



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



In the matter of:	)	
-----	)	
	)	ISCR Case No. 14-05529 <sup>1</sup>
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Lance R. Gallardo, Esquire

September 8, 2015

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

On December 5, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant, through his attorney, replied to the SOR (RSOR) in writing on January 16, 2015, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on March 2, 2015. DOHA issued a notice of hearing on March 10, 2015, and I convened the hearing as scheduled on May 5, 2015. The Government offered Exhibits 1 and 2, which were received and admitted without

\_\_\_\_\_  
<sup>1</sup> The SOR incorrectly cited the case number as ADP Case No. 14 05529. It has been corrected to ISCR Case No. 14 05529.

objection. Applicant testified on his own behalf and submitted Exhibits A through J, which were also admitted without objection. One additional witness, Applicant's father, testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on May 13, 2015. The record remained open to allow Applicant to submit additional evidence, and two documents that were submitted in a timely fashion have been identified and entered into evidence without objection as post-hearing Exhibits A and B. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Korea (South Korea). The request and the attached documents were admitted into evidence as Exhibit 2. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the second witness, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old. He was born in South Korea in 1970, and he moved to the United States in 1996, under a student visa. He became a United States citizen on January 18, 2012. Applicant has been married to his present wife since 1999, and she has never been employed outside of the home since they have been married. They have two sons, ages 9 and 6, who are United States citizens. Applicant also has a brother who resides in the United States, and is a naturalized United States citizen. His brother is married and has two daughters in the United States.

Applicant received a Ph.D. from an American university in 2002. He has been employed by his present employer, a defense contractor, since 2011, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 56-66, 90, 98.)

### **Paragraph 1 (Guideline B - Foreign Influence)**

The SOR lists seven allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's mother is a citizen and resident of South Korea. Applicant speaks to his mother a few times a month. He does not provide his mother or his father with any financial support. She has never been employed outside of the home. (Tr at 98.)

1.b. It is alleged in the SOR that Applicant's father is a citizen and resident of South Korea. Applicant speaks to his father once every month to two months. (Tr at 98.)

Applicant testified that his mother and father plan to immigrate to the United States. They have not yet done so because they have to liquidate their property in South Korea before they move, and because of the poor economy in South Korea over the last several years, it has been difficult to do this. (Tr at 74-75.)

1.c. It is alleged in the SOR that Applicant's father-in-law is a citizen and resident of South Korea. Applicant testified that he has contact with his father-in-law approximately every three to six months. He had been a CEO of a large private company. He does not plan to move to the United States. (Tr at 92-94.)

1.d. It is alleged in the SOR that Applicant's brother-in-law is a citizen and resident of South Korea. Applicant testified that he has contact with his brother-in-law approximately every four to six months. He is currently a college student in the United States, although he does plan to return to South Korea. (Tr at 95-96.)

1.e. It is alleged in the SOR that Applicant's wife's extended family members are citizens and residents of South Korea. Applicant does have a relationship with one of his wife's aunts, and he does see them when he travels to South Korea. (Tr at 95-96.)

1.f. It is alleged in the SOR that Applicant owns real estate in South Korea worth an estimated \$200,000. Applicant testified that this property was purchased by his father without Applicant's knowledge or approval, and he only learned about it several years after the purchase had been made. Applicant indicated that while he did not want the property, he did not want to force his father to sell the property during the drop in the economy, which would have forced his father to take a substantial loss. (Tr at 79-81.) Applicant did concede that as of this time, the property is still in his name and has not been transferred back to his father. (Tr at 87-88 .)

1.g. It is alleged in the SOR that Applicant's wife owns a bank account in South Korea worth an estimated \$40,000. Applicant testified that this money had been his wife's separate money, and she has transferred all of the money from that account to a United States bank. (Tr at 77-78.)

## **Paragraph 2 (Guideline C - Foreign Preference)**

The SOR lists one allegation regarding Foreign Preference, under Adjudicative Guideline C.

2.a. It is alleged in the SOR that Applicant exercised his South Korean citizenship by possessing a South Korean passport issued on May 4, 2011, and not scheduled to expire until May 4, 2021.

At the hearing, Applicant explained that he renewed his South Korean passport in 2011, before he became a United States citizen. He was planning to take a trip to

South Korea and he learned that he needed to renew his South Korean passport, which had less than six months left on it before it expired, if he was to be able to use it to allow him to re-enter the United States. Applicant testified that he received his United States passport in February 2012, shortly after he became a United States citizen, and he never used his South Korean passport after he received his United States passport. Applicant further testified, and Exhibit D establishes, that Applicant surrendered his current South Korean passport to his employer's facility security officer, and the South Korean passport was destroyed. (Tr at 67-71.)

## **Mitigation**

Applicant submitted two property appraisals showing that the home in which he lives is appraised for the amount of \$1,050,000. Applicant has also recently completed the purchase of a condominium as a rental property, which has been appraised for \$423,000. (Exhibits G and I.) Post-hearing Exhibit B shows the property was sold to Applicant for \$415,000.

Applicant testified that his estimated total net worth in the United States exceeds \$2 million. (Tr at 88.) In post-hearing Exhibit A, Applicant showed that after a more thorough analysis his net worth is \$1,541,313.

As reviewed above, Applicant's father testified on his behalf. He confirmed that he purchased the property in South Korea as a gift for his son, without his son's knowledge or approval, and without any financial input from his son. He further testified, and Exhibit B established, that this property in South Korea is for sale. Applicant's father also testified that his own home in South Korea is for sale, and once that property has been sold, he and Applicant's mother will move to the United States. He anticipates that the sale will occur sometime in 2015. (Tr at 26-37.)

Applicant testified that he has no intention to ever return to live in South Korea. Towards that end, he has never registered his two sons as citizens of South Korea; they are only United States citizens, and they only have United States passports. (Tr at 83-85.) He also stated that, with the exception of his parents, he does not have close relationships with any other citizens or residents of South Korea. (Tr at 85-86.)

## **Current Status of South Korea**

I take administrative notice of the following facts regarding South Korea. South Korea has a history of collecting protected U.S. information. South Korea has been ranked as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States, and it has been the unauthorized recipient of technology controlled under U.S. export controls. (Exhibit 2.)

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

### Paragraph 2 (Guideline B - Foreign Influence)

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: AG ¶ 7 (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.” Applicant’s family members, who are citizens and residents of South Korea, make AG ¶ 7(a) a concern to the Government. AG ¶ 7 (e) “a substantial business, financial, or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation” is also applicable because of Applicant’s property in South Korea.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant because of the following: Applicant, his wife, his two sons, and his brother and his brother’s family are all United States citizens and residents. Applicant received his Ph.D. in the United States, and he has a net worth of more than \$1.5 million here. His parents plan to move to the United States as soon as it is financially feasible. Finally Applicant testified credibly and convincingly that his loyalty lies with the United States, and he has no divided loyalty with South Korea.

Because of Applicant’s significant assets in the United States, I also find AG ¶ 8(f) applicable, “the value . . . [of the] property interests is such that they are unlikely to result in a conflict and could not be used to effectively to influence, manipulate, or pressure the individual.” As a result of all of these factors, I conclude Guideline B for Applicant.

## **Guideline C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises, “When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s application, receipt, and retention of a South Korean passport raises foreign preference concerns under disqualifying condition AG ¶ 10(a) as the “exercise of any right, privilege or obligation of foreign citizenship.”

Applicant’s dual citizenship was based solely on his birth in a foreign country, and he applied for the current South Korean passport before he became a United States citizen. Additionally, Applicant never used his South Korean passport after he became a United States citizen, and he has now destroyed his South Korean passport. Therefore, I find that mitigating conditions AG ¶ 11(a), (c) and (e) apply to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs any disqualifying evidence.

## **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(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 under Guidelines B and C. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling under both Guidelines, I find that the evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

## **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.g.:       For Applicant

Paragraph 2, Guideline E:       FOR APPLICANT

    Subparagraph 2.a.:           For Applicant

## **Conclusion**

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

Martin H. Mogul  
Administrative Judge