



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



In the matter of:)
)
) ISCR Case No. 19-02305
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

April 28, 2020

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On November 15, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on December 12, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 31, 2020. The Defense Office of Hearings and Appeals issued a notice of hearing on February 14, 2020, and the hearing was convened as scheduled on March 6, 2020. The Government offered two exhibits, referred to as Government Exhibits 1 and 2 which were admitted without objection. The Applicant offered eight exhibits, referred to as Applicant’s Exhibits A through H, which were admitted without objection. Applicant testified on his

own behalf. DOHA received the transcript of the hearing (Tr.) on March 16, 2020. After the record closed, Applicant submitted a letter dated April 3, 2020, to supplement his testimony. Department Counsel noted her objection. In all fairness to the Applicant, the document, even though submitted untimely, will be admitted into evidence as Applicant's Post-Hearing Exhibit I. Department Counsel's objection is overruled.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Israel. Department Counsel provided a six page summary of the facts, supported by twelve Government documents pertaining to Israel, identified as Government Exhibit HE1. The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 62 years old and is married a second time. He has two daughters from his first marriage, and a son from his current marriage. He has a bachelor's degree in Engineering. He holds the position of Manufacturing Engineer with a defense contractor. A security clearance is required in connection with this employment.

Applicant admits each of the allegations set forth in the SOR. Applicant has lived a nomadic life. He has an extensive history of moving back and forth from Israel to the United States and Canada motivated by economic opportunities. Applicant was born in Israel in 1958. In 1974, at the age of sixteen, he and his parents and brother relocated from Israel to the United States. They obtained their green cards and planned to stay in the United States. Applicant obtained his college education in the U.S., and in 1982, he became a naturalized United States citizen. (Applicant's Exhibit C.)

In 1983, Applicant moved back to Israel because he wanted to marry an Israeli woman. While a naturalized U.S. citizen, Applicant served in the Israeli Army from 1983 to 1987. He married an Israeli woman in 1987. Together, they had two daughters who were born in Israel. In 1990, Applicant returned to the United States, where he and his family lived until 1992/1993. At that time, Applicant sponsored his daughters for United States citizenship. In 1993 or so, Applicant's wife convinced him that it would be better for their family to move back to Israel to enable her parents to help with taking care of their children. (Tr. p. 29.) In about 1993, Applicant and his family moved back to Israel. They lived in Israel this time until 1996. (Tr. p. 31.)

In 1996, Applicant and his family left Israel and moved to Canada for a job. Applicant lived and worked in Canada for five years or so. During his time in Canada, Applicant rented a residence there, saved his earnings, and purchase a home in Israel for \$230,000. (Tr. p. 32.) In late 1999, early 2000, Applicant left Canada, and once again, moved his family back to live in Israel. From 2000 to 2003, Applicant worked for the Israeli Aircraft Industries in Israel. By this time, Applicant's relationship with his wife was deteriorating, and he decided to divorce her. He then returned to the United States. He left his wife, the house, and their two daughters in Israel, who at that time were 12 and 13 years old. (Tr. p. 34.) Applicant testified that following the divorce with his wife, he continued to care for his daughters, by calling them, visiting them Israel, and bringing them presents. Most noteworthy was a visit he made in 2006 when his youngest daughter got into an argument with his ex-wife and was forced to leave the house. Not wanting her to be alone, Applicant returned to Israel. In 2007, he decided it best to move back to Israel again, this time to give his daughter emotional support. Applicant remained in Israel from 2007 until either 2010 or 2011. While in Israel, Applicant met his current wife through the internet. At the time, she lived in Belarus and is of Russian decent. Two months after meeting her, she moved to Israel to be with the Applicant. They were married in April 2010. She became a naturalized U.S. citizen in 2016. (Applicant's Exhibit C.) Their son was born in Israel in October 2010. (Tr. p. 38.)

While living in Israel, from November 2009 to December 2010, Applicant worked for the Israeli government as an engineer for the Israeli Civil Aviation Authority, which is equivalent to the Federal Aviation Administration. Applicant's job involved working with aircraft engines and fuel systems, and to ensure that the airplanes engine met Israeli requirements. (Tr. p. 48.) After a while Applicant became discontented with his job. In 2011 he left Israel, and moved back to Canada for another job.

In 2012, Applicant returned to the United States with his current wife and son. In 2014, Applicant purchased a home in the United States, where he has lived for the past six years. (Applicant's Exhibit B.) In 2016, he began working for his current employer. In 2018, he returned to Israel to attend one of his daughter's wedding. (Tr. p. 57.)

Applicant's two daughters are now grown and married to medical professionals. They are both dual citizens of Israel and the United States. One of them recently had a child, and so Applicant has a new granddaughter. Applicant maintains regular contact with his daughters. He talks to them by telephone every two weeks or so. One of Applicant's daughters owns a home in Israel valued at \$500,000. Applicant states that he provides no financial support to his family in Israel.

Applicant also maintains some contact with several friends and professional associates who are residents and citizens of Israel. These individuals are long-time friends of the Applicant. During their conversations, Applicant does not reveal any classified or sensitive information.

Applicant is a dual citizen of the United States and Israel. He possesses a valid Israeli passport that he uses when he travels to Israel. Applicant stated that if he needs to renounce his citizenship and surrender his foreign passport, he is willing to do it in order to obtain a security clearance.

Applicant provided a Statement of Intent dated December 12, 2019, which indicates that he pledges to renounce his Israeli citizenship and destroy his passport with no intention to renew them. Should there be any violation with regard to that statement of intent, he consents to automatic revocation of his security clearance. (Applicant's Exhibit A.) At the time of the hearing Applicant had not renounced his foreign citizenship nor had he surrendered his foreign passport.

A letter from the President of the company for whom Applicant works recognized Applicant's extraordinary team performance and achievements in 2018 for Program Excellence. Applicant and his team were nominated for the company's Aerospace Systems President's Award. (Applicant's Exhibit D.)

Applicant received a certificate of appreciation from his employer for his hard work and dedication. (Applicant's Exhibit E.)

I have taken administrative notice of background information concerning the country of Israel. The State of Israel is a multiparty 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.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and

commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

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

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to

pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline at AG ¶ 7 contains seven disqualifying conditions that could raise security concerns. Three disqualifying conditions may apply:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(i) conduct, especially while traveling or residing outside the U.S. that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's foreign family members include his two daughters and their husbands who are citizens and residents of Israel, and several long-time friends and associates. Although there are not many individuals that pose a security risk, of concern is the nature of the relationships he does have. For most of his life, over a forty year period, and on a number of occasions, Applicant has traveled to and from Israel to live and work. Considering the fact that he now lives far away from his daughters, Applicant remains emotionally close to them, especially his younger one, and Israel holds a special place in his heart. Applicant recently became a grandfather, and now has a new granddaughter in Israel. After becoming a U.S. citizen, Applicant served in the Israeli military forces, and worked for the Israeli government, specifically the Israeli Civil Aviation Authority. Applicant has a few long-time Israeli friends and or associates that he continues to maintain relationships with. He has an Israeli passport and maintains his citizenship there. Based upon Applicant's past history, he is tightly woven into the Israeli culture.

Applicant's strong foreign connection with Israel raises some serious security concerns. Applicant is a target to be threatened or influenced or placed in a situation that may manipulate or induce him to help a foreign person or foreign government in a way that is inconsistent with the U.S. interests. Applicant has subjected himself to a heightened risk of foreign influence, or exploitation, or personal conflict of interest from his connections with his relatives and friends in Israel. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact poses a

security risk to the U.S. government that is not necessary. The evidence is sufficient to raise these disqualifying conditions.

The guideline at AG ¶ 8 contains six conditions that could mitigate security concerns. None of them apply to Applicant:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 agency head or designee;

(e) the individual has promptly complied with existing agency requirement 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.

Applicant argues that under any circumstances his loyalties are to the United States. However, his actions speak louder than his words. Applicant's foreign contacts with his family and friends in Israel clearly pose a security risk. Applicant has throughout the past 40 years made some extraordinary moves; leaving the United States on numerous occasions, and choosing to move to Israel to be close to his family there. Although his daughters are not directly associated with the Israeli government, Applicant is extremely close to his daughters. When one of his daughters needed him emotionally, Applicant left the United States, and moved back to Israel to be close to her. Since becoming a naturalized U.S. citizen, Applicant has continued to maintain and nurture his relationship with the country of Israel, by serving in their Army and by working for their government. He has continued to maintain close contact with his family and close friends in Israel.

It is noted that Applicant first came to the United States with his parents and he attended college. After doing so, however, he has returned to Israel several times. He went there to marry and establish his family, to work, to purchase a home, and to serve in the Israeli military. Another time he followed his family when they wanted to move back. Another time, he returned to Israel, initially to provide emotional support to his daughter, and decided to move there again. These obvious deep emotional connections to Israel present the potential for divided allegiance between the U.S. and Israel. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established. Applicant's foreign relationships poses a heightened security risk.

Whole-Person Concept

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

- (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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's strong familial ties and foreign connections in Israel pose a significant risk to the U.S. government. Under the particular circumstances of this case, this regular ongoing contact with these foreign nationals creates an unnecessary security risk not worth the benefit to the U.S. government.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a: through 1.d:	Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge