



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-00638
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro se*

January 18, 2008

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 29, 2005 (Government Exhibit 1). On May 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines C and B stating 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 a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked. 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 revised adjudicative guidelines (AG) promulgated by President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 11, 2007. He answered the SOR in writing on July 16, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on August 6, 2007, and I received the case assignment on August 13, 2007. DOHA issued a notice of hearing on September 6, 2007, and I convened the hearing as scheduled on September 26, 2007. The government offered Government Exhibits (Ex.) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through DD, without objection. DOHA received the transcript of the hearing (Tr.) on October 9, 2007. I granted Applicant's request to keep the record open until October 10, 2007, to submit additional matters. On October 10 and October 11, 2007, he submitted Applicant's Exhibits EE and FF, without objection. The record closed on October 11, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding subparagraph 2.e., "Your daughter, a citizen of Israel and the United States, is currently attending a university in Israel." The Applicant did not object to the amendment, and stated he did not need additional time to respond to the amendment. The motion to amend was granted, and the Applicant admitted the additional subparagraph. (Transcript at 115-116.)

#### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to The State of Israel. (Transcript at 8-12.) The request and the attached documents were not admitted into evidence but were included in the record as Administrative Judge Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

The Applicant is 48, married, and has a Bachelor of Science degree in Computer Science. He is the Chief Executive Officer of a defense related company and seeks a Secret level clearance in connection with his employment in the defense industry. In his Answer to the SOR, dated July 16, 2007, Applicant admitted all the factual allegations of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

The Applicant was born in Israel in 1959. He emigrated to the United States in 1991 because of a job opportunity. The Applicant started his company in 1994. He became a naturalized American citizen in April 2003 (Government Exhibit 1, Section 8.c.). His wife was born in Israel, and she became a naturalized American citizen in July 2003. They were married in 1980, and have three children. Two children were born in Israel and the third in the United Kingdom. All three children are dual citizens of the United States and Israel (Government Exhibit 1, Section 15.) They have about \$3 million in assets in the United States. (Transcript at 100.)

In accordance with Israeli law, the Applicant served three years in the Israeli Air Force as an enlisted man. This fact has no current security significance. (Transcript at 51-53.)

The Applicant has an Israeli passport. In October 2005, the Applicant renewed this passport (Government Exhibit 2 at 10-26.) He submits that he uses the passport to travel to Israel primarily to visit his aging parents. On August 30, 2007, the Applicant submitted his Israeli passport to the Israeli Consulate General. (Applicant's Exhibit CC.) The Israeli Consulate General confirmed on October 1, 2007, that the Applicant's passport had been deposited with them. (Applicant's Exhibit EE at 4.) Finally, the Consulate General also confirmed that the Applicant has requested permission from the Israeli government to travel to Israel using only his American passport. This letter was dated October 10, 2007. (Applicant's Exhibit FF.)

The Applicant is still a dual citizen of Israel and the United States. The totality of the record shows that the Applicant is very reluctant to take the steps to renounce his Israeli citizenship. The Applicant's primary reasons for not renouncing his Israeli citizenship appears to be the cost and time involved in applying for revocation, and the fact that actual renunciation does not appear to be mandated for the granting of a security clearance. (Transcript at 55-57, 61-68, 102-111.) At the end of the hearing, the Applicant stated that, as a business decision, he was prepared to start taking steps to renounce his Israeli citizenship, stating "So, I guess I'm willing to do it." (Transcript at 111.)

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

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant's parents are citizens of Israel and reside there. They are both retired and are able to live on their Israeli government pensions. The Applicant, his wife and children have a close relationship with his parents, as well as his wife's mother. (Transcript at 71-76, 80-82.) The Applicant has one brother. He is also a citizen of Israel and lives there. He and the Applicant communicate about twice a year. (Transcript at 77-80.)

The Applicant's eldest child is attending a university in Israel as of the date the record closed. She has been in Israel since 2005-2006 and is due to return to the United States in September-October 2008. (Transcript at 93-96.)

The Applicant owns an apartment in Israel, which he rents out for between \$600 and \$700 a month. He has owned this apartment since 1990. The apartment is managed by a company in Israel. As of the present time, the Applicant does not plan to sell the apartment because he would lose money on the transaction. (Transcript at 87-91.)

The Applicant has traveled to Israel in 1999, 2001, 2002, 2004 and 2007. During each of those trips, he presented his Israeli passport to Israeli authorities. (Government Exhibit 2 at 10-26, Transcript at 82.)<sup>1</sup> For travel other than to Israel, the Applicant uses his American passport. (Government Exhibit 2 at 28-40; and Applicant's Exhibit DD.) His last trip to Israel was in connection with making a lecture to a business group in Israel. (Transcript at 82-87.)

The Applicant has many contacts with Israel. Accordingly, it is appropriate to discuss the situation in Israel at this time.<sup>2</sup> Israel is a parliamentary democracy. Israel's prime minister leads the executive branch of the government. The United States is Israel's leading trading partner. Israel respects the rights of its citizens; however, there are some concerns about Israel's detention and interrogation of alleged terrorists, and discrimination against Arabs. Terrorism is a continuing threat to Israel, and American interests in Israel. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Occasionally, Israeli and American interests have diverged. Several U.S. government employees have been prosecuted for disclosure of classified information to persons connected to the Israeli government. Israel has an active program to gather proprietary information from U.S. companies.

## **Mitigation**

The Applicant submitted letters and other documents. They show that the Applicant is respected in his industry, and that his company has provided valuable

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<sup>1</sup>The Applicant's Israeli passport also shows a trip to Israel from October 23 to October 28, 2006.

<sup>2</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of her request for administrative notice. (Administrative Judge Exhibit I and attachments.)

services to the defense efforts of the United States. (Applicant's Exhibits B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, X, Y, Z, AA.)

## **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 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 common sense 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant is a dual citizen of Israel and the United States, and that he had a valid Israeli passport (Guideline C); and that the Applicant has family members overseas (Guideline B)

The Applicant, on the other hand, has not successfully mitigated the Government's case, except in part. Subparagraph 1.d. is found for the Applicant as his service in the Israeli Air Force occurred in the distant past and has no current security significance. Subparagraph 2.c. is found for the Applicant as the value of his Israeli apartment is insignificant when viewed against the totality of his assets in the United States.

### **Paragraph 1 (Guideline C - Foreign Preference)**

Turning first to Guideline C, the Applicant has not mitigated the Government's concerns about his dual citizenship with Israel, and his continued possession and use of his Israeli passport after becoming an American citizen. The concern is stated thus under this Guideline, *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.*

Under any analysis of the evidence, it is obvious that the Applicant would like to retain his Israeli citizenship and passport if at all possible. The Applicant only grudgingly gave his passport to the Israeli authorities on the eve of his case, and while he states that he now intends to begin the process of renouncing his Israeli citizenship, as of the time the record closed there was no evidence that he had made any positive steps to do so.

Disqualifying Condition 10(a)(1) applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.* (Emphasis supplied.)

The Israeli Consulate General currently holds the Applicant's passport. It remains a valid passport, available to the Applicant on demand as an Israeli citizen, and has not "been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." Accordingly, Mitigating Condition 11(e) does not apply to this case.

At the end of the hearing, the Applicant stated that he was willing to renounce his Israeli citizenship. If I believed the statement was credible, Mitigating Condition 11(b) would apply to this case: *the individual has expressed a willingness to renounce dual citizenship.* In this case, however, I cannot find that his statement, standing alone, is sufficient. Guideline C is found against the Applicant.

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

The concern under Guideline B is styled 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 Applicant has many and varied connections to Israel on both sides of his family. As described above, one of the Applicant's children is currently attending school in Israel. His parents and his mother in law live in Israel and his family has a close relationship with them.

All of these connections must also be viewed in the context of the Israeli government, and in particular that government's history of attempting to obtain classified and other information from American companies. To his credit, the Applicant repeatedly stated that he is a loyal American citizen, that he understands his responsibilities as a security clearance holder, and that he would not be a party to any attempt by the Israeli government to obtain information from him. However, given the depth and extent of his current connections with Israel, he has failed to meet his burden of showing an unequivocal connection to the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) *Contact with a foreign family member . . . 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 . . . 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 . . . 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.* I have also considered the information concerning the Israeli government, provided by Department Counsel in Administrative Judge's Exhibit I and its attachments.

The Applicant has not provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 7(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.;* and (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.* Paragraph 2 is found against the Applicant.

### **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) 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. Two of the factors have the most impact on this case. First, I cannot find that there is the "presence or absence of rehabilitation and other permanent behavioral changes," as set forth under AG ¶ 2(a)(6). The Applicant simply has not engaged in sufficient conduct which shows a preference



for the United States instead of Israel. Such conduct might include his taking the actions concerning his Israeli passport set forth in Mitigating Condition 11(e). In addition, he could actively engage in renouncing his Israeli citizenship, not merely give that fact lip service.

The lack of any of the actions stated above make it impossible for me to find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8).

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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WILFORD H. ROSS  
Administrative Judge