



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00268
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

04/30/2024

**Decision**

LAFAYE, Gatha, Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B (foreign influence). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 2, 2021. On April 5, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence). The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on April 24, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on about June 21, 2023, including Items 1 through 4.

Item 4 is a request for Administrative Notice regarding Israel and the Palestinian Territories (ADMIN Notice). The original ADMIN Notice request, dated June 13, 2023, was superseded by an updated ADMIN Notice submitted by the Government on March 18, 2024. I re-labeled the original ADMIN Notice as Item 4X. The updated ADMIN Notice takes into account the most recent country conditions, including the terrorist attacks on October 7, 2023. I provided Applicant an opportunity to comment and submit supplemental documents if desired. Applicant commented on March 20, 2024, via electronic mail. I marked Applicant's comments as an exhibit, described below, and included it in the record.

In June 2023, a complete copy of the Government's file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on July 7, 2023, and submitted comments to the FORM on July 16, 2023, which I marked as Applicant's Exhibit (AE) A. I marked Applicant's comments to the updated ADMIN Notice as AE B. The case was assigned to me on September 28, 2023. The Government's Exhibits, marked as Items 1 through 4, and Applicant's Exhibits, marked as AE A and AE B, are admitted in evidence without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about the State of Israel and the Palestinian Territories (Israel), and the United States' relations with Israel as part of this FORM. I have taken administrative notice of the facts contained in Item 4, the most pertinent of which are summarized in the Findings of Facts, below. See ISCR Case No. 18-02641 at 4 (App. Bd. Jul. 10, 2019) ("It is well established that a Judge may take administrative notice of facts about a foreign country from official U.S. Government publications when conducting that foreign influence assessment.")

### **Findings of Fact**

In his Response to the SOR, Applicant admitted seven of eight allegations involving foreign influence, SOR ¶¶ 1.a – 1.g; he denied the allegation in SOR ¶ 1.h. His admissions are incorporated in my findings of fact.

Applicant is a 51-year-old program manager. He has worked for a major defense contractor since August 2021. He previously worked as an engineering manager for a private company in the United States from September 2013 through July 2021.

Born in Israel, Applicant is an Israeli citizen by birth. In June 2012, he acquired Romanian citizenship through his Romanian-born father. He immigrated to the United States in 2013, and became a naturalized United States citizen in July 2021. He holds citizenship and maintains active passports for Israel, Romania, and the United States. He stated he is willing to renounce his Romanian citizenship; but unwilling to renounce his Israeli citizenship. (Items 2, 3; and AE A, B)

Applicant earned his Israeli high school diploma in June 1991, and his bachelor's and master's degrees from Israeli universities in June 1999 and July 2009 respectively. He joined the Israeli Defense Force (Israeli army) in 1991, and was ultimately discharged as a Captain in 2013, after serving for 22 years. In his Response to the SOR, he stated his military service, from 1991 through 1995, was mandatory. He also stated his subsequent military service in the Israeli army reserve, from 1995 through 2013, was mandatory. (Item 2; AE A) He commented:

I am a law-abiding citizen, always have been and always will be. The law in Israel is such that male(s) who arrive at the age of 18 are obliged to a mandatory military service of a minimum of 3 years, and then for a reserve service up until the age of 40-45 years old, depending on their role. (Response to SOR ¶ 1.a; AE A)

Applicant did not disclose his role or responsibilities in the Israeli Army, which he stated caused an extended 18-year obligation to the Israeli army. When the DOD investigator inquired about his military service Israel, he only confirmed the listed military service dates, stating there was nothing further to add. He left Israel and immigrated to the United States in mid-2013, upon his discharge from the Israeli army. He began work as a program engineer for a private company in the United States. As part of his engineering work, he was required to participate in extensive international travel, including multiple trips to Asia. He left the private company in July 2021, after becoming a naturalized United States citizen. In August 2021, he began working for his current employer, a major U. S. defense contractor. (Item 2 at 18-21, Item 3 at 9-11; AE A)

Applicant has an Israeli retirement account, described as similar to a 401k, which exceeded the value of \$400,000 USD in February 2023. He disclosed that he is entitled to receive about \$2,000 USD per month from retirement funds beginning in 2040, until about August 2063. He and his wife also have a joint Israeli bank account, valued at about \$800 USD. (Item 2, Item 3 at 2,9-12; AE A)

Applicant got married in Israel in 2000. His wife, also an Israeli-born citizen, is a permanent United States resident, in the process of becoming a naturalized United States citizen. They have three children, ages 23, 19, and 16 years. All were born in Israel, and are citizens of Israel, Romania, and the United States. (Items 2, 3)

Applicant's mother is a citizen and resident of Israel. His father, born in Romania, was a dual citizen of Romania and Israel, and a resident of Israel, prior to his recent death. His sister is a dual citizen of Romania and Israel, and a resident of Israel. His father-in-law and mother-in-law are also citizens and residents of Israel. (Items 2, 3; AE B)

Applicant maintains close relations with all of his relatives residing in Israel. He has weekly contact with his mother and sister; and bi-monthly to quarterly contact with his mother-in-law and father-in-law. (Item 2; Item 3 at 6-8) In March 2024, Applicant reported that his father recently passed away. (AE B)

Applicant also disclosed the following in his Response to the SOR:

His mother is “75 years old now and consumed with dementia.” His father, a disabled 78-year-old man, “was born in Romania and immigrated to Israel in 1968.” His Romanian citizenship was “based on his birth in Romania, and he has no financial interests in it.” As discussed previously, Applicant’s father recently passed away. His sister’s Romanian citizenship, like his, is based on their father’s citizenship and birth in Romania. He stated his sister is a social worker and “not in any position to be exploited by a foreign power.” His mother-in-law and father-in-law are both retired and, like his sister, are “not in any positions to be exploited by a foreign power.” (Response to SOR; Items 2, 3; AE B)

He admitted having a retirement account valued at about \$400,000 USD in Israel. He stated he worked as an electrical engineer for a private employer from 1996 through 2013, and accumulated retirement funds in a personal “401k equivalent” account. If he were to remove the funds before his retirement age of 67 years, he would have to pay a 35% tax on the money, which he chose to avoid. He denied he and his wife are due to receive retirement benefits from the Israeli government in the future. He stated his wife worked as an elementary school teacher, and that her salary and retirement benefits as a public-school teacher, are paid by the Israeli education ministry, a branch of the Israeli government. (Response to SOR; Items 2, 3)

Applicant completed his security clearance application on October 2, 2021. He traveled to Israel to visit family and friends eight times between 2014 and 2021. (Item 2 at 50-70; Item 3 at 10-11)

### **Israel & the Palestinian Territories**

Israel is a multiparty parliamentary democracy. Although it has no written constitution, its parliament, the unicameral 120-member Knesset, has enacted a series of “Basic Laws” that enumerate certain rights and freedoms. Members of the Knesset, including the prime minister, are elected in free and fair elections. Under the Basic Laws, the Knesset has the power to dissolve itself and mandate elections. Israel, in recent years has experienced an unprecedented period of political instability, holding five legislative elections between April 2019 and November 2022. Former Prime Minister Benjamin Netanyahu returned to office in late 2022, and continued his dominance of Israel's political landscape at the head of Israel's most rightwing and religious government. (Item 4)

Since the beginning, the United States and Israel have enjoyed strong bilateral relations based primarily on common democratic values and security interests, though the relationship has been far from perfect. (Item 4)

Terrorism remains an ongoing issue in Israel, with a notable increase in violence and terrorist attacks occurring since 2021, and further escalating in 2023. On October 7, 2023, the terrorist organization Hamas conducted an unprecedented attack on Israeli citizens, massacring 1,300 Israelis citizens, including 31 or more U.S. citizens. Hundreds

of hostages were also taken. Hostages ranged in age from infants to elderly grandparents, from Israel, the United States, and other countries. Many remain in captivity. Horrible atrocities have been reported from this attack, including rapes, beheadings, and people being burned alive. The United States immediately rushed security assistance to Israel to enable Israeli defense forces to restore security and to protect the Israeli people. The United States as Israel's strongest defense partner is committed to supporting the protection and security of Israel. (Item 4)

## **Policies**

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security." Section 7 of EO 10865 provides that 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

Under Guideline B, the SOR alleges Applicant served as a Captain in the Israeli army for about 22 years (SOR ¶ 1.a); that his mother, mother-in-law, and father-in-law are citizens and residents of Israel (SOR ¶¶ 1.b, 1.e, and 1.f); and that his father and sister are citizens of Israel and Romania, and residents of Israel (SOR ¶¶ 1.c and 1.d). It further alleges he maintains an Israeli retirement account valued at about \$400,000 (SOR ¶ 1.g), and that he and his wife stand to receive retirement benefits from the Israeli government (SOR ¶ 1.h). Applicant admitted all allegations in the SOR, except SOR ¶ 1.h, denying that he and his wife would receive retirement benefits from the Israeli government.

### 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. 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

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.

AG ¶¶ 7(a), 7(b), and 7(f) are applicable. The current country conditions in Israel and the Palestinian Territories, especially following the terrorist attacks of October 7, 2023, establish the heightened-risk element of the analysis. Conditions in Israel are such that there is an ongoing risk of armed conflict, potentially extending beyond Israel to the broader Middle East, and a continuation of violence and terrorist attacks in Israel. Given Applicant's family ties to Israel, his 22-year service in the Israeli army, and his significant financial interest in Israel, the disqualifying conditions listed above apply in this case.

Notwithstanding the above, the allegations in SOR ¶¶ 1.c and 1.h are found in Applicant's favor. Applicant reported the passing of his father in AE B, rendering the allegation in SOR 1.c moot. He also denied that he and his wife will receive retirement benefits from the Israeli government. The Government presented substantial evidence that his wife will likely receive retirement benefits from the Israeli government due to her prior employment as a public-school teacher in Israel. However, no such evidence was presented concerning the Applicant. Though Applicant admitted in SOR ¶ 1.g, that he will receive a private retirement benefit based on his previous employment with a private company in Israel, he denied he will receive retirement benefits from the Israeli government; and the Government's evidence is insufficient to establish that he will. The fact that his wife will likely receive a retirement benefit from the Israeli government is not disqualifying for him in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. Three potentially apply in this case:

AG ¶ 8(a): the nature of the relationship 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 and interests of the U.S.;

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 interests in favor of the U.S. interests; 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.

The current country conditions in Israel present a heightened risk, which places a heavy burden on Applicant to mitigate the security concern. I considered the totality of Applicant's ties to Israel, the significant ongoing terrorist activities in Israel, and the risk of armed conflict within Israel, with the potential to expand beyond its borders to the broader Middle East. I am unable to conclude 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 his family members, including his in-laws, who are citizens and residents of Israel. Applicant was raised, educated, and lived in Israel until the age of 40. He understandably has close ties to his family in Israel. He communicates with them frequently, and visits them regularly.

Applicant also served in the Israeli army for 22 years, before he was discharged as a Captain. He did not disclose his roles or responsibilities as an officer in the Israeli army. Whatever his role, the Israeli government required him to serve 18 additional years in its army before he was allowed to be discharged. The Appeal Board has held that prior foreign military service raises significant questions that require scrutiny in evaluating an Applicant's security clearance eligibility. See ISCR Case No. 10-00824 at 3 (App. Bd. Aug. 6, 2012); see also ISCR Case No. 14-03112 at 4 (App. Bd. Nov. 3, 2015). During his interview with a DOD investigator, Applicant was given an opportunity to discuss his 22-year service as an officer in the Israeli army; he declined to discuss his foreign military service.

There is insufficient evidence to find that there is no conflict of interest either because Applicant's sense of loyalty or obligation to the foreign person or Israel is so minimal; or because he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States interest. I am unable to conclude that his ties to the United States are paramount. Applicant's significant financial interest, a 401k-like retirement account from a previous employer in Israel, is also problematic.

The three mitigating conditions noted above do not apply to mitigate Applicant's foreign influence security concern.

### **Whole-Person Analysis**

I have incorporated my comments under Guidelines B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 also considered that Applicant offered insufficient evidence in response to the SOR and he did not submit any documentary evidence or explanation concerning his service in the Israeli army for 22 years. I conclude he did not present sufficient evidence to sustain his heavy burden of persuasion necessary to overcome security concerns established by his 22-year service in the Israeli army, his significant Israeli retirement funds, and his close connections to his family members who are citizens and residents of Israel.



Overall, the record evidence leaves me with questions and doubts concerning Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns raised under Guideline B, foreign influence.

### **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.c, 1.h:	For Applicant
Subparagraphs 1.a-b; 1.d-1.g:	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 to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Gatha LaFaye  
Administrative Judge