



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



In the matter of:)
)
) ISCR Case No. 14-05565
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro Se*

02/16/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. His mother-in-law, father-in-law, and one brother-in-law are citizens and residents of the Republic of Korea (South Korea). Another brother-in-law is a citizen of South Korea who is a student attending a U.S. university. The foreign influence security concerns have been mitigated. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 3, 2015, the DoD issued a Statement of Reasons (SOR) detailing foreign preference and foreign influence security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On June 25, 2015, Applicant answered the SOR and requested a hearing. On October 1, 2015, I was assigned the case. On October 29, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on November 17, 2015. I admitted Government's Exhibits (Ex.) 1 – 3, and Applicant's Ex. A – D without objection. Applicant testified at the hearing, as did his company's security officer on Applicant's behalf. On November 25, 2015, DOHA received the hearing transcript (Tr.).

Procedural Rulings

Department Counsel submitted a written request that I take administrative notice of certain facts about the Republic of Korea (South Korea). No objection was raised and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Ex. 3. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's Answer to the SOR, he denied that one of his brothers-in-law was still employed as a foreign intelligence officer. That brother-in-law was a student at a U.S. university attending a master's course in computer science. Applicant admitted his mother-in-law, father-in-law, and another brother-in-law are citizens and residents of South Korea. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 36-year-old software engineer who has been employed by a defense contractor since September 2008 and worked in the defense industry since 2003. (Tr. 15, 17) He was born to U.S. citizens and raised in the United States. (Ex. 1, Tr. 15) He is the grandson of Holocaust survivors. (Tr. 17) In November 2008, he married his wife who had been born in South Korea and was a citizen of South Korea. As a teenager, his wife came to the United States and was adopted by her aunt. (Ex. 2) His wife completed high school and her further education in the United States. (Tr. 19) She is a naturalized U.S. citizen. (Tr. 38) Applicant and his wife met when both worked for the same defense contractor. (Tr. 23) She was a systems engineer and he a software engineer. (Tr. 23) His wife held a security clearance when she worked in the defense industry. (Tr. 19) She had surrendered her Korean passport as required. (Tr. 20) She is now a stay-at-home mother. They have two children ages three and six. (Tr. 31)

Applicant's wife's parents and two brothers were born in and are citizens of South Korea. His mother-in-law and father-in-law both work in Korea for a Korean company that repairs ship engines. (Ex. 2, Tr. 26) In October 2005, he first met his in-laws when he and his wife visited South Korea. He has quarterly telephone contact with his in-laws and last saw them in person in August 2012. (Ex. 2) His mother-in-law, father-in-law, and brother-in-law living in Korea speak minimal or no English and Applicant does not speak, read, or write Korean. (Tr. 18) He has contact with his

brother-in-law in Korea on those occasions when his brother-in-law is present at his parent's home when his wife calls her parents.

One of Applicant's brother-in-laws is a software engineer. (Tr. 19) The other brother-in-law attends a computer science MS program at a U.S. university. (SOR Answer) This brother-in-law hopes to go through the immigration process to be allowed to stay in the United States following the completion of his education. (Tr. 19) While in Korea, from 2009 through 2015, this brother-in-law had a job with the South Korean National Intelligence Service. (Ex. 2, Tr. 28) He was a translator assigned to the U.S. Army. (Tr. 28, 47)

Applicant has visited Korea three times: in October 2005, April 2011, and August 2012. (Ex. 1, 2) In August 2012, Applicant, his wife, and son spent ten days visiting South Korea and his wife's family. (Ex. 2) His in-laws have visited him and his wife in the United States three or four times, staying a week or two each time. (Tr. 30, 39) The brother-in-law studying in the United States visited him and his wife for a week in the United States before traveling to the university, which is located in a different state. (Tr. 30)

Applicant presented character letters from several coworkers, including company officers, such as a vice president and two directors, and also a letter from a foreign service officer. (Ex. A – D) Universally, Applicant is held in great esteem for his integrity, trustworthiness, reliability, and good judgment. He has been exposed to sensitive proprietary and personnel information and has treated this information with the utmost care. (Ex. A, B, D) He is an upstanding citizen, respected, and proactive in the community. (Ex. A – D) Applicant was born and raised in the United States. He has spent his entire life here. All of his school was obtained here. His job is here and his family lives here.

South Korea

The Republic of Korea is a stable, mature, democratic republic, a strong military ally and friend of the U.S., and a major U.S. trading partner. The South Korean government generally respects the human rights of its citizens. The United States and South Korea cooperate in trade, academic and cultural exchanges, science and technology, joint efforts to combat terrorism, and people-to-people exchanges. South Korea has a good human rights record, although it has taken some strong measures against violent labor, political, and student demonstrations. However, South Korea has some reported human right problems including: hazing of military personnel, imprisonment of conscientious objectors, the government's interpretation of laws regulating the Internet and telecommunications, and sexual and domestic violence. South Korean National Security Law allows arrest and detention for conduct the Government views as "endangering the security of the State." Crime is generally low in the South Korea.

South Korea and North Korea have a strained relationship. North Korean agents have sought to exploit South Korean dissidents to undermine the South Korean

government. In 2010, relations between the two nations experienced significant setbacks when a South Korean warship was struck by a North Korean torpedo and sunk. Tensions further increased when North Korea fired upon a South Korean island with artillery.

The United States, because of its supremacy in industrial power, remains a prime target of foreign economic collection and industrial espionage. Due to the race to control scarce resources and the global markets, economic intelligence against the United States, including the theft of trade secrets and competitive business information is likely to increase. On several occasions, South Korea has been the unauthorized recipient of sensitive technology in violation of U.S. export control laws. South Korea has been identified as one of the seven most active nations engaging in foreign economic collection and industrial espionage. Traditional allies, as well as adversaries, have increased their collection efforts against U.S. targets and will continue to do so in the future.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

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

Analysis

Guideline B, Foreign Influence

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant’s father-in-law, mother-in-law, and brother-in-law are citizens and residents of South Korea, and another brother-in-law who is a citizen of South Korea attends university in the United States. South Korea is a strong ally of the United States, but it has engaged in industrial espionage in the past. The presence of Applicant’s in-

laws in South Korea creates a somewhat heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates the possibility of a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's contact with his in-laws in South Korean is minimal. He has contact with them quarterly. They do not speak English and he does not speak Korean. None of his in-laws are currently affiliated with the South Korean government. Before becoming a student at a U.S. university, Applicant's one brother-in-law had previously worked for the South Korean National Intelligence Service as a translator working with the U.S. Army in Korea.

The South Korean government is a stable, democratic government that generally respects human rights. It is also a very supportive ally of the United States. Consequently, given the nature of the relationship Applicant has with his relatives, it is unlikely Applicant will be put in a position of having to choose between his in-law's interests and those of the United States. AG ¶ 8(a) applies.

Applicant was born, raised, and educated in the United States. His job is here and his family lives here. He is respected as a loyal employee with good judgment who has been exposed to sensitive information and has always properly safeguarded it. His wife has assimilated to the lifestyle and culture in this country. I find Applicant's obligations to his in-laws are minimal and he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any potential conflict of interest in favor of the United States. Both AG ¶¶ 8(b) and 8(c) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and living his entire life in this country. I also considered the totality of Applicant's ties to South Korea. 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."²

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence

² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has strong ties to his community. South Korea is a strong, reliable ally of the United States. It has a democratic government and respects human rights. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Foreign Influence 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

Subparagraphs 1.a – 1.c: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Claude R. Heiny II
Administrative Judge