



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-02335
)
Applicant for Security Clearance)

Appearances

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

07/14/2020

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate foreign influence concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On October 30, 2019, the Department of Defense (DoD) Consolidated Central Adjudication Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on November 19, 2019, and elected to have his case decided on the basis of the written record, in lieu of a hearing. The case was assigned to me on June 11, 2020. Applicant received the file of relevant materials (FORM) on May 1, 2020 and interposed no objections to the materials in the FORM. He did not supplement the record.

Summary of Pleadings

Under Guideline B, Applicant allegedly (a) has a daughter who is a citizen of Israel who resides in Belgium while employed by the government of Israel in the Israel Embassy in Brussels Belgium, (b) has a mother-in-law and father-in-law who are citizens and residents of Israel; and (c) has a brother who is a citizen and resident of Israel. Allegedly, Applicant's relatives create security risks covered by the foreign influence guideline.

In his response to the SOR, Applicant admitted most of the allegations without explanations. He claimed his father-in-law is deceased but provided no details of dates and residency history. (Item 2)

Findings of Fact

Applicant is a 65-year-old director of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant is a naturalized U.S. citizen and a dual citizen of Israel who retains his Israeli passport that was issued to him in June 2003 and was renewed in February 2014. (Item 3) His Israeli passport is not scheduled to expire before February 2024. (Item 4) Applicant immigrated to the United States in October 1997 and became a naturalized U.S. citizen in April 2009. (Item 3) He was issued a U.S. passport in May 2009 and only uses his Israeli passport to gain ingress to Israel and egress to return to the United States. (Items 3-4) Applicant married in October 1978 and has two children from this marriage, ages and 34 and 40. (Item 3)

Applicant attended a Russian university between 1977 and 1981, but did not earn a degree before immigrating to Israel in 1981. Between 1982 and 1985, he studied engineering at an Israeli university, but did not earn a degree. (Item 3) Whether he has resumed his studies in Israel or the United States with the objective of completing his degree requirements is unclear.

Since February 2018, Applicant has been employed by his current employer. (Item 3) Between February 2017 and January 2018, he was employed by another defense contractor as a director of electronic systems development. (Items 3-4) He reported unemployment between June 2016 and February 2017. Between May 2006

and May 2016, Applicant worked for a non-defense contractor as an associate vice president. (Items 3-4)

Citizenship and residency status of Applicant's family members

Applicant's parents are both deceased and were citizens and residents of Russia before their deaths in 1968 and 1990, respectively. (Item 3) His youngest daughter is a citizen of Israel who currently resides in Belgium where she is employed by the government of Israel in the Israeli Embassy in Brussels, Belgium. (Item 4)

Applicant maintained weekly contact with his youngest daughter prior to October 2018. Whether he has since resumed his contacts with her is unclear. (Item 4) Applicant's oldest daughter is a citizen of Israel who resides in Switzerland. (Item 3) He maintains weekly contact with her and visits her once or twice a year. (Item 4).

Applicant's brother was born in Russia and immigrated to Israel. (Items 3-4) He maintains monthly contact with his brother and sees him when he travels to Israel. His brother retired several years ago.

While his father-in-law is deceased, his mother-in-law is a citizen and resident of Israel. Applicant maintains quarterly contact with her by telephone. (Item 3)

Applicant reported many short trips to and from Israel between 2009 and 2015. (Item 3) On these trips, he made contact with his brother and in-laws. (Item 3) Except for his youngest daughter who works for the Israeli government, none of his immediate and extended family members have any reported affiliations or ties to the Israeli government. (Items 3-4)

Country status of Israel

Israel is a multi-party parliamentary democracy. See Request for Administrative Notice-Israel, at 2 (April 2019) and *Israel and the Golan Heights 2018 Human Rights Report*, U.S. Department of State (March 2019). Israel is a close ally of the United States. Although it has no constitution, Israel's unicameral 120-member Knesset, has enacted a series of "Basic Laws" that enumerate fundamental rights. Implementation of certain fundamental laws, orders, and regulations legally depend on the existence of a "state of emergency," which has been in effect since 1948.

Under the Basic Laws, the Knesset has the power to dissolve the government and mandate elections. The nationwide Knesset elections in 2015, which were considered free and fair, resulted in a coalition government led by Prime Minister Benjamin Netanyahu. The Knesset voted on December 26, 2018 to dissolve itself and set April 9, 2019, as the date for national elections. See Request for Administrative Notice, Israel, *supra*.

Terrorism remains a considerable risk in Jerusalem and Tel Aviv, and tensions remain high. Throughout 2018, random attacks were reported, prompting the Israeli

Defense forces to initiate Operation Northern Shield. See Request for Administrative Notice, *Israel, supra*; Israel 2019 Crime and Safety Report, U.S. Dept. of State (July 2019) Several designated foreign terrorist organizations (such as Hamas, Palestinian Islamic Jihad, and Lebanese Hisb'allah) maintain a large presence in the West bank and Gaza, and in bordering countries. Violent demonstrations and shootings occur on a frequent basis, and the collateral risks of terrorist attacks run high in Gaza (a region controlled by Hamas). See Request for Administrative Notice, *Israel, supra*; *Israel, the West Bank and Gaza, Country Information*, U.S. Dept. of State (May 2018). Human rights issues in Israel include unlawful or arbitrary killings, restrictions on Palestine residents of Jerusalem, including arbitrary or unlawful interference with privacy, family, and home; and significant restrictions on freedom of movement. See Request for Administrative Notice, *Israel, supra*.

State Department travel advisories caution U.S. travelers in Israel to exercise increased caution due to terrorism, civil unrest, and armed conflict. See Request for Administrative Notice, *supra*, at 5; *Israel, the West Bank & Gaza, Travel Advisory*, U.S. Dept. of State (December 2018). Based on State Department travel warnings, terrorist groups and lone-wolf terrorists continue plotting attacks in Israel, the West bank, and Gaza. Often with little warning, terrorists may attack, targeting tourist locations, transportation hubs, markets and shopping malls, and local government facilities. (*Id.*) Israel has been subjected to numerous attacks from the Palestinians operating from the Gaza strip.

The United States and Israel participate in joint military planning and training and have collaborated on military research and weapons development. There have been incidents of illegal export, actual or attempted, of dual-use technology from the United States to Israel.

The United States has disagreed with Israel about its sale of U.S. and Israeli technologies to other countries, such as China and Russia. See Request for Administrative Notice-*Israel, supra*, at 2; *Summary of Major U.S. Export Enforcement Economic Espionage, Trade Secret and Embargo-related Criminal Cases*, U.S. Department of Justice at 42-45, 51, and 84 (Jan. 2015) and *Don't Let this Happen to You! Actual Investigations of Export Control and Anti-boycott Violations*. (U.S. Department of Commerce (November 2018). Verified reports are documented of export-controlled technologies being illegally sent to Israel, including (1) parts used in fighter jets; (2) a product containing trietanolamine, a Schedule 3 chemical precursor controlled for chemical/biological, antiterrorism, and chemical weapons reasons; (3) pressure transducers controlled for nuclear non-proliferation reasons; and (4) encryption software for national security reasons. See *cases supra*.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

The guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: 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.

Burdens of Proof

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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

Applicant and his wife are naturalized U.S. citizens who hold dual citizenship with Israel and retain their Israeli passports. With his Israeli passport, Applicant is able to enter and exit Israel without a visa. He has a younger daughter who is a citizen of Israel and works for the Israeli embassy in Brussels Belgium. He has a mother-in-law and brother who are citizens and residents of Israel. Security concerns are raised under the foreign influence guideline due to Applicant's longstanding family ties to Israel, and due to his youngest daughter's employment by the Israeli Embassy in Belgium.

Despite encouraging developments in Israel and strong U.S. bilateral relations with the country, considerable security risks still remain. Terrorist attacks from the Palestinians operating from the Gaza strip have long plagued Israel, and there have been verified incidents of illegal exporting of dual-use technology by Israel.

Because Israel presents some heightened security risks for applicants who have family members who either reside in the country or work for the Israeli government, security concerns remain. With his significant family ties to Israel, Applicant is exposed to authorities in the country who might use improper and/or illegal means to obtain classified information in Applicant's possession or control through his mother-in-law, brother, or youngest daughter who is employed by the Israeli government in Belgium.

While Applicant's contacts with his family members are relatively infrequent (ranging from weekly to quarterly), they are longstanding. And, there is a rebuttable presumption that a person with immediate family members in a foreign country has ties of affection for, or obligation to, his immediate family members, and this presumption covers in-laws (to include Applicant's mother-in-law residing in Israel). ISCR case No. 07-06030 at 3 (app. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (May 15, 2018)(citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)

To be sure, the risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government that ignores or discounts the rule of law. Examples include the marginalization of widely accepted civil liberties, a family member is associated with or dependent upon the government; the government is engaged in a counterinsurgency; terrorists cause a substantial amount of death or property damage; or the country is known to conduct intelligence collection operations against the United States.

With respect to Israel, the country is not free from risks of potential hostage taking. Notwithstanding that Israel maintains strong bilateral relations with the United States and recognizes democratic principles of governance, cited areas of security concern continue to plague Israel's standing with the United States and its Western allies.

Taken together, the personal relationships Applicant has with Israel, and the situations that exist in this country, place a significant burden of persuasion on him to demonstrate that his relationship with any family member who either resides in Israel

(as with his mother-in-law and brother) or works for the Israeli embassy in Belgium, (as with his youngest daughter) does not pose irreconcilable security risks. Such risks that cannot be reconciled or otherwise mitigated could potentially place him in a position of having to choose between loyalty to the United States and a desire to assist a relative living in or visiting Israel, or working for the Israeli government.

As a result, the Government urges security concerns over risks that Applicant and his family members who either reside in Israel or work for the Israeli embassy in Belgium, might be subject to exploitation, coercion or duress by civilian or military authorities in these countries to access classified information in Applicant's possession or control. Applicant's family ties in Israel warrant some application of two of the disqualifying conditions of the foreign influence guideline DC ¶¶ 7(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" and 7(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."

Applicable, too, to Applicant's situation is ¶ 7(f), "substantial business, financial, or property interests in a foreign country, or in any foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest." The reported employment relationship his youngest daughter enjoys as an employee of the Israeli embassy in Belgium has potential financial benefits that could potentially affect Applicant.

True, none of Applicant's family members with ties to Israel have any history to date of being subjected to any coercion or pressure. These historical antecedents limit the risk of any potential conflict situation. Still, the absence of any past coercive measures taken by Israeli authorities does not absolve Applicant from any pressure or coercive risks in the future given Israel's checkered history of collection interests and activities in the United States.

The nature of the foreign government (Israel in this case), the intelligence-gathering and human rights history of the country in issue, and the country's government relations with the United States are among the most important considerations to be considered when assessing risks associated with an applicant's family ties and financial interests in that country (either direct or indirect). See ISCR Case No. 16-02435 at 3 (May 15, 2018)(citing ISCR Case No. 15-00528 at 3 (App. Bd. March 13, 2017) While Israel has maintained good bilateral relations with the United States, the recent reports of terrorism, human rights abuses, and collection activities in the country continue to raise security concerns.

Mitigation is only partially available to Applicant under the foreign influence guideline of the AGs. Based on his case-specific circumstances, mitigating condition (MC) ¶ 8(a), "the nature of the relationships with foreign persons, the country in which

these persons are located, or the persons or activities of these 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,” minimally applies to Applicant’s situation.

Other mitigating conditions potentially available to Applicant are ¶¶ 8(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,” and 8(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,” have minimal application. Without more clarifying information from Applicant about his family members who either reside in Israel, work for the Israeli government, or maintain dual citizenship and passports with Israel, accurate and reliable risk assessments cannot be made. Given these collective circumstances, Applicant’s Israeli family connections when considered together with his foreign connections are sufficient to overcome the foreign influence security concerns under Guideline B.

Whole-person assessment

Whole-person assessment of Applicant’s foreign influence risks to ascertain whether they are fully compatible with eligibility requirements for holding a security clearance takes account of the dual U.S. citizenship of Applicant and his wife and the citizenship and residency status of his mother-in-law and brother in Israel, and youngest daughter who works for the Israeli government. While Applicant maintains relatively infrequent contact with his family members (ranging from weekly to quarterly), he retains strong affection for each of them with little evidence of any overriding commitments to the United States that he could rely on in any hypothetical pressure situation that could arise with his family members.

A Guideline B decision concerning Israel must take into consideration the geopolitical situation and dangers extant in Israel and assess whether Israel is a country that still poses some heightened risks despite its strong bilateral relationship with the United States. Terrorists continue to threaten the interests of the United States in Israel, and Israel remains a reported major collector of intelligence information in the United States and its allies, and in those countries who cooperate and assist the United States.

Although Israel remains a strong ally of the United States in the war on terror, heightened risks remain that have not been fully mitigated. More information is required of Applicant to fully absolve him of security risks associated with his having family members who either reside in Israel or work for the Israeli government.

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 foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge