegal behavior is South Korea's lengthy history of military and diplomatic alliance with the United States. There is no evidence that the South Korean Government has coerced any South Korean citizens living in the United States to betray the United States.

I have carefully applied the law, as set forth in *Egan,* Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that foreign influence security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

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
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge

[3] *See* ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).