DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

05/26/2022

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Decision

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information due to her ties and connections, past and present, to Israel. She did not present sufficient evidence to mitigate the foreign preference and foreign influence security concerns. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, in December 2019. (Exhibit 3) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed during the course of a March 2020 background investigation. (Exhibit 5) She answered written interrogatories in July 2021. (Exhibit 4) Thereafter, on November 12, 2021, after reviewing the available information, the DoD Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement

of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.

The SOR is similar in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of an offense. Here, the SOR detailed the factual reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference.

Applicant answered the SOR in November 2021. She admitted all factual allegations made in the SOR, except for SOR ¶ 1.c. She explained the allegation was inaccurate because she worked as a software developer for an Israeli company in the years alleged as opposed to product manager. She also provided a two-page memorandum in explanation. She did not provide supporting documentation. She requested a clearance decision based on the written record in lieu of a hearing.

On January 28, 2022, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was mailed to Applicant, who received it February 7, 2022. She did not reply to the FORM within the prescribed 30-day period. The case was assigned to me May 3, 2022.

Findings of Fact

Applicant is a 55-year-old employee who is seeking to obtain a security clearance in conjunction with her job as a proposal manager for a company doing business in the defense industry. She is a dual citizen of the United States and Israel, and she holds passports from each country. She was born in the United States and moved to Israel as a minor child with her parents. She acquired Israel citizenship in 1975, at about the age of 8. She then lived in Israel until 2014, when she came to the United States.

Applicant performed military service in the Israeli Defense Forces (IDF) during 1985-1989. She was trained in and worked in the field of military intelligence. She attained the rank of staff sergeant. She then earned a bachelor's degree from an Israeli university in 1992. Her employment history in Israel includes working for software companies between 1992 and 2011, as a programmer, team leader, and only later as a product manager, starting around 2008. (Answer to SOR) She voted in an Israeli election in 2013, but has voted only in U.S. elections thereafter.

Applicant married for the first time in 1993 and divorced in 2001. Her first husband was also a dual citizen of the United States and Israel. She married for the second time in 2001. They married at a location in the United States. Her husband is a citizen of the United States, Israel, and Germany. She has three adult children and an adult stepchild.

Applicant and her husband have resided together in the United States since 2014. She described her husband as an eminent scientist who is employed by the U.S. Government and a holder of a public trust clearance (which is typically for a non-national security position). She stated that her U.S. citizenship is important to her, and she took pains to have her three children obtain U.S. citizenship through the naturalization process. She has sponsored her stepdaughter to obtain a green card, as her stepdaughter intends to come to the United States and live here upon completion of her studies in Israel. Her two sons are living with her and her husband. Her third child, a 26-year-old daughter, has chosen to reside in Israel.

Applicant has a number of family ties or connections to Israel. (Exhibit 4, Appendix A) Her daughter, sister, and brother are dual citizens of the United States and Israel, and they reside in Israel. Her stepdaughter and sister-in-law are citizens of and residents in Israel. Her brother-in-law is a dual citizen of Germany and Israel, and he resides in Israel. In the past she maintained contact with a person with whom she served with in the IDF, but she is no longer in contact with him.

Several of Applicant's family members have served in the IDF. (Exhibit 4, Appendix A) Her spouse served as an officer and aerial navigator. Her sister served as an intelligence officer. Her brother served as a target instructor. Her son served in logistics. Her daughter served in operations. And her stepdaughter served as a military reporter.

Applicant, individually or jointly with her husband, has financial interests in Israel. (Exhibit 4, Appendix B) She noted that she and her husband sold all of their Israeli securities and mutual funds, as she understood doing so was required by U.S. law. They also sold their former residence in Israel in 2016, and they no longer own real estate in Israel. She described their current financial accounts in Israel as consisting of a checking account, two educational funds, a life insurance policy, a life insurance pension fund, and two provident funds (which I understand are long-term savings to support an employee upon retirement). She estimated the U.S. dollar value of these financial holdings at about $1 million in total. Concerning foreign-based income, her husband receives a pension from an Israeli university in the amount of about U.S. $8,600 monthly.

In addition to their Israeli financial interests, Applicant noted that she and her husband own their U.S. home, which has an estimated market value of more than $1 million. She also noted that they have more than $1.5 million in U.S. mutual funds and accounts. Their current net worth is approximately $3 million. (Exhibit 4 at 9)

Applicant travels frequently to Israel. For example, she made ten trips to Israel during November 2014 and November 2019. (Exhibit 4, Appendix C) She uses her Israeli passport to enter and depart Israel, as required by Israeli law. Likewise, she uses her U.S. passport to enter and depart the United States, as required by U.S. law.

I have taken administrative notice of the following facts concerning the country of Israel. (Exhibit 6) Israel is a nation in the Middle East, and it is governed by a multiparty

parliamentary democracy. Israel and the United States have historically strong bilateral relations and ties, including cooperation on defense and security matters. With that said, U.S. officials remain concerned about the potential for Israeli espionage. The most notable example is perhaps the case of Jonathan Pollard, a former intelligence analyst for the U.S. Government. He pleaded guilty in 1987, as part of a plea agreement, to spying for and providing top-secret classified information to Israel, for which he was sentenced to life in prison. The current State Department travel advisory for Israel is do not travel there due to COVID-19, and the advisory warns to exercise increased caution in Israel due to terrorism and civil unrest.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.[1] As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[2] Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.[3]

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[4] Substantial evidence means "evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla."[5] Substantial evidence is a lesser burden than both clear and convincing evidence and preponderance of the evidence, the latter of which is the standard applied in most civil trials. It is also a far lesser burden than evidence beyond a reasonable doubt, the norm for criminal trials.

[1] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[2] 484 U.S. at 531.

[3] 484 U.S. at 531.

[4] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

[5] *Black's Law Dictionary* 640 (Bryan A. Garner ed., 9th ed., West 2009).

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[6] Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[7]

Discussion

Concerning the allegations in SOR ¶ 2, the issue under Guideline B for foreign influence is whether Applicant's ties and connections to Israel should disqualify her from eligibility for access to classified information. Under Guideline B for foreign influence, the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is set forth in AG ¶ 6 as follows:

> 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 a security concern under AG ¶ 7. The following are potentially applicable in this case:

> AG ¶ 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;
>
> AG ¶ 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; and

[6] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[7] Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

> AG ¶ 7(f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The starting point for the analysis is the country of Israel. The heightened-risk element is satisfied given the risk of terrorism in Israel as well as concerns about the potential for Israeli espionage against the United States. Israel stands in contrast to countries that pose a low national security risk; for example, Canada, United Kingdom, Australia, and New Zealand, all of which belong to (with the United States) the Five Eyes intelligence alliance for joint cooperation in signals intelligence. Given Applicant's family ties to Israel and financial interests in Israel, the above disqualifying conditions are raised by substantial evidence.

The guideline provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following mitigating conditions:

> AG ¶ 8(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;

> AG ¶ 8(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; and

> AG ¶ 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.

Israel presents a heightened risk and places a heavy burden on Applicant to mitigate the security concern. With that said, Applicant has various indicators of a mature, stable, responsible, and trustworthy person. She has an employment history in both Israel and the United States. She and her husband are both financially responsible and successful. They have been homeowners, past and present. She appears to have cooperated fully and provided truthful information during the security clearance process. Her responses in her SF 86 and her responses to written interrogatories were meticulous and professional.

I have considered the totality of Applicant's ties and connections to Israel. She was born in the United States and departed the country as a minor child with her parents. The majority of her upbringing, her education, and her adult life were in Israel, where she lived for about 40 years. She has lived in the United States as an adult for less than ten years. Understandably, she maintains ongoing relationships with various family members in Israel, including an adult daughter and an adult stepdaughter. She travels frequently to Israel for vacation as well as to maintain those relationships. She along with her husband have substantial financial interests in Israel, estimated at about U.S. $1 million. Their Israeli financial interests are less than their U.S. financial interests, but they are not minor or trivial to say the least. On balance, I cannot conclude that her ties and connections to the United States are far stronger than her ties and connections to Israel. My overall assessment is that they are about the same, with Applicant having one foot in the United States and one foot in the country of her foreign citizenship.

Given the totality of facts and circumstances, I cannot conclude 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 the Israeli government or her family members who have Israeli citizenship, reside in Israel, or both. I also cannot conclude there is no conflict of interest within the meaning of AG ¶ 8(b). The substantial financial interests in Israel are also worrisome. The three mitigating conditions noted above, in light of the evidence as a whole, do not apply to mitigate the foreign influence security concern.

Concerning the allegations in SOR ¶ 1, the issue under Guideline C for foreign preference is whether Applicant's actions are such as to indicate a preference for a foreign country over the United States. Note, Department Counsel did not address the foreign preference matters in the argument section of his written brief. The overall concern is set forth in AG ¶ 9 as follows:

> When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then [they] may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself;* the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtained recognition of a foreign citizenship.

The guideline notes several conditions that could raise a security concern under AG ¶ 10. The following are potentially applicable in this case:

> AG ¶ 10(a) applying for and/or acquiring citizenship in any other country; and

> AG ¶ 10(d) participation in foreign activities, including but not limited to: (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Of the four allegations made in SOR ¶ 1, only Applicant's military service in the IDF raises a concern. It falls squarely within the meaning of the disqualifying condition at AG ¶ 10(d)(1). The remaining three SOR allegations are addressed below.

First, while it's undisputed that Applicant acquired Israeli citizen as a native-born citizen, she did so when she was a minor child under the control and influence of her parents. It was a matter wholly beyond her control. Given these circumstances, her acquisition of Israeli citizenship cannot reasonably qualify as an intentional, deliberate, or purposeful act on her part; she was a passive participate in the process. Accordingly, the disqualifying condition at AG ¶ 10(a) does not apply here.

Second, Applicant's employment history in Israel working for software companies between 1992 and 2011, as a programmer, team leader, and only later as a product manager, starting around 2008, does not raise a concern. It does not fall within the meaning of AG ¶ 10(d)(1), because it was not employment with or a position in a foreign government or military organization.

Third, Applicant's voting in an Israeli election in about January 2013 does not raise a concern. Voting in a foreign election does not fall within the meaning of AG ¶ 10(d). Note, the previous August 2006 version of Guideline C specifically included voting in a foreign election as a disqualifying condition. But voting in a foreign election was not included in the list of disqualifying conditions when the most recent version of Guideline C was issued in December 2016.

The guideline provides that certain facts and circumstances may mitigate foreign preference concerns. Given the evidence here, I considered the following mitigating conditions:

> AG ¶ 11(d) the exercise of the rights, privileges, or obligations or foreign citizenship occurred before the individual because a U.S. citizen; and
>
> AG ¶ 11(g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law.

The mitigating condition at AG ¶ 11(d) does not apply because Applicant's military service in the IDF, a mandatory obligation in Israel, occurred while she was an adult dual citizen of the United States and Israel. Likewise, there is no evidence in the written record to support application of AG ¶ 11(g). I also note that Applicant served in the IDF for four years, and she was trained and worked in the field of military

intelligence. She also has several family members, including her husband, her son, her daughter, and her stepdaughter who have served in the IDF, which is probably common for Israeli families given the mandatory obligation to perform military service. Her military service occurred more than 30 years ago during 1985-1989, when she was a young adult, and there has been substantial passage of time. Still, when viewing her military service not in isolation but as part of the whole of this case, I cannot conclude that Applicant has met her burden of proof to establish mitigation.

One final matter. Applicant has argued that none of the reasons in the SOR indicate anything beyond expected behavior and circumstances of any person immigrating to the United States from another country, and that she has no reason for disloyalty to the country of her birth. (Answer to SOR) As to the first point, which is a fair point to make, that does not mean the U.S. Government may not consider the expected behavior and circumstances of such a person when deciding whether to grant such a person the privilege of a security clearance. As to the second point, it is a long-standing rule that security clearance decisions are not a loyalty determination or test. Section 7 of the 1960 Eisenhower Executive Order (E.O. 10865) provides that an unfavorable clearance decision "shall be a determination in the terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that she has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline C:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	Against Applicant
Subparagraphs 2.a – 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is denied.

Michael H. Leonard
Administrative Judge