



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



In the matter of:)
)
) ISCR Case No. 15-03150
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: John Randolph MacPherson, Esquire

05/25/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant has six relatives, including his father and his parents-in-law, who are citizens and residents of South Korea. He frequently communicates with his father and to a lesser extent with his other relatives, and his spouse frequently communicates with her parents, who are citizens and residents of South Korea. Foreign influence concerns raised by his and his spouse’s relationships with family in South Korea are mitigated by his strong connections to the United States. Access to classified information is granted.

Statement of the Case

On August 19, 2014, Applicant signed and submitted a Questionnaire for National Security Positions (e-QIP) (SF 86) (Government Exhibit (GE) 1). On October 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest 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 Guideline B (foreign influence).

On November 10, 2015, Applicant responded to the SOR, and he requested a hearing. On March 17, 2016, Department Counsel was ready to proceed. On March 28, 2016, the case was assigned to me. On April 12, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 2, 2016. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 15-16) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits, which were admitted without objection. (Tr. 12-13; GE 1-2) Applicant offered 30 exhibits, which were admitted without objection. (Tr. 22-23; AE 1-30) On May 13, 2016, DOHA received a copy of the transcript of the hearing.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning South Korea. (Tr. 12-23; Administrative Notice Request, March 17, 2016) Applicant provided the Intelligence Threat Handbook (June 2004) because it does not cite South Korea as an intelligence threat, and he urged acceptance of the 2004 version in lieu of the 1996 version of the Intelligence Threat Assessment that Department Counsel provided. (Tr. 15-16; HE 4) Applicant urged rejection of Intelligence Threat Handbook as an exhibit for administrative notice because it was prepared by a contractor (the Interagency OPSEC Support Staff, Alexandria, VA: Centre for Counterintelligence and Security Studies), and not by the federal government, and he cited ISCR Case No. 14-02454 (A.J. Mendez Dec. 7, 2015) in support of his motion to exclude. (Tr. 15-17) Department Counsel had no objection to consideration of both versions of the Intelligence Threat Handbook. I admitted both versions of the Intelligence Threat Assessment with greater weight being given to the more recent version. (Tr. 17) Department Counsel conceded there was no evidence that the South Korean Government used coercive methods upon South Korean—United States dual citizens to obtain U.S. classified information. (Tr. 22) However, the list of indictments and convictions in the administrative notice request established that South Koreans had voluntarily and illegally provided U.S. classified and sensitive information and equipment to South Korean entities. (Tr. 22)

Applicant offered the Office of National Counterintelligence Executive, *Fiscal Year 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* (July 23, 2009) as the most recent version of the annual report to Congress and a 2015 human rights report concerning South Korea. (Tr. 18-21; HE 6, HE 7) I admitted all proffered reports, with greater weight being given to the most recent reports. (Tr. 19-20) The parties' documents provided verification, detail, and context for facts relating to South Korea's relationship with the United States.

There was no objection to me taking administrative notice of two additional documents: U.S. Department of State website, *Background Note South Korea* (Apr. 12,

2012) <http://www.state.gov/outofdate/bgn/southkorea/200974.htm> and U.S. Bilateral Relations Fact Sheets, *U.S. Relations With South Korea*, Fact Sheet (Feb. 5, 2015), <http://www.state.gov/r/pa/ei/bgn/2800.htm>. (Tr. 28-29; HE 9) On May 12, 2016, Applicant provided a post-hearing statement emphasizing facts in HE 8. (HE 10)

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 South Korea section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning South Korea.

Findings of Fact¹

Applicant admitted the allegation in SOR ¶ 1.a. (HE 3) His admission is accepted as a finding of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a defense contractor, who is seeking a security clearance to enhance his employment in sensitive construction projects. (Tr. 52, GE 1) He has worked for a federal government contractor since June 2014. (GE 1) He attended a university in the United States, and he was awarded a masters of science degree in project management in 2001. (Tr. 52-53; AE 25) In 1998, he married. (Tr. 53) He has worked for various construction companies since 2001. His daughter was born in the United States, and she is 11 years old. (GE 1) Applicant immigrated to the United States in 2000. (Tr. 52) He and his spouse became U.S. permanent residents in 2008, and they became U.S. citizens in 2014. (Tr. 25, 55-56; AE 17-18) He votes in U.S. elections. (Tr. 57; AE 30)

Applicant attended periodic security training and briefings provided by his company. (Tr. 60-62; AE 11-16) He paid close attention during training and conscientiously took notes.

Foreign Influence

Applicant was born in South Korea. (Tr. 52, GE 1) As a South Korean citizen, he served in the South Korean Army, and he was part of the South Korean Augmentation to the U.S. Army. (Tr. 71) He received a bachelor's degree in South Korea. (GE 2) The SOR alleges, and Applicant admits, that his father, brother, two sisters, father-in-law and mother-in-law are citizens and residents of South Korea. His conversations with family members are casual and do not involve substantive or sensitive matters

¹The 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.

pertaining to his employment. (Tr. 65-67; AE 20) He frequently communicates with his father, and he does not frequently communicate with any other South Korean relatives. (Tr. 65, 74; AE 19-20) His spouse frequently contacts her parents. (Tr. 75; AE 19-20)

Applicant surrendered his South Korean passport, and in 2015, he renounced his South Korean citizenship. (Tr. 25, 59; AE 28) He visited South Korea in 2000, and 2011. (Tr. 26, 62-64; AE 21) His relatives in South Korea visited Applicant and his family in the United States in 2003, 2005, and 2015. (Tr. 26, 62-64; AE 21) His family living in South Korea knows Appellant is involved with construction; however, they are not knowledgeable about the sensitivity of the construction projects. (Tr. 64) He does not have any financial connections to South Korea. (Tr. 70) He does not receive any financial assistance from his family in South Korea. (Tr. 73) None of his family members in South Korea work for the South Korean Government. (Tr. 71)

Character Evidence

Eight character witnesses provided statements describing their frequent or close contacts with Appellant since June 2014. (Tr. 29-51; AE 2-10) His witnesses were colleagues or supervisors from work. (Tr. 29-51; AE 2-10) The general sense of the character evidence is that Applicant is an asset to his company, careful, conscientious, thorough, diligent, reliable, honest, and trustworthy. (Tr. 29-51; AE 2-10) He is well-trained in security matters, and he is sincere and serious about protecting security. (Tr. 47-48; AE 11-16)

There is no derogatory information concerning Applicant's police records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

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 troop commitment has continued since the North Korea invasion of South Korea in 1950.

The State Department Fact Sheet provides in part:

The United States and South Korea 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 South Korea in support of its commitment under the U.S.-R.O.K. Mutual Defense Treaty to help South Korea defend itself against external aggression. In 2013, the two countries celebrated

the 60th anniversary of the U.S.-South Korea alliance. A Combined Forces Command coordinates operations between U.S. units and South Korean armed forces. The United States and South Korea coordinate closely on the North Korean nuclear issue and the denuclearization of the Korean Peninsula. As South Korea's economy has developed (Korea joined the OECD in 1996), trade and investment ties have become an increasingly important aspect of the U.S.-South Korea relationship.

In recent years, the U.S.-South Korea alliance has expanded into a deep, comprehensive global partnership, and South Korea's role as a regional and global leader continues to grow. South Korea 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. South Korea is a committed member of various international nonproliferation regimes, including the Proliferation Security Initiative (PSI) and the Global Initiative to Combat Nuclear Terrorism (GICNT). The United States and South Korea are also expanding cooperation on development assistance and aid.

People-to-people ties between the United States and South Korea have never been stronger. South Korea, 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 South Korean students the opportunity to learn more about the United States. . . .

Bilateral Economic Relations

Over the past several decades, South Korea 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 in South Korea, while South Korea'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. The agreement is expected to boost exports by billions of dollars annually for both sides and create new export-related jobs in both South Korea and the United States.

South Korea's Membership in International Organizations

South Korea 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. South Korea hosts the Green Climate Fund, an international organization associated with the United Nations Framework Convention on Climate Change. South Korea also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe and an observer to the Organization of American States. (HE 10)

The Government's Administrative Notice request provides as follows:

- South Korea has a history of collecting protected U.S. information. The 1996 Interagency OPSEC Support Staff, Intelligence Threat Handbook notes that South Korea has targeted the United States with intelligence gathering programs, and has centered its collection efforts on computer systems, aerospace technologies and nuclear technologies, and its activities have included stealing information from computerized databases maintained by U.S. government agencies.
- The 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, issued by the National Counterintelligence Center, ranks 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 major foreign collectors remain active. . . .
- 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
- Industrial espionage remains a high-profile concern relating to South Korea and South Korean companies. In 2015, a South Korean industrial company pleaded guilty to conspiracy to steal a U.S. company's trade secrets involving Kevlar technology, which is used in a wide range of commercial 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 South Korean government has generally respected the human rights of its citizens, however, reported human rights problems include: the government's interpretation of national security and other laws limiting freedom of expression and restricting access to the internet; official corruption; the absence of a comprehensive antidiscrimination law; sexual and domestic violence; child prostitution; and trafficking in persons. The South Korean National Security Law grants authorities the power to detain, arrest, and imprison persons believed to have committed acts intended to endanger the "security of the State." (HE 4)

The most recent counterintelligence reports have not mentioned South Korea as one of the major or primary nations of concern pertaining to espionage against the United States. Nevertheless, some South Korean individuals and companies have engaged in espionage against the United States. This criminal activity is not limited to South Koreans. U.S. born citizens have also engaged in espionage against the United States.

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 that, "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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). 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 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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 as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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 or her] 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 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 indicates three conditions that could raise a security concern and may be disqualifying 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;

(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; and

(d) sharing 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.

AG ¶¶ 7(a), 7(b), and 7(d) apply because of Applicant's relationship with his family, which includes his spouse's relationship with her parents, who are citizens and residents of South Korea.

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(d). Although Applicant does not have direct ties of affection to his in-laws living in South Korea, he has affection for his spouse, and she has affection for her family living in South Korea. So an indirect tie remains between Applicant and his in-laws living in South Korea.

Indirect influence from Applicant's in-laws living in South Korea, through Applicant's spouse to Applicant, could result in a security concern. Applicant's spouse's communications with her family living in South Korea are not fully described in the record, and there is insufficient evidence to rebut the evidentiary presumption. Her relationships with her family living in South Korea are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Her relationships with residents of South Korea create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse and her relatives who are in South Korea. For example, if entities in South Korea wanted to expose Applicant to coercion, they could exert pressure on his in-laws in South Korea. Applicant would then be subject to indirect coercion through his spouse and classified information could potentially be compromised.

The mere possession of close family ties with relatives or in-laws living in South Korea 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 *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 and his own relationships to relatives living in South Korea 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 and family living in South Korea, being particularly mindful of the potential threat of coercion by entities in South Korea.

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 in-laws living in South Korea, it is not possible to rule out such a possibility in the future. Applicant and his spouse’s communications and visits with family living in South Korea are sufficiently frequent, to demonstrate obligations to them and affection for family living in South Korea. Concern for family is a positive character trait that increases trustworthiness; however, it also increases the 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(d) 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 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;

(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 cognizant security authority;

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant had frequent communications with his father living in South Korea, and his spouse had frequent communications with her parents living in South Korea. The amount of contacts between an applicant or the applicant's spouse and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of connections to family living in South Korea, 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." Visits to or from family provide additional evidence of concern for family and obligation to family welfare.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. He, his spouse, and his daughter are U.S. citizens. He earned a master's degree in the United States, has lived in the United States 16 years, and had been employed by a U.S. Government contractor since June 2014.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by relationships with family living in South Korea. There is no evidence that terrorists, criminals, the South Korean Government, or those conducting espionage have approached or threatened Applicant or family in South Korea to coerce Applicant or his family in South Korea 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 66-year history of close military and diplomatic connections between South Korea and the United States.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family living in South Korea. Applicant is not required to report his contacts with family living in South Korea.

AG ¶ 8(f) does not apply. Applicant has some property interests in the United States, which include his employment in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case. Applicant does not own any property or have any investments in South Korea.

In sum, the primary security concern is Applicant's close relationship with his father and his spouse's relationships with her parents, who are residents and citizens of South Korea. Those family members living in South Korea are readily available for coercion; however, there is no evidence that the South Korean Government or industrial entities have engaged in coercion of South Korea-United States dual citizens. Applicant has "such deep and longstanding relationships and loyalties in the U.S.," which clearly outweigh his connections to South Korea, that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." 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 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline B, but some warrant additional comment.

Applicant has strong connections to the United States. He has lived in the United States for the previous 16 years. He, his spouse, and his daughter are U.S. citizens. He earned a master's degree in the United States, and he is employed by a U.S. federal contractor. Eight character witnesses provided statements describing Applicant as an asset to his company, careful, conscientious, thorough, diligent, reliable, honest, and trustworthy. He is well-trained in security matters, and he is sincere and serious about protecting security.

Applicant voluntarily returned his South Korean passport. He renounced his South Korean citizenship. He limited his visits to South Korea after immigrating to the United States to two visits in 2000 and in 2011. He has no financial interests in South Korea.

There is no derogatory information concerning Applicant's police records, any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States, and he considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

A Guideline B decision concerning South Korea must take into consideration the geopolitical situation in South Korea, as well as the dangers existing in South Korea.² For 66 years, South Korea and the United States have been close military and diplomatic allies. U.S. military bases in South Korea have provided crucial support for decades to the defense of the United States and South Korea. The danger of coercion from South Korean entities is relatively low in comparison to some countries, and Applicant's connections to the United States are strong. Foreign influence concerns are mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign interest 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

Subparagraph 1.a: For Applicant

² 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).

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.

Mark Harvey
Administrative Judge