

DATE: May 15, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17620

REMAND DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM  
APPEARANCES

**FOR GOVERNMENT**

Sabrina Elaine Redd, Esq., Department Counsel

**FOR APPLICANT**

Mark S. Zaid, Esq.

**SYNOPSIS**

Applicant, a naturalized citizen of the United States, is an owner-employee of a computer services company which contracts with federal agencies. He has two brothers living in South Korea. Another brother and his mother are South Korean citizens living in the United States. Clearance was granted. The government appealed. The Appeal Board remanded the decision. After additional findings of facts and conclusions, I again conclude that Applicant successfully mitigated the security concerns under Guidelines B and E. Clearance is granted.

**STATEMENT OF THE CASE**

On July 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline B (foreign influence) and Guideline E (personal conduct) detailing reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued,

denied or revoked. The SOR detailed foreign influence and personal conduct issues as the reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.

In a sworn written statement, dated August 9, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on February 24, 2005. Notice of the hearing was dated April 1, 2005. A hearing was conducted on May 3, 2005. The transcript was received May 13, 2005. A decision was entered on June 22, 2005. The government appealed. The Appeal Board remanded the case on April 17, 2006.

### **APPELLATE ISSUES**

The Appeal Board directed me to issue findings of fact and discuss SOR ¶ 2.b., and to discuss adjudicative process guidelines E2.2.1.1 through E2.2.1.9.

### **FINDINGS OF FACT**

I adopt the findings of fact from the original decision and make the following additional findings of fact. SOR ¶ 2.b. alleges that during an April 23, 2004 interview with an authorized investigator for the Department of Defense, Applicant stated that his brother's sole duties involved bookkeeping, notwithstanding the fact that the Japanese and Korean components of Applicant's company's website listed his brother as a point of contact. As of February 2004, his brother ceased to be employed by his company, as an accountant and an employee.

The solutions engineer/sales manager of Applicant's company testified that since joining the company in 1999, there were no business relationships with any foreign business.<sup>(1)</sup> The contact person's name for foreign business on the company's website and some foreign language instructions had been removed from that website. The company was trying its best to develop business from as many sources as possible. The Small Business Administration (SBA) suggested the company use any methods possible to obtain business, with the goal of partnering with larger defense corporations.<sup>(2)</sup>

Applicant's brother was responsible for accounting and inventory control. He was listed as the foreign business contact person on the company's website because he spoke the Japanese and Korean languages. He would only be used as an interpreter because he did not have the ability to market or sign contracts.<sup>(3)</sup> He no longer works for the company.<sup>(4)</sup>

Two brothers live in South Korea. One is an administrator with a private university and the other operates a small store. Neither has involvement with political, scientific, or commercial activities with the South Korean government.<sup>(5)</sup>

Applicant has not been approached by foreign agents, and said if he would be he would contact his contracting officer or a government security officer. If forced to make a choice, he would choose loyalty to the U. S. over loyalty to his brothers.<sup>(6)</sup> Applicant

renounced his South Korean citizenship when he became a U. S. citizen.<sup>(7)</sup> His daughter said that when there were family discussions, only things about the U. S. were discussed.<sup>(8)</sup> She stated that if he were ever approached by a foreign government, he would immediately contact his point of contact within the U. S. Government.<sup>(9)</sup>

When Applicant came to the U. S., he found employment with large corporations and has never felt the need to have contacts with Koreans. Many ethnic groups form a relationship within their ethnic community because they cannot survive without it. He never felt that need.<sup>(10)</sup>

Regarding the potential for coercion or duress, consider this testimony:

Q. Let me ask you sir, to your knowledge, have you ever been approached or targeted by any terrorists here in the United States?

A. Not at all.

Q. And to your knowledge, have you ever been approached or targeted by any agents of a foreign power?

A. Not at all

Q. Now, were you to be approached by terrorists, or an agent of a foreign power, whether South Korean or another country, what would you do?

A. Well, first of all, I'd call my contracting officer, or Pentagon security officer, and consult with them, and follow their instruction. Rather than trying myself. I don't think it's the proper way. And I believe some - - I have a very limited power, but the government has a lot of resources, and they have power, so relying on the government, that's the best way. That's what I believe.

Q. Now given the fact though that you do have siblings in the Republic of South Korea, do you believe that subjects you to coercion, exploitation, or any type of pressure that the South Korean government can impose on you?

A. Not that I know of, and not that I can think of. And if it happens, I'll have to choose the U. S. Government.<sup>(11)</sup>

Applicant's company has contracts with federal agencies to repair computer parts, printers, and to install network cabling. His company installed the network cabling throughout DOHA's offices at One Liberty Center.<sup>(12)</sup>

### **POLICIES**

I adopt the statement of policies in the original decision.

## **CONCLUSIONS**

### **SOR ¶ 2.b.**

The following apply: Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*). The government alleged Applicant made false statements to an investigator during the course of his security clearance by stating that his brother's only job was as a bookkeeper. It is alleged that Applicant stated in an interview that he did not have any foreign business interests, while his company's website listed his business as actively engaged in foreign business and listed his brother as a point of contact. Applicant's answer was credible. He had no such interests at the time of the interview. This was a true statement. The website was used as an advertising tool to attract attention from larger companies with which the company might do business. The company had done foreign business prior to 1992. Applicant's brother was listed as the point of contact as he spoke fluent Japanese and Korean.

He was engaged in "puffing" his business. When the investigator asked him if he was doing business in a foreign setting he truthfully answered "no." He was not doing business in a foreign country. He was not asked, "Could you do business in a foreign country?" This was corroborated by his sales manager's testimony that since at least 1999, there had been no request by anyone either from a foreign business or by a U. S. company wanting to do business in a foreign company. He further testified that Applicant's brother was an accountant and watched the inventory and that he had no authority to market the company nor to sign any contracts for the company. He would have been an interpreter if some firm had wanted Applicant's company do business where knowledge of the Korean or Japanese language was required. That request never came, and this information was removed from Applicant's website after the brother left Applicant's company. Applicant may have misunderstood the agent's question and the agent misinterpreted Applicant's answer. I do not find any false statement by Applicant either on his SF 86 or in the interview, nor do I find that there was any intent by Applicant to give a false answer. Applicant testified truthfully to the agent because his knowledge and understanding of the facts were different from that of the agent. I find for the Applicant on SOR ¶ 2.b.

### **Adjudicative Process**

Guideline E2.2.1. The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for as security clearance. Eligibility for access to classified information is predicated upon the

individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

**E2.2.1.1. The nature, extent, and seriousness of the conduct;**

**E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;**

**E2.2.1.3. The frequency and recency of the conduct;**

**E2.2.1.4. The individual's age and maturity at the time of the conduct;**

**E2.2.1.5. The voluntariness of participation;**

**E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;**

**E2.2.1.7. The motivation for the conduct;**

**E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and**

**E2.2.1.9. The likelihood of continuation or recurrence.**

The extent of Applicant's foreign influence is that he has two brothers living in Korea. Applicant's participation is involuntary. He cannot determine who his brothers are or where they choose to live. He has been in this country since 1981 and a citizen since 1988. Neither brother works for the Korean government. They call Applicant maybe twice per year. They initiate the calls because he is the oldest brother, and under Korean customs, since their father is deceased, he is looked upon as the family's "father figure." The customary respect afforded the eldest male is that the younger siblings call him. His witnesses testified that he never talked about Korea, that he only talked about America, and he never socialized with Korean people. In effect, he is thoroughly "Americanized." I feel these facts do not raise any serious security concerns about him.

There is no evidence that Applicant has any foreign affinity or preference for Korea. A close reading of his testimony and that of his witnesses reveal a person totally committed to following the American dream of building his business, caring for his wife and children, and contributing to the common good of society. He does not associate with persons from Korea.

Applicant is 56 years old. He has been a citizen for eighteen years. He demonstrated to me that he was mature and took his responsibilities seriously, including those required of a person with a security clearance. He is described as honest, hard-working, and

committed to the United States. He hasn't committed any illegal or unethical conduct. And I find that his testimony was credible, because he answered questions directly, completely, and honestly.

Applying the whole person concept and a common sense reading of the evidence in this case leads me to conclude allegations 1.a. through 1.c. and 2.a. and b. of the SOR in Applicant's favor.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

### **DECISION**

On remand, in light of all the circumstances presented by the record in this case, I find again it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

**Christopher Graham  
Administrative Judge**

1. Tr. at 55.
2. Tr. at 55-57.
3. Tr. at 58-59.
4. Tr. at 87.
5. Tr. at 89.

6. Tr. 85-98.

7. Government Exhibit 2 (*Applicant's Sworn Statement dated April 23, 2004*) at 5.

8. Tr. at 82.

9. Tr. at 83.

10. Tr. at 91-92.

11. Tr. at 97-98.

12. Tr. at 55.