



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



In the matter of:)	
)	
)	ISCR Case No. 23-01009
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from his friend residing in Israel. He can be expected to resolve any potential conflict of interest in favor of the United States. National security eligibility for access to classified information is granted.

Statement of the Case

On June 5, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017. On July 24, 2023, Applicant responded to the SOR and requested a hearing.

On November 21, 2023, a notice of hearing was issued, scheduling the hearing for December 12, 2023. The hearing proceeded as scheduled. Applicant testified and

submitted 13 documents, which I labeled as Applicant's Exhibits A through M. Department Counsel offered four documents marked as Government Exhibits (GE) 1 through 3, and Hearing Exhibit (HE) 1. I admitted all proffered exhibits into evidence without objection. Department Counsel also submitted materials for administrative notice concerning Israel, which I admitted as Administrative Notice (AN) I, without objection. The administrative notice materials are included in the record to show the basis for concluding that the noticed facts are well known, generally accepted within the U.S. government, and are not subject to reasonable dispute. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on December 21, 2023.

Findings of Fact

The SOR alleges foreign influence security concerns based on Applicant's friend who is a citizen and resident of Israel. His friend works for an Israeli technology company, and Applicant maintains regular contact with him. (SOR ¶ 1.a.) Applicant admitted, with explanation, the single Guideline B allegation in his response to the SOR. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 46-year-old citizen of the United States. He married in 1999, and he and his wife have two children. He graduated in 1999 with a bachelor's degree, followed by a Master of Arts in history in 2001. He started his career in education where he served as a public-school teacher for 15 years teaching U.S. history. He also was employed by a community college as an adjunct professor teaching history and humanities. In approximately 2019, he left his career in education and began working in the computer engineering sector. In September 2021, he was hired by his current employer, a government contractor. His job title is product growth architect. In April 2022 Applicant was granted a Secret security clearance. His employer continues to sponsor him for a Top-Secret DOD security clearance. (SOR response; GE 1, GE 2; Tr. 18-22)

Foreign Influence

The SOR alleges security concerns based on Applicant's friend, X, who is a citizen and resident of Israel. Applicant met X in June 2017 during a personal trip he took to Israel with his best friend. Applicant was hired by his best friend to work for a well-known company in the U.S. as a consultant, and X was also hired as a consultant for the company team located in Israel. Applicant mainly had work-related email communications with X during the following year trying to navigate the bureaucracy of a 30,000-person global corporation. (Tr. 23-25; SOR response)

Applicant would communicate with X via electronic messaging and occasionally by telephone. The frequency was sporadic, about once or twice a month. He and his best friend met X in Paris in 2018, and they met X in New York a few times for work-related meetings. Between 2020 and 2023, Applicant and X were included in a total of 13 email threads with other recipients, and they only exchanged one direct email message. Their communications have only been social in nature and X has never once asked for information about Applicant's current work for a government contractor. X now works for a technology company in Israel, which was acquired by an American company in 2015.

Applicant did not possess a security clearance during the times he communicated with X, and their last direct electronic message took place in May 2020. (SOR response; Tr. 28-32)

Applicant voluntarily disclosed X on his June 2022 security clearance application. In early 2023, Applicant soon realized that X was a security concern during his background investigation, and he severed all communications with X. Whether or not his security clearance is granted, Applicant has no intention of reinitiating contact with X. (SOR response; Tr. 28-32; GE 1)

Character References:

Applicant submitted several letters of recommendation by friends, co-workers, and colleagues. All the references recommended Applicant be granted a Top-Secret security clearance because he is considered dedicated, trustworthy, and a loyal U.S. citizen. (AE A-F)

Administrative Notice

I have taken administrative notice of the following facts concerning 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. Israel has experienced an unprecedented period of political instability in recent years.

A March 6, 2023 travel warning issued by the U.S. Department of State for Israel and the West Bank, urged U.S. travelers to exercise increased caution while traveling due to terrorism and civil unrest. The Department of State has issued a travel advisory for Gaza, urging U.S. travelers not to travel due to terrorism, civil unrest, and armed conflict.

Significant human rights issues in 2022 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. (AN I)

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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern under this guideline is set out 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.

Two disqualifying conditions under this guideline are relevant to 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; and

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.

“The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

To establish AG ¶ 7(a), the Government must demonstrate a “heightened risk” of exploitation due to Applicant’s contact with his friend in Israel. Given the presence and activities of several terrorist organizations hostile to the interests of the United States in Israel, to include the current armed conflict, the Government has established the requisite “heightened risk” and potential conflict of interest regarding Applicant’s contact with his friend in Israel. AG ¶¶ 7(a) and 7(b) apply.

The following mitigating conditions under this guideline are potentially relevant:

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, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Terrorist organizations and current armed conflict pose an ongoing and critical threat to U.S. interests in Israel. The United States and Israel are strong partners and friends. Americans and Israelis are united by a shared commitment to democracy, economic prosperity, and regional security. It is important to note, however, that the last direct communication between Applicant and his friend, X, occurred in May 2020, before he was hired by a government contractor. When Applicant and X worked for the same global corporation, their work-related contacts were regular. Their social contacts, however, have been sporadic and infrequent. There is no evidence that his friend was affiliated with the Israeli government, military, or defense industry. Applicant no longer maintains a relationship with his friend in Israel, and he has severed all communications with X. AG ¶¶ 8(a) and 8(c) apply.

Security-clearance determinations are predictive judgments as to whether an individual will safeguard classified information. Applicant was born and raised in the United States. He taught U.S. history to middle school-aged children and college students

for 15 years. Applicant no longer has any ties or connections to anyone in Israel. He can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies. Applicant mitigated the foreign influence security concerns.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's friends, colleagues, and co-workers describe Applicant as a loyal U.S. citizen. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The foreign connection was self-reported by Applicant, and he no longer maintains contact with his friend who resides in Israel and works for a technology company. There is no derogatory information about Applicant in the record. His close relationship with his wife, children, extended family members, and friends are such that any conflict of interest can be expected to be resolved in favor of the U.S. interest. I conclude Applicant mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge