



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03743

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

10/29/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to his contacts with citizens and residents of foreign countries. He refuted the personal conduct security concerns related to the allegation that he failed to disclose his contacts with foreign nationals in his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Eligibility for access to classified information is granted.

**Statement of the Case**

On April 6, 2016, Applicant completed and signed an SCA. (Government Exhibit (GE) 1) On February 28, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (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 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), effective June 8, 2017. (Hearing Exhibit (HE) 2)

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 Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines B (foreign influence) and E (personal conduct).

On April 5, 2018, Applicant responded to the SOR. (HE 3) Department Counsel requested a hearing. (Transcript (Tr.) 12) On May 17, 2018, Department Counsel was ready to proceed. On August 30, 2018, the case was assigned to me. On September 18, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 27, 2018. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 13) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 16; GE 1-2). On October 5, 2018, DOHA received a transcript of the hearing. Applicant did not provide any documents after his hearing.

### **Procedural Rulings**

Department Counsel offered information for administrative notice (AN) concerning foreign influence security concerns raised by Applicant's connections to the Republic of Korea or South Korea. (Tr. 16-17; HE 4) Applicant did not object, and I granted Department Counsel's motion. The request listed supporting documents to show detail and context for those facts. Portions of the South Korea section are drawn from the U.S. State Department website and from Department Counsel's AN request. (Tr. 17) AG ¶ 6, Foreign Influence, provides, "Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism." A risk assessment in this case necessitates administrative notice of facts concerning South Korea.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at security clearance 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). Portions of the Department Counsel's requests and information from the State Department website are quoted without quotation marks and footnotes.

### **Findings of Fact<sup>1</sup>**

Applicant admitted SOR ¶¶ 1.a and 1.b, and he partially admitted SOR ¶ 2.a. (HE 3) He also provided mitigating information. (HE 3) His admissions are incorporated

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<sup>1</sup> The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to ensure protection of privacy interests. The cited sources contain more specific information.

herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 28-year-old network operations technician, who has been employed by a government contractor for three years. (Tr. 6-7) He was born and educated in the United States. (Tr. 8; GE 1) In 2008, he graduated from high school. (Tr. 7) In 2012, he received an associate of science degree. (Tr. 7) He has never married, and he does not have any children. (Tr. 7) He did not serve in the military. (Tr. 28) His parents and brother were born in the United States, and they reside in the United States. (GE 1) He has no immediate family members living in any foreign countries. All of his employment and residences have been in the United States. (GE 1)

## **Foreign Influence**

During Applicant's May 3, 2017 Office of Personnel Management (OPM) personal subject interview (PSI), he disclosed contacts with citizens and/or residents of the United Kingdom, South Korea, Egypt, Libya, India, China, Vietnam, Thailand, Bosnia, Colombia, Malaysia, Philippines, and Indonesia. (GE 2) Most of these foreign contacts were over the Internet. The only countries he visited were brief trips to South Korea, Thailand, and Japan in 2016. Department Counsel focused on his contacts with residents of South Korea; Thailand; People's Republic of China; Singapore; Vietnam; Indonesia, and the Philippines, and she questioned him about the recency, quality, and frequency of those contacts. His longest and most frequent contact was with a citizen and resident of South Korea.

The SOR raises the following foreign influence security concerns:

SOR ¶ 1.a alleges, and Applicant admits that he met a citizen and resident of South Korea (SK) over the Internet. Applicant first communicated with SK in 2013. (GE 2) For several years, he frequently communicated with SK during online video games involving zombie survival. (Tr. 21; SOR response; GE 2) In 2017, Applicant and SK played video games about once a week for two to three hours. (GE 2) SK lived for 11 years in Colorado with his family, and SK is fluent in English. (Tr. 21) From 2015 to 2016, SK served as a reservist in the South Korean Navy. (Tr. 21) In 2016, Applicant went to South Korea and met with SK on three different days for meals, and he went to SK's residence and looked at SK's computer. (GE 2) In February 2018, he learned his contacts with SK caused a security concern, and he stopped communicating and playing video games with SK. (Tr. 22, 28-29)

SOR ¶ 1.b alleges Applicant maintained continuing contacts with several foreign nationals in addition to SK. Applicant had contacts with multiple foreign nationals over the Internet and in chats because he was considering vacationing in foreign countries, and he wanted to find out about good places to visit. (Tr. 38)

Applicant has weekly contact with a woman who resides in Thailand (TN1) using a chat application. (Tr. 29-30) He met TN1 personally in 2016 in Thailand. (Tr. 30) TN1 works for a truck dealership. (Tr. 30) He does not have a romantic interest in her. (Tr. 30) She has not visited Applicant in the United States. (Tr. 30)

TN1 referred Applicant to another Thailand resident (TN2), and he met TN2 for dinner in Japan in 2016. (Tr. 36) He ended his communications with TN2 shortly after they had dinner in Japan. (Tr. 36)

Applicant has contact about every two months with a resident of the People's Republic of China (CN) through a messaging application or chatting. (Tr. 31) He met CN at a club in the United States. (Tr. 31) At the time he met CN, she was a student at a U.S. university. (Tr. 31) He was not romantically involved with her. (Tr. 31) She returned to China after graduating from a U.S. university. (Tr. 32) CN works in a medical laboratory. (Tr. 40-41) Applicant has never been to China. (Tr. 32)

In 2016, Applicant had contact with a resident of Singapore (SN) he met at a dance club in South Korea. (Tr. 32) The day after they met, he went shopping with her. SN was on vacation in South Korea when she met Applicant. (Tr. 32) Applicant maintained contacts with SN through texting; however, he never met with SN in person after their meeting in 2016 in South Korea. (Tr. 32) She is a Facebook contact. (Tr. 32)

Applicant communicates on an almost daily basis with a woman who is a resident of Vietnam (VN) over the Internet. (Tr. 33) He has never met with VN in person. (Tr. 33)

Applicant met a woman who is a resident of the Philippines (PN1) over the Internet. (Tr. 34) He has never met PN1 in person. (Tr. 34) At one time, he communicated with PN1 on a weekly basis. Now his communications with her are infrequent. (Tr. 34)

At the time of Applicant's May 3, 2017, OPM PSI, he had contact about every two months with a resident of the Philippines (PN2) that he met over the Internet. (Tr. 37) He never met PN2 in person. (Tr. 38) He ended his communications with PN2 at least six months ago. (Tr. 38)

Applicant met a resident of Indonesia (IN1) over the Internet. (Tr. 35) He never met IN1 in person. (Tr. 35) At one time, he communicated with IN1 about twice a month; however, he does not contact her anymore after he received the SOR. (Tr. 35)

At the time of Applicant's May 3, 2017 OPM PSI, Applicant had contact with a resident of Indonesia (IN2). He ended his contacts with IN2 when he received the SOR. (Tr. 39)

Applicant's only foreign trip was in 2016. (Tr. 41) He spent six days in Japan, five days in South Korea, and six days in Thailand. (GE 2) He does not have any plans for future international travel. (Tr. 41) When he responded to the SOR, Applicant said he had contacts with 26 foreign nationals. (Tr. 44) He currently has ongoing contacts with 15 foreign nationals. (Tr. 44)

## **Personal Conduct**

Section 19, of Applicant's April 6, 2016 SCA asks, "Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years**

with whom you . . . are **bound** by affection, influence, common interests, and/or obligation?" (first emphasis in original; second emphasis added; GE 1) Applicant answered no, and he did not disclose any contacts with foreign nationals.

When Applicant completed his April 6, 2016 SCA, he believed the SCA sought information about foreign nationals with whom he had affection, such as a girlfriend, family member, etc., or to whom he was "close." (Tr. 18, 42) At the time he completed his April 6, 2016 SCA, he had not traveled to South Korea or Thailand, and he had not met any of the foreign nationals discussed in the previous section in person. (Tr. 22) He traveled for the first and only time outside the United States in October 2016. (GE 2) He had continuing contact with several foreign nationals, but he was not close to any of them before he completed his SCA. (Tr. 43-43)

During his May 3, 2017 OPM PSI, the investigator asked Applicant about his foreign contacts. (Tr. 15) After the OPM investigator explained the scope of the foreign contacts question, he provided a description of all of his foreign contacts. (Tr. 15, 23)

Applicant promised to disclose any foreign contacts that he had on any SCAs he completes in the future. (Tr. 41) None of his contacts have sought information from Applicant about his employment. (Tr. 41)

## **Character Evidence**

Applicant's supervisor since 2015 said Applicant is honest, forthright, diligent, and reliable. (Tr. 25) He seeks self-improvement, for example, he obtained certification in Security Plus in 2016. (Tr. 26) He has excellent judgment. (Tr. 26) He made important contributions to mission accomplishment. (Tr. 26) His supervisor supports approval of Applicant's security clearance. (Tr. 27) Two coworkers lauded Applicant's diligence and trustworthiness. (SOR response)

## **South Korea<sup>2</sup>**

South Korea is a stable, democratic republic. The United States and South Korea have been close allies since 1950, and have fought communism 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 four 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. In 2017, the most significant human rights issues in South Korea included:

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<sup>2</sup> The facts in the section concerning South Korea are primarily from Department Counsel's factual summary and attachments, except for some comments about the relationship between the United States and South Korea, which are drawn from the U.S. Department of State website, *Republic of Korea*.

government interpretation and application of National Security Law, libel laws, and other laws that limited freedom of expression and restricted Internet access; corruption; and domestic violence.

In recent years, the United States and South Korea have differed in their diplomatic approaches towards 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. South Korea has been the victim of attacks from North Korea.

Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies. South Korea has a history of collecting protected U.S. information. On multiple occasions, South Korea has been the unauthorized recipient of sensitive technology, in violation of U.S. export control laws. Department Counsel has listed numerous cases involving South Korea and theft or improper importation of sensitive information or technologies. There is no evidence that South Korea or entities in South Korea have a history of coercing U.S. citizens through contacts or friends that reside in South Korea to commit crimes against the United States. Department Counsel does not have the burden to produce such evidence.

In sum, the United States and South Korea are close military, diplomatic, and political allies. The United States has maintained a large military force in South Korea for more than sixty years, and that close relationship is vital to both countries' national security. It is unlikely that the South Korea government would jeopardize its close bilateral relationship with the United States by coercing an applicant to obtain classified or sensitive information from the Department of Defense.

## **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 (4<sup>th</sup> 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 has 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; 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 or technology.

Applicant engaged in frequent contacts over the Internet with citizens and residents of the following countries: South Korea; Thailand; People's Republic of China; Singapore; Vietnam; Indonesia, and the Philippines. He had in-person contacts in 2016 with citizens and residents of South Korea, Thailand, China, and Singapore for parts of one to three days. He had the longest and most frequent contact with SK; however, when he was advised that his contacts with SK raised a security concern, he ended his contacts with SK. The SOR did not allege that any of his other foreign contacts with specific individuals raised a security concern.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close ties with a foreign national residing in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

Guideline B security concerns are 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. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from any foreign countries seek or have sought classified or economic information from or through Applicant, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services. Applicant's contacts in foreign countries "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationships of foreign countries with the United States, and the situation in those countries places a significant burden of persuasion on Applicant to demonstrate that his relationships with persons living in or visiting those countries do not pose a trustworthiness or security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist someone living in a foreign country.

Applicant's relationships with person who are living in a foreign country or visiting those countries create a potential conflict of interest because terrorists, criminals, or government authorities could place pressure on residents of those countries in an effort to cause an applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with residents of foreign countries and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) 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 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;

(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(b) applies. None of the other mitigating conditions apply. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant was born, raised, and educated in the United States. A DOD contractor has employed him for the past three years. All of his immediate family members live in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with citizens and residents of foreign countries. Applicant engaged in contacts over the Internet with residents of foreign countries over several years. He had in-person contacts in 2016 for parts of one to three days with citizens and residents of South Korea, Thailand, China, and Singapore. His most extensive contacts were with SK, and after he learned those contacts raised a security concern, he terminated his contact with SK. The SOR did not indicate his contacts with any other specific person raised a security concern.

In sum, Applicant's connections with foreign nationals are much less significant than his connections to the United States. His family living in the United States, his U.S. citizenship, his residence in the United States, and his U.S. employment are important factors weighing towards mitigation of foreign influence security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

## Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . [or to] determine security clearance eligibility . . . [.]"

Section 19, of Applicant's April 6, 2016 SCA asks, "Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years** with whom you . . . are **bound** by affection, influence, common interests, and/or obligation?" (first emphasis in original; second emphasis added; GE 1) The term "bound" is not defined in the SCA. Merriam Webster on-line Dictionary defines "bound" as being "placed under legal or moral restraint or obligation." <https://www.merriam-webster.com/dictionary/bound>. The SCA question is not designed to collect information about every contact with a foreign national because most residents of the United States are likely to have numerous routine continuing contacts with persons who are foreign nationals. Any U.S. citizen who stays in a foreign country for more than a few days would also have

numerous continuing foreign contacts. The question seeks information about an applicant's significant or close foreign contacts or connections.

Applicant answered no because he did not have a close or significant relationship with any foreign nationals. At the time he completed his SCA, he had not met foreign nationals in person with whom he maintained contacts. His interpretation of the SCA question about contacts with foreign nationals was reasonable.

Applicant volunteered to the OPM investigator information about his numerous foreign contacts. His forthright description of his foreign contacts to the OPM investigator is an indication he did not intend to conceal information about his foreign connections in his SCA. I do not believe he intentionally failed to disclose or intended to conceal his contacts with foreign nationals in his SCA. Applicant refuted personal conduct security concerns.

### **Whole-Person Analysis**

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 Guidelines B and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant more comment.

Applicant is a 28-year-old network operations technician, who has been employed by a government contractor for three years. He was born and educated in the United States. In 2012, he received an associate of science degree. His parents and brother were born in the United States, and they reside in the United States. All of his employment and residences have been in the United States. The general sense of the statements of three coworkers supporting approval of his security clearance is that Applicant is diligent, trustworthy, and reliable.

I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, and the AGs, to the facts and circumstances in the context of the whole person. For the reasons

stated, Applicant has mitigated the foreign influence security concerns and refuted the personal conduct security concerns.

### **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
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Subparagraphs 1.a and 1.b:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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### **Conclusion**

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

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MARK HARVEY  
Administrative Judge