



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



In the matter of: )  
)  
) ISCR Case No. 21-02257  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

02/08/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign preference security concerns, but he did not mitigate either the foreign influence or outside activities security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 12, 2021, the U.S. Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer 1) on November 30, 2021, and he requested a hearing before an administrative judge. On January 10, 2022, Department Counsel amended the SOR, pursuant to ¶ E3.1.17 of the Directive, by cross-alleging SOR ¶¶ 1.b and 2.a, numbered as ¶ 3.a, under Guideline L (Outside Activities). In his January 16, 2022, response to the amended SOR (Answer 2), Applicant denied SOR ¶ 3.a.

The case was assigned to me on July 21, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 5, 2022, scheduling the hearing for September 1, 2022.

I convened the hearing as scheduled. I appended to the record as Hearing Exhibit (HE) I and II, respectively, the Government's exhibit list and administrative notice request. Government Exhibits (GE) 1 through 3 and Applicant's Exhibits (AE) A and B were admitted in evidence without objection. Applicant testified. At Applicant's request and without objection, I left the record open until October 3, 2022, for additional documentation. Applicant timely submitted documentation that I marked as AE C and admitted without objection. DOHA received the hearing transcript (Tr.) on September 12, 2022.

### **Request for Administrative Notice**

As noted above, Department Counsel's request that I take administrative notice of certain facts about Israel was included in the record as HE II. I marked and included in the record as HE III two updated reports from which I took administrative notice of more recent facts about Israel. One report was issued by the Congressional Research Service on November 16, 2022, and is entitled, "Israel: Background and U.S. Relations in Brief." The second is an October 13, 2022 travel advisory issued by the U.S. Department of State on Israel, the West Bank, and Gaza. I have taken administrative notice of facts about Israel, contained in HE II and HE III, which are summarized below.

#### **Israel**

Israel has forged close bilateral cooperation with the United States in many areas. A 10-year bilateral military aid memorandum of understanding commits the United States to provide Israel \$3.3 billion in foreign military financing and spend \$500 million annually on joint missile defense programs from fiscal year 2019 to fiscal year 2028, subject to congressional appropriations.

After elections held on November 1, 2022, for Israel's parliament (Knesset), Likud party leader Benjamin Netanyahu is again the prime minister, a post he held twice previously, from 1996 to 1999 and 2009 to 2021. The 2022 election was the fifth held in Israel since a formal process began in December 2018 addressing corruption allegations against Netanyahu. Two of the previous four elections did not result in the formation of a government, and the other two resulted in short-lived coalition governments, a 2020 to 2021 government with Netanyahu as prime minister, and a 2021 to 2022 government without him. The rise of the ultra-nationalist Religious Zionism faction as a likely Netanyahu coalition partner has triggered debate about the implications for Israel's democracy, its ability to manage tensions with Arabs and Palestinians, and its relations with the United States and other countries.

An October 2022 travel warning issued by the U.S. Department of State for Israel, the West Bank, and Gaza is at Level 2: Exercise Increased Caution, advising travelers to exercise increased caution in Israel and the West bank due to terrorism

and civil unrest, and not to travel to Gaza due to terrorism, civil unrest, and armed conflict. The Sunni Islamist militant group Hamas, a U.S. Government-designated foreign terrorist organization, controls the security infrastructure in Gaza, and the security environment within Gaza and on its borders is dangerous and volatile.

In hopes of preserving the viability of a negotiated two-state solution among Israelis and Palestinians, U.S. Government officials have sought to help manage tensions, bolster Israel's defensive capabilities, and strengthen U.S.-Palestinian ties. U.S. Government officials have regularly spoken out against steps taken by Israelis or Palestinians that could risk sparking violence and undermining the vision of two states, including settlement expansion and settler violence, demolitions, evictions, incitement to violence, and payments for individuals imprisoned for acts of terrorism. Israeli-Palestinian violence in 2022 and increased West Bank militancy has triggered heightened counterterrorism measures and some controversy, including in relation to the killing of journalist Shireen Abu Akleh, a U.S. citizen who was a resident of East Jerusalem. With the Gaza Strip still under the control of the Hamas, the United States and other international actors face significant challenges in seeking to help with reconstruction without bolstering the group.

Significant human rights issues in 2021 included credible reports of unlawful or arbitrary killings; arbitrary detention, often extraterritorial detention of Palestinians from the occupied territories in Israel; restrictions on Palestinians residing in Jerusalem including arbitrary or unlawful interference with privacy, family, and home; substantial interference with the freedom of association; arbitrary or unlawful interference with privacy; harassment of nongovernmental organizations; significant restrictions on freedom of movement within the country; violence against asylum seekers and irregular migrants; violence or threats of violence against national, racial, or ethnic minority groups; and labor rights abuses against foreign workers and Palestinians from the West Bank.

The U.S. Department of State advises that all persons seeking to enter or depart Israel, the West Bank, or Gaza are subject to immigration and security screening, possibly including prolonged questioning and physical searches, and may be denied entry or exit. Some U.S. citizens of Arab or Muslim heritage, including Palestinian-Americans, have experienced significant difficulties, unequal, and occasionally hostile treatment at Israel's borders and checkpoints. Israeli security officials have also on occasion requested access to travelers' personal e-mail accounts or other social media accounts as a condition of entry. In such circumstances, travelers should have no expectation of privacy for any data stored on such devices or in their accounts.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.c-1.d, and 2.b-2.h, and he denied SOR ¶¶ 1.b, 2.a, and 3.a. He is 65 years old, married, and he has five children, all adults. He attended college in the United States from September 1975 to January 1979, during which time he attended an affiliate college in Israel from August 1978 to June 1979. He

earned a bachelor's degree in physics in the United States in 1979. (Answer 1-2; Tr. at 8-10, 39, 43-45; GE 1-3)

Applicant worked as a program manager for the U.S. military from 1979 to 1991. He worked for various DOD contractors from 1999 to 2015. He was unemployed from December 2015 to December 2016, while residing in Israel. Since December 2016, he was a self-employed consultant in Israel, registered with the Israeli tax authority. From December 2016 to September 2017, he worked as a part-time engineer for an Israeli company in Israel. As of the date of the hearing, he worked as a part-time engineer for his current employer, a DOD contractor, since April 2020, for whom he is only permitted to work when he is in the United States. He was first granted a DOD security clearance in 1980, which he held at various levels until 2015. He was also granted a security clearance by another U.S. Government agency in 2010. (Tr. at 8-10, 39-43, 54-76, 86-87, 90-110, 159-160, 165-167, 173-175; GE 1-3)

The SOR alleged under Guideline C, and in part, under Guideline L, that Applicant, a native-born U.S. citizen, acquired dual citizenship with Israel in about December 2015. (SOR ¶ 1.a) It also alleged that he performed, and continued to perform, work for Israeli defense contractors or other entities affiliated with the Israeli defense industry, to include assisting Israeli defense companies obtain contracts with the U.S. DOD. (SOR ¶¶ 1.b, 3.a) It also alleged that he resided in Israel over half the year since 2016, in part so that he could remain eligible for Israeli social security and health care benefits. (SOR ¶ 1.c) It also alleged that he voted in at least three Israeli elections since March 2019 (SOR ¶ 1.d)

The SOR also alleged, under Guideline B, and in part, under Guideline L, that Applicant maintained contact with various individuals who are citizens and residents of Israel and employed as Israeli defense contractors or otherwise involved in the Israeli defense industry, for whom he performed and continued to perform, the work as discussed under SOR ¶ 1.b. (SOR ¶¶ 2.a, 3.a) It also alleged that his spouse's cousin (Cousin) is a dual citizen of Israel and the United States residing in Israel; that Cousin's spouse, a citizen and resident of Israel, is affiliated with the Israeli defense industry and served in the Israeli military; and that he maintained weekly contact with Cousin and Cousin's spouse. (SOR ¶ 2.b) It also alleged that his spouse is a dual citizen of Israel and the United States, who resides in Israel over half the year. (SOR ¶ 2.c) It also alleged that he owned an apartment in Israel with an approximate value of \$520,000 USD. (SOR ¶ 2.d) It also alleged that he maintained an Israeli credit card, and an Israeli bank account with an approximate value of \$40,000 USD. (SOR ¶ 2.e) It also alleged that he expected to receive royalties or compensation from a device he and an Israeli citizen and resident co-invented. (SOR ¶ 2.f) It also alleged that he expected to receive Israeli social security benefits. (SOR ¶ 2.g) It also alleged that he maintained contact with various friends who are citizens and residents of Israel. (SOR ¶ 2.h)

Applicant and his spouse are native-born U.S. citizens. His spouse works as an accountant for a U.S. accounting firm, and her employer allows her to maintain employment during the periods when she resides in Israel, as further discussed below. His parents, parents-in-law, and one sibling are deceased. His children and two siblings

are native-born U.S. citizens who reside in the United States in state A. As of his May 2020 security clearance application (SCA), he held a U.S. passport that was issued in August 2015 and not scheduled to expire until August 2025. He has owned a home in state A since February 1983. (Tr. at 83-85; GE 1-3)

Applicant and his spouse purchased an apartment in Israel in August 2014. In December 2015, they applied for and became Israeli citizens. They also became legal residents of Israel. In February 2018, Applicant obtained an Israeli passport, which is not scheduled to expire until February 2023. He previously obtained and used a transit document, which he relinquished to the Israeli authority upon obtaining his Israeli passport, to travel to and from Israel. Since obtaining his Israeli passport, he has traveled to the United States from Israel about five times yearly, during which times he used his Israeli passport to depart Israel and his U.S. passport to enter the United States. Upon his returns to Israel, he used his U.S. passport to depart the United States and his Israeli passport to enter Israel. (Answer 1-2; Tr. at 44-54, 80-81, 89-90, 144-148, 154-160, 170-172, 178-180, 182, 185; GE 1-3)

Applicant and his spouse have resided in their home in state A for half or less than half of every year since becoming legal residents of Israel in December 2015. They resided in Israel from December 2015 to February 2016, March 2016 to July 2016, August 2016 to November 2016, December 2016 to February 2017, March 2017 to April 2017, April 2017 to August 2017, August 2017 to November 2017, December 2017 to March 2018, April 2018 to June 2018, July 2018 to August 2018, August 2018 to November 2018, December 2018 to February 2019, March 2019 to April 2019, May 2019 to June 2019, July 2019 to August 2019, September 2019 to November 2019, December 2019 to January 2020, and January 2020 to March 2020. They resided in the United States during the COVID-19 pandemic restrictions, beginning in March 2020. Since March 2020 and as of the date of the hearing, they resided in Israel approximately four times and were last there from July 2022 to August 2022. They planned to return to Israel in November 2022 for approximately 17 days. He used his Israeli transit document or his Israeli passport to enter and exit Israel during each of these trips. (Answer 1-2; Tr. at 44-54, 80-81, 89-90, 144-148, 154-160, 170-172, 178-180, 182, 185; GE 1-3)

Applicant and his spouse chose to become Israeli citizens and residents for religious reasons. He intends to maintain dual citizenship with the United States and Israel, and he intends to renew his Israeli passport when it expires. He and his spouse intend to maintain their living situation, in which they reside part of the year in Israel and the other part in the United States, until they are no longer able to be independent. They anticipate that they would then return permanently to live in the United States, where their children reside. (Answer 1-2; Tr. at 44-54, 80-81, 83-85, 89-90, 154-160, 170-172, 178-180, 182, 185; GE 1-3)

In response to Department Counsel's question, "What do you consider home . . ." Applicant stated:

That's a really hard question. It's the only answer I can give is that's a really hard question. If I, I mean, if I were told, look, you can either live in Israel or live in the United States, you can't have both, you can't keep doing what you're doing, you know, going back and forth, I would choose the United States because of my family. But legally, because I'm in Israel 183 days nominally of the year, then, technically, I reside in Israel . . .

(Tr. at 155)

As an Israeli citizen, Applicant has the right to vote in Israel, the right to receive social security benefits in Israel, and the right to use Israel's health care system. He voted in Israeli elections in March 2019, September 2019, and March 2020. Although he could not recall the specific dates, he also voted in two subsequent elections since March 2020, and he intended to continue to exercise his right to vote in Israel. To remain in good standing with Israel's social security system and be able to use Israel's health care system, he is obligated to pay taxes in Israel and into Israel's social security program, and he is required to live in Israel at least 183 days of the year. He has complied with such requirements and intends to continue to do. He and his spouse expect to receive Israeli social security benefits of \$500 USD monthly, beginning in August 2027. He testified that although he and his spouse receive their medical care in the United States, they purchase their medicine, to include the medicine he needs for a chronic health condition, in Israel "at a quarter of the price." He and his spouse have an accountant in Israel who files their income tax returns there. (Tr. at 46-47, 77-80, 83-85, 87-90, 167-171, 174-175, 180, 184-185; GE 1, 3)

As previously discussed, Applicant and his spouse purchased an apartment in Israel in August 2014. They did so for \$520,000 (USD). As of the date of the hearing, the value of their apartment in Israel was approximately \$1,000,000 USD. In January 2013, he and his spouse opened a checking and a savings account in Israel for the purpose of purchasing their apartment there, and they also obtained a credit card in Israel. They opened their Israeli bank account with \$800 USD. As of the date of the hearing, the balance on their Israeli bank account was \$70,000 USD. (Tr. at 76-77, 81-87, 160-164, 170-172; GE 1, 3)

In the United States, the value of their home as of the date of the hearing was approximately \$350,000. They have two checking and savings accounts, for which the total balance as of the date of the hearing was approximately \$250,000. He testified that he and his spouse had approximately \$1.5 million total in their investments and retirement savings accounts in the United States. He also testified that they timely file their federal and state income tax returns in the United States, as required. They also vote in the United States. (Tr. at 76-77, 81-87, 160-164, 170-172; GE 1, 3)

Applicant maintained weekly in-person, telephonic, and electronic personal contact with his spouse's first cousin (Cousin) and with Cousin's spouse. Cousin is a native-born U.S. citizen who maintains dual citizenship with Israel and the United States and resides in Israel. Applicant met Cousin in October 2004. Cousin is a retired, self-employed English as a Second Language (ESL) teacher. Cousin's spouse is an Israeli

citizen residing in Israel. Applicant met Cousin's spouse in December 2004. Cousin's spouse is a former member of the Israeli military and is a self-employed consultant to the Israeli defense industry. Applicant maintained that although Cousin and Cousin's spouse were aware that he has previously held a DOD security clearance, they do not discuss sensitive or proprietary information with each other. In addition to seeing Cousin and Cousin's spouse in Israel since becoming a legal resident of Israel in 2015, Applicant traveled to Israel to visit Cousin from December 2003 to January 2004, in January 2007, in January 2010, from October 2010 to November 2010, and in February 2012. (Tr. at 59-69, 86-111, 144-148, 152-155, 172-173, 180-183; GE 1-3)

Applicant also maintained monthly in-person, telephonic, and electronic professional contact with an Israeli citizen residing in Israel. Applicant met this individual in March 2015. This individual is a former officer in the Israeli military and owned two companies in Israel, of which one has held contracts with the Israeli defense industry. Applicant consulted for this individual in Israel for several years beginning in 2016. Applicant maintained that the consulting work he did for this individual was private and unaffiliated with the Israeli government, military, or defense industry. Applicant also served as a liaison between this individual and an agency of the U.S. DOD from approximately 2019 to March 2020, as further discussed below. (Tr. at 59-69, 86-87, 90-155, 172-183; GE 1-3; AE A-C)

Applicant also maintained monthly in-person, telephonic, and electronic professional contact with an Israeli citizen residing in Israel. Applicant met this individual in March 2015. Applicant worked for this individual's company from December 2016 to September 2017, as previously discussed. This individual's company is affiliated with the Israeli defense industry. Applicant maintained that the work he did for this individual was private and unaffiliated with the Israeli government, military, or defense industry. (Tr. at 59-69, 86-87, 90-111, 152-155, 172-173, 180-183; GE 1-3)

Applicant maintained daily in-person, telephonic, and electronic personal contact with his neighbor in Israel, an Australian citizen residing in Israel. He met this individual in August 2015. She is retired and widowed. He also maintained daily in-person, telephonic, and electronic personal contact with the rabbi of his synagogue in Israel, whom he met in November 2015. (Tr. at 47-48, 59-69, 86-87, 90-111, 152-155, 172-173, 180-183; GE 1-3)

While in Israel, Applicant served as a liaison between four Israeli companies and an agency of the U.S. DOD between approximately March 2018 and March 2020. He engaged in this capacity before he began working for his current employer in April 2020. He recommended, to the U.S. DOD agency, Israeli companies that could potentially support the U.S. DOD agency's mission. The deputy joint program executive officer for the U.S. DOD agency wrote, in a September 2022 letter, that Applicant's liaison work was encouraged by the U.S. DOD agency, but that Applicant was neither funded by nor was there any agreement that he would be paid by the U.S. DOD agency. The U.S. DOD agency was aware that Applicant would receive a finder's fee from any of the Israeli companies if they received a contract from the U.S. DOD agency. Nothing materialized and the initiatives fell apart because the U.S. DOD agency reoriented

towards addressing COVID in March 2020. (Tr. at 97-104, 110-155, 175-177, 182, 184; GE 1, 3; AE A-C)

As of the date of the hearing and since approximately October 2018, Applicant and an Israeli citizen, who resides in Israel and is a reservist in the Israeli military, co-invented a medical device for which they were in the process of obtaining a patent and seeking potential investors. Applicant expects to receive a percentage of any royalties that might come about, but he had not received any such compensation as of the date of the hearing. He maintained that his work with this Israeli citizen for this medical device was not affiliated with the Israeli government, military, or defense industry. (Tr. at 102-104, 110-111, 130-134, 182; GE 1, 3)

Applicant testified that he has reported to his facility security officer (FSO) his trips to Israel and his foreign contacts. He also testified that he would comply with reporting requirements and notify his FSO of any future consulting work, to include any such work in Israel. He did not provide any evidence to show that he reported his continued work on the medical device, with the Israeli citizen and resident who is a reservist in the Israeli military. He disclosed the above-discussed information on his 2012 and 2020 SCAs and during his 2012 and 2020 background interviews. He testified that no one has approached him about U.S. classified information. (Tr. at 74-76, 144-148; GE 1-3)

### **Policies**

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(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 access to classified information will be resolved in favor of 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 Exec. Or. 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* Exec. Or. 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;

(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;

(e) shared 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;

(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; 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.

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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant's spouse is a dual citizen of Israel and the United States, and they reside together in Israel for over half of every year since becoming legal residents of Israel in 2015. Applicant maintains regular contact with Cousin, Cousin's spouse, his rabbi, and two professional contacts, all of whom are Israeli citizens and residents. Cousin's spouse is a former member of the Israeli military and a self-employed consultant to the Israeli defense industry.

One of Applicant's professional contacts in Israel is a former officer in the Israeli military and owned a company that has had contracts with the Israeli defense industry. Applicant consulted for this individual in Israel for several years beginning in 2016, and Applicant served as a liaison between this individual and an agency of the U.S. DOD from approximately 2019 to March 2020. Applicant's other professional contact in Israel also has a company affiliated with the Israeli defense industry, and Applicant worked part time for this company from December 2016 to September 2017. An October 2022 travel warning issued by the U.S. Department of State advised travelers to exercise increased caution in Israel and the West Bank due to terrorism and civil unrest, and not to travel to Gaza due to terrorism, civil unrest, and armed conflict.

From approximately 2019 to March 2020, Applicant was a liaison between four Israeli companies and a U.S. DOD agency while he was in Israel. One of the Israeli companies is owned by one of Applicant's professional contacts in Israel who is a former officer in the Israeli military, and who owns at least one company that has held contracts with the Israeli defense industry, as discussed above. Should any contracts have materialized between any of these four Israeli companies and the U.S. DOD agency, Applicant would have received a finder's fee from the Israeli company. While his work was encouraged by the U.S. DOD agency, he was not funded by it nor was there any agreement that the agency would pay him for it. As of the date of the hearing, Applicant maintains his registration with the Israeli tax authority to work as a self-employed consultant in Israel, and he continues to work with another Israeli citizen and resident, who is a reservist in the Israeli military, as co-inventor of a medical device for which they were working to patent and secure potential investors. Applicant expects to receive a percentage of any royalties that might come about from this device.

Applicant does not expect to receive Israeli social security benefits until 2027, in four and a half years, and if he does receive such benefits, it would be in the nominal amount of \$500 USD monthly. As such, I find that AG ¶ 7(f) does not apply to SOR ¶ 2.g, and I find that allegation in Applicant's favor. However, he has significant assets in Israel totaling approximately \$1,070,000 USD, which include his apartment valued at approximately \$1,000,000 as of the date of the hearing, and his bank account that had a balance of approximately \$70,000 USD as of the date of the hearing. Applicant's contacts and financial interests in Israel create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), 7(e), 7(f), and 7(i) apply to SOR ¶¶ 2.a-2.f and 2.h.

AG ¶ 8 provides conditions that could mitigate security concerns. 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;

(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;

(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 requirements 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 disclosed the above-discussed information on his 2012 and 2020 SCAs and during his 2012 and 2020 background interviews. He intends to continue to comply with reporting requirements and disclose to his FSO his foreign contacts, foreign travels, and any future consulting work, to include any such work in Israel. AG ¶ 8(e) is established.

AG ¶ 8(d) is established, in part, because Applicant's contacts with the four Israeli companies for whom Applicant served as a liaison to the U.S. DOD agency, was encouraged by the U.S. DOD agency. However, AG ¶ 8(d) is not established for Applicant's professional contact in Israel who is a former officer in the Israeli military and owns a company that has had contracts with the Israeli defense industry. It is also not established for Applicant's other professional contact in Israel whose company is affiliated with the Israeli defense industry. It is also not established for Applicant's continued work with another Israeli citizen and resident, who is a reservist in the Israeli military, as co-inventor of a medical device for which he expects to receive a percentage of any potential royalties.

In addition, AG ¶¶ 8(a), 8(c), and 8(f) are not established for the reasons set forth in the above discussion of AG ¶¶ 7(a), 7(b), 7(e), 7(f), and 7(i). Applicant, his spouse, his children, and his siblings are all native-born U.S. citizens. His children and siblings reside in the United States. He has substantial financial interests in the United States. These are all factors that weigh in Applicant's favor. However, his ties to Israel are also strong. He maintains personal and professional contact with Israeli citizens and residents, and three of his professional contacts have ties to the Israeli government, military, or defense industry. He also has significant financial interests there. As such, Applicant has not met his burden of demonstrating that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8(b) is not established.

### **Guideline C: Foreign Preference**

The security concern for foreign preference is set out in AG ¶ 9:

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 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 obtain recognition of a foreign citizenship.

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

- (a) applying for and/or acquiring citizenship in any other country; and
- (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.

No disqualifying conditions under AG ¶ 10 are raised by Applicant's residence in Israel for half or more than half of every year in part to remain eligible for Israeli social security benefits and health care there. As such, I find SOR ¶ 1.c in Applicant's favor. As previously discussed, in 2016, Applicant consulted for an Israeli citizen and resident whose company has had contracts with the Israeli defense industry. From 2016 to 2017, he worked for another Israeli company that has affiliations with the Israeli defense industry. His work as a liaison between four Israeli companies and a U.S. DOD agency was encouraged by the U.S. DOD agency, who was aware that Applicant would receive a finder's fee if a contract materialized for any of the Israeli companies. His continued work with an Israeli citizen and resident, who is a reservist in the Israeli military, pertains to a medical device. He maintained that none of the work he did was affiliated with the Israeli government, military, or defense industry. AG ¶¶ 10(d)(1) and 10(d)(2) do not apply to SOR ¶¶ 1.b, and I find this allegation in Applicant's favor.

However, Applicant is a native-born U.S. citizen who became an Israeli citizen and resident in 2015. In addition, he has voted in at least three Israeli elections since March 2019. AG ¶ 10(a) applies to SOR ¶ 1.a and AG ¶ 10(d), "participation in foreign activities . . ." applies to SOR ¶ 1.d.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

(a) the foreign citizenship is not in conflict with U.S. national security interests; and

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

As previously discussed, although Applicant has voted in at least three Israeli elections since March 2019, he has also voted in the United States. His voting in Israel does not present a national security concern. In addition, Applicant's dual citizenship with Israel and the United States is not in conflict with U.S. national security interests. As such, I find that AG ¶¶ 11(a) and 11(e) are established for SOR ¶¶ 1.a and 1.d.

### **Guideline L: Outside Activities**

The security concern for outside activities is set out in AG ¶ 36:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified or sensitive information.

The guideline notes several conditions that could raise security concerns under AG ¶ 37. The following is potentially applicable in this case:

(a) any employment or service, whether compensated or volunteer, with: . . .

(2) any foreign national, organization, or other entity; and

(3) a representative of any foreign interest.

In 2016, Applicant worked for an Israeli citizen and resident whose company has had contracts with the Israeli defense industry. From 2016 to 2017, he worked for another Israeli company that also has affiliations with the Israeli defense industry occurred. He served as a liaison between four Israeli companies and a U.S. DOD agency from 2019 to 2020. Since 2018, he has worked with another Israeli citizen and resident, who is a reservist in the Israeli military, as co-inventor of a medical device. As of the date of the hearing, they were in the process of obtaining a patent for the device, and they were also seeking out potential investors. He also expects to receive a percentage of any potential royalties. AG ¶¶ 37(a)(2) and 37(a)(3) apply.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 38. The following are potentially applicable:

- (a) evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States; and
- (b) the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

As previously discussed in my analyses under Guideline B and Guideline C, Applicant's work for an Israeli citizen and resident whose company has had contracts with the Israeli defense industry occurred in 2016. His work for another Israeli company that also has affiliations with the Israeli defense industry occurred from 2016 to 2017. His liaison work for four Israeli companies occurred from 2019 to 2020, at the encouragement of the U.S. DOD agency, and nothing materialized from them. AG ¶¶ 38(a) and 38(b) are established for these activities.

As previously stated, Applicant did not provide any evidence to show that he reported to his FSO his continued work on a medical device with the Israeli citizen and resident who is a reservist in the Israeli military. Such work was ongoing as of the date of the hearing, as he and this individual were in the process of obtaining a patent for the device and seeking potential investors. He also expects to receive a percentage of any future royalties. AG ¶¶ 38(a) and 38(b) are not established.

### **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 Guidelines B, C, and L in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these three guidelines and evaluating all the evidence in the context of the whole person, I conclude that Applicant mitigated the foreign preference security concerns, but he did not mitigate either the foreign influence or outside activities security concerns. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **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: Subparagraphs 1.a-1.d:	FOR Applicant For Applicant
Paragraph 2, Guideline B: Subparagraphs 2.a - 2.f: Subparagraph 2.g: Subparagraph 2.h:	AGAINST Applicant Against Applicant For Applicant Against Applicant
Paragraph 3, Guideline L: Subparagraph 3.a:	AGAINST Applicant 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge