



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



In the matter of:)	
)	
)	ISCR Case No. 20-01434
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 22, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant submitted an undated response and requested a hearing before an administrative judge. The case was assigned to me on June 7, 2021. The hearing was convened as scheduled on July 21, 2021.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and called three witnesses, but he did not submit any documentary evidence.

Department Counsel requested that I take administrative notice of certain facts about Israel. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that, while a close ally and trading partner of the United States, Israel has a significant documented history of using U.S. government employees to obtain classified information and controlled technologies. The threat of terrorist attacks in Israel is an ongoing concern. A U.S. State Department travel warning is in effect for Israel, the West Bank, and Gaza. Gaza is under the control of Hamas, a U.S. Government-designated foreign-terrorist organization. Human rights issues remain in Israel.

Findings of Fact

Applicant is a 25-year-old employee of a defense contractor, where he has worked since 2016. He is applying for a security clearance for the first time. He has a bachelor's degree, which he earned in 2016. He is married without children. (Transcript (Tr.) at 31, 33, 37; GE 1, 2)

Applicant is a dual citizen of the United States and Israel. His father is a native-born U.S. citizen. He met Applicant's mother, an Israeli citizen and resident, on a trip to Israel. He moved to Israel; they married; they had four children in Israel, including Applicant; and he became a dual citizen of the United States and Israel. (Tr. at 24, 31; Applicant's response to SOR; GE 1, 2)

Applicant's grandparents on his mother's side are Holocaust survivors. His grandfather on his father's side served in the U.S. Army during World War II, and was in the unit that liberated Dachau. The U.S. flag that covered Applicant's grandfather's coffin when he passed away in 1993 hung on Applicant's bedroom wall in Israel. Applicant's father instilled his love of the United States in his children. They celebrated American holidays; Applicant studied American history; and he followed American sports teams. They periodically visited Applicant's father's side of the family in the United States. (Tr. at 26, 28, 32)

Applicant knew that he wanted to eventually move to the United States. He served his mandatory military service in the Israel Defense Forces (IDF) from 2004 to 2007. He moved to the United States in 2008. He registered with the Selective Service shortly thereafter. He attended college in the United States from 2012 through 2016. He began working for his current employer after graduation. (Tr. at 26-29, 32, 34; GE 1)

Applicant's mother is a citizen and resident of Israel. His father and three siblings are dual citizens of the United States and Israel and residents of Israel. Applicant keeps in contact with his family in Israel through the telephone and social media. He visits Israel, and his family visits him in the United States. His mother and siblings have all performed mandatory service in the IDF. Applicant's father is retired after working as a bookkeeper and in retail, and his mother is a nurse. None of Applicant's immediate

family in Israel have any direct ties to the Israeli government. (Tr. at 24-25, 38-53; Applicant's response to SOR; GE 1, 2)

Applicant expressed his love for the United States, which he considers his home. He has a great job and a future with a company. He has friends and family on his father's side in the United States. He does not have any foreign assets. He credibly testified that his family in Israel could not be used to coerce or intimidate him into revealing classified information. (Tr. at 29-30, 32, 53-54)

Applicant called three witnesses who testified to his excellent job performance and strong moral character. He is praised for his judgment, reliability, work ethic, dedication, and trustworthiness. He is described as "an all-around good guy." He is recommended for a security clearance. (Tr. at 16-23)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 the national security."

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." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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 notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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

(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.

Applicant has family members who are citizens and residents of Israel. Israel is a close ally of the United States, but it also has a significant documented history of using U.S. government employees to obtain classified information and controlled technologies. The potential for terrorist violence exists in Israel. It continues to have human rights issues. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I considered the totality of Applicant's ties to Israel. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's father instilled his love of the United States in his children. They celebrated American holidays; Applicant studied American history; and he followed

American sports teams. They periodically visited Applicant's father's side of the family in the United States. Applicant realized his dream of moving to the United States in 2008, and it is now his home. He has a great job and a future with a company. He has friends and family on his father's side in the United States. He credibly testified that his family in Israel could not be used to coerce or intimidate him into revealing classified information.

I find that Applicant's ties to Israel are outweighed by his deep and long-standing relationships and loyalties in the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of Israel. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

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 have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence 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
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge