



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-01464
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant has not provided sufficient mitigating evidence to overcome the foreign influence security concerns stemming from his family’s citizenship and residence in Israel or from his relationship with his former girlfriend, a citizen and resident of Russia. Eligibility for access to classified information is denied.

Statement of the Case

On July 25, 2018, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. On January 3, 2019, Applicant provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). This PSI is incorporated in Applicant’s answers to interrogatories dated July 21, 2021. Following a preliminary review of Applicant’s security clearance eligibility, The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated August 13, 2021, detailing security concerns raised by foreign influence (Guideline B). The action was taken Department of Defense (DOD) Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) effective June 8, 2017.

Applicant provided his notarized answer on January 19, 2022. The case was assigned to me on October 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2023, for a hearing by Microsoft Teams Teleconference on March 7, 2023. The hearing was held as scheduled. The Government's three exhibits, (GE) 1-3, were entered into evidence without objection. Applicant did not submit exhibits. Applicant testified. One hearing exhibit (HE) 1 (administrative notice) was marked. The record closed on March 16, 2023, when DOHA received the transcript (Tr.).

Administrative Notice

I have taken administrative notice of certain relevant facts related to State of Israel and the Russian Federation. These facts come from source material published by the Department of State and Department of Justice. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant admitted the first seven allegations of the SOR without explanations. He denied SOR ¶ 1.h. In denying SOR ¶ 1.i, he explained that he no longer had a relationship with his former Russian girlfriend.

Applicant is 68 years old and is a dual citizen of the United States and Israel. He was born in Morocco in 1955, but became an Israeli citizen in February 1962 when the Israeli government granted citizenship to all Jewish people who immigrated to Israel. From 1972 to 1976, he performed mandatory military service in the Israeli Defense Forces (IDF). (SOR ¶ 1.e) He rose to the level of artillery officer. Applicant served in the IDF Reserves and law enforcement from 1976 to 1980. (SOR ¶ 1.e) (Tr. 27-28) He received his bachelor's degree from an Israeli university, married a U.S citizen, and immigrated to the United States in early 1980. After his divorce in 1983, he received a master's degree from a U.S. university. After marrying his current wife, a dual citizen of the United States and Israel, in November 1986, he became a naturalized U.S. citizen in the same month. Following some marital discord, Applicant separated for a period, but has since reconciled, and views his current relationship with his wife as married and living separately. (GE 1 at 9-20; GE 2 at 4-5; Tr. 29-31)

Applicant has been employed as a principal software engineer with a defense contractor since June 2018. From June 2008 to June 2018, he and an Israeli citizen were owners of a software development company located in Israel. (SOR ¶ 1.h) The e-learning company provided instructional tools needed for high school exams. Students gained access to the tools through subscriptions. From April 1994 to May 2007,

Applicant was staff software engineer for a U.S. company. (GE 1 at 14-16; GE 2 at 7; Tr. 14, 40-42)

SOR ¶ 1.a, 1.d – Applicant’s wife is a dual citizen of the United States and Israel. The two are legally divorced in Israel, but not in the United States. His wife provides after school care for children in Israel. She comes to the United States regularly; she spent a month in the United States on her last visit in October 2022. (GE 2 at 5; Tr. 37-38)

Applicant’s oldest son is 34 years old and was born in the United States. As with his three siblings, he is a dual citizen of the United States and Israel. Neither Applicant’s wife nor his children are affiliated with the Israeli government or military. The oldest son was discharged from mandatory service in the IDF because of a personal problem. He is single and currently employed in Israel as a security guard. He lives in Applicant’s Israeli home. (GE 1 at 39-40; GE 2 at 5; Tr. 32-33)

Applicant’s second oldest son is 31 years old, and completed his mandatory service in the IDF, but is still in the IDF Reserves. He is an electrical engineer who has his own residence about 80 miles from Applicant’s Israeli home. Applicant’s contact with his two oldest sons is weekly to every two weeks. (GE 1 at 23; GE 2 at 5; Tr. 33-35)

Applicant’s third and youngest son was a technician in the Israeli air force. He finished his mandatory military service, but the government could call him back at any time. Recently graduated from college, he is currently a software engineer. He lives in another location in Israel with a friend. Applicant has contact with him once a week. (GE 1 at 23; GE 2 at 5; Tr. 35-36)

Applicant’s daughter was born in Israel. She completed her mandatory service in the IDF and is currently enrolled in an Israeli college. She is subject to recall, but the government usually does not recall females. Applicant sends his daughter and his youngest son \$250 a month to help pay bills and educational expenses. (GE 1 at 23; GE 2 at 5-6; Tr. 36-37, 44) Though the record does not indicate the frequency of contact that Applicant has with his daughter, I find his contact with her is the same as with his youngest son.

SOR ¶ 1.b – Applicant’s one brother and five sisters are citizens and residents of Israel. His brother, a retired major in the IDF, has been a high school teacher in Israel since 2011. He is paid by the Israeli government. Applicant’s contact with his siblings is about once every three weeks, and he may see them in person once a year. (GE 2 at 5; Tr. 42)

None of Applicant’s sisters work for the Israeli government. Applicant’s oldest sister operates a daycare center in Israel. Applicant does not know the employment of his 63-year-old sister. Applicant’s 51-year-old sister is married and is in the education department of a school. He contacts her by phone, in person, or social media. Applicant’s 55-year-old sister is married and self-employed, but the record does not

indicate her employment. Applicant's youngest sister, 46 years old, is married and a banker. (GE 1 at 28-39; GE 2 at 6; Tr. 43)

SOR ¶ 1.c –From June 2008 to June 2018, Applicant and an Israeli citizen were owners of a software developer. The e-learning company provided instructional tools needed for high school exams. Students had access to the tools through subscriptions. After the company closed, Applicant moved back to the United States. He still maintains contact with his former partner because he is married to Applicant's sister. (GE 1 at 14, 42; GE 2 at 7; Tr. 40-42)

SOR ¶ 1.f – In September 2003, Applicant purchased a house in Israel valued at approximately \$700,000 in January 2019 and \$1,200,000 in July 2021. He does not intend to sell the house. Applicant also owns a house in the United States valued at \$90,000. (GE 1 at 40; GE 2 at 7, 12; Tr. 24, 45)

SOR ¶ 1.g – Applicant maintains an Israeli bank account with funds amounting to approximately \$5,000. He uses the account while he is in the country. (GE 2 at 7, 12)

All Applicant's other financial accounts are in the United States. He has a savings and checking account. He has investments in two U.S. companies. He has a 401(k)-retirement account worth about \$800,000. Applicant will receive about \$500 a month in retirement from his employment at a U.S. telecommunications company. At a point in his career, he interacted with several professional colleagues, but currently he maintains close contact with one professional peer, and a coworker who has had him over for holiday meals. (Tr. 45-48, 56-59)

SOR ¶ 1.i – Applicant had a girlfriend, a U.S. citizen, who is originally from Russia and is currently a resident of Russia. She married a U.S. citizen and lived for a time in the United States. After her husband passed away, she returned to Russia. She supports herself with U.S. Social Security benefits. Applicant did not disclose his travel to Russia in his June 2018 e-QIP even though the dates of travel to the country appear in his passport. He did not report the travel because he did not think he was required to. He began this relationship online in 2014. Between 2014 and 2016, he traveled to Russia on four occasions and stayed four to eight days. The former girlfriend visited him occasionally. In his testimony, Applicant initially indicated that the relationship ended in 2017. Later he testified that the affair ended in 2020 when he and his wife reconciled. Between January 2017 and January 2019, he was spending about \$300 a month for educational expenses of his former girlfriend's son. At the March 2023 hearing, he testified that he stopped paying the child's expenses. Applicant's last contact with his former girlfriend was a month before the hearing. At that time, he provided \$1,700 in financial support in 2023 and \$1,000 in 2022. The money transfers were to help her repay loans. Applicant does not intend to provide financial support to her in the future. (GE 2 at 8-9; Tr. 25, 49-55) No additional information was provided.

Applicant traveled to Israel regularly before the COVID-19 pandemic. From 2014 through 2019, he spent over three months a year in Israel. In 2020, he was in the

country 30 days. In 2021, he was in Israel for one day. In 2022, he took two trips and a stayed a total of about a month. He plans to travel to Israel in April 2023 and stay for two weeks. (GE 2 at 12; Tr. 48-49)

Applicant has voted in Israeli elections in 2012, 2015, and once since. Whenever he is in the country, he votes because he is an Israeli citizen. He also exercises his Israeli citizenship by using the country's social medical system. When he retires, he wants to maintain his house in the United States and allocate significant time with his children in Israel. He considers his allegiance to both Israel and the United States. (GE 1 at 43-44; GE 2 at 4, 7; Tr. 55, 59)

Administrative Notice – State of Israel

Israel, a parliamentary democracy, has no constitution, but it has enacted fundamental laws since 1948 that safeguard rights of its citizens. The 120-member Knesset has the power to dissolve itself and require elections.

Israel is a close ally and trading partner of the United States. The country has a verified history of targeting U.S. classified information. The Department of State Travel Advisory for Israel, the West Bank, and Gaza, is at level 4: Do not travel. The advisory is based on COVID-19, terrorism, and civil unrest. One additional reason for not traveling to Gaza is civil conflict. The Israeli government considers U.S. citizens who also have Israeli citizenship to be Israeli citizens for Immigration and other legal reasons.

Administrative Notice – The Russian Federation

Russia is a substantially centralized, authoritarian political system closely controlled by Vladimir Putin. Though the United States and Russia were once allies, their current relationship is antagonistic. In August 2017, the U.S. president imposed sanctions against Russia for interference in the 2016 U.S. elections and their aggression towards Ukraine. After Russia invaded Ukraine on February 24, 2022, the U.S. president imposed additional sanctions. In October 2020, the U.S. Department of Homeland Security (DHS) indicated that that Russian state-affiliated actors have continued to target all levels of the U.S. Government through cyber espionage. The purpose of this activity is to retrieve economic, policy, and national security information. The U.S. Department of State Travel Advisory has issued a warning not to travel in Russia because of the limited ability to protect U.S. citizens in the country, COVID-19 restrictions, terrorism, harassment by government security, and arbitrary enforcement of local laws.

The Department State 2020 Human Rights Report described significant human rights violations including: extrajudicial killings, enforced disappearances, pervasive torture by government authorities, serious restrictions on religious freedom, restrictions on individuals trying to change government through free and fair elections; and violent crimes against persons with disabilities, members of ethnic minorities, and lesbian, gay, bisexual, transgender, and intersex persons.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

(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;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and

(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.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶¶ 7(a) and 7(f), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. Under AG ¶ 7(b), connections are only disqualifying if they create a potential conflict of interest between Applicant's security duties and his desire to assist his foreign family members. As the guideline indicates, the country in question must be considered to determine whether it is known to target U.S. citizens to obtain classified information or is associated with the risk of terrorism. AG ¶ 7(c) also applies based on Applicant's failure to reveal travels to Russia and his former Russian girlfriend's identity on his June 2018 e-QIP.

Applicant's family ties to his wife, four children who are dual citizens of the United States and Israel and residents of Israel, his six siblings and a former business partner who are citizens and residents of Israel, together with Applicant's financial interest in the country, are sufficient to establish a heightened risk in AG ¶¶ 7(a) and 7(f), and also potential for a conflict of interest as described in AG ¶ 7(b).

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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; 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 no be used effectively to influence, manipulate or pressure the individual.

AG ¶¶ 8(a) and 8(f) are not established. Applicant's wife and four children are dual citizens of the United States and Israel, and residents of Israel. Though Applicant's mandatory military service in the IDF ended over 41 years ago, his four children have had recent military service in the IDF, and at least two are subject to recall in the Reserves. Six siblings and a former business partner are citizens and residents of Israel. Applicant maintains regular contact with them and has traveled to Israel frequently to visit them. He operated an Israeli company from 2008 to 2018. Applicant's Israeli home and bank account total more than \$1,200,000, an amount that is close to the value of his U.S. home and retirement account, and therefore not insignificant. In sum, with Israel's record of industrial espionage against the United States, I cannot conclude that it is unlikely Applicant will be placed in a position of having to choose between an Israeli interest or entity and the interests of the United States. Though there is no evidence that the Israeli government seeks to exploit financial assets of its citizens, Applicant's interest in the Israeli house used by Applicant and other family members could create the potential for a conflict of interest.

AG ¶ 8(b) does not apply because Applicant's sense of obligation to his foreign family members is not minimal. He admitted that he has allegiance to both the U.S. and Israel. I am unable to conclude that Applicant could be expected to resolve any conflict in favor of the U.S. interest.

Applicant should have disclosed his relationship with the former Russian girlfriend on his June 2018 e-QIP. Applicant's testimony claiming that the relationship ending in 2020, is not persuasive in light of the \$1,700 he transferred to her shortly before the security clearance hearing, and his regular monthly payments of her son's educational expenses between 2017 and at least 2019. Applicant has not satisfied AG ¶ 8(c) because his relationship with his former girlfriend, which is neither casual nor infrequent, could create a risk of foreign influence or exploitation.

Whole-Person Concept

I have examined the evidence under the foreign influence guideline in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant entered the United States in 1980. He earned a master's degree in March 1984. He has been married to his present wife since November 1986, the same month that he became a U.S. citizen. He has been working for his present employer since June 2018.

Applicant indicated unequivocally that when he retires he would like to live in the United States part of the year and in Israel for part of the year. His divided allegiances prevent a finding that he can be expected to resolve all conflict of interests in favor of the United States. Considering the evidence from an overall commonsense point of view, Applicant has not met his burden of mitigating the security concerns based on the foreign influence guideline.

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–1.i:	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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge