



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01019
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Sean D. Rogers, Esq.

08/29/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 16, 2023. On May 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on August 7, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 28,

2023, and the case was assigned to me on May 3, 2024. On May 20, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on July 16, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 3 were admitted in evidence without objection. GX 2, an unauthenticated summary of a personal subject interview, was not admitted. Applicant testified, presented the testimony of six witnesses and submitted Applicant's Exhibits (AX) A through S, which were appended to her answer to the SOR. They were admitted without objection. I kept the record open until July 23, 2024, to enable Applicant to submit additional documentary evidence. She did not submit anything further. The record closed on July 23, 2024. DOHA received the transcript (Tr.) on July 24, 2024.

Amendment of SOR

Department Counsel moved to amend SOR ¶ 1.e, alleging that Applicant's aunt and her husband are citizens and residents of Israel, by changing "aunt" to "cousin." I granted the motion. (Tr. 11) After both sides had presented their evidence. Department Counsel moved to withdraw SOR ¶ 1.b, and I granted the motion. (Tr. 117)

Administrative Notice

Department Counsel and Applicant requested that I take administrative notice of relevant facts about Israel. The requests and supporting documents were not admitted in evidence but are attached to the record as GX 3 and AX R. I took administrative notice as requested by both parties. Applicant objected to GX 3 as irrelevant. I denied the objection. (Tr. 6-7) The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, she admitted the factual allegations in SOR ¶¶ 1.a-1.f but denied that the facts are an appropriate basis for finding a security concern. Her admissions are incorporated in my findings of fact.

Applicant is a 29-year-old analytics associate manager employed by a federal contractor since October 2022. She is a native-born U.S. citizen. (Tr. 18) She received a bachelor's degree in December 2016 and a master's degree in December 2021. She was employed by a federal contractor from February 2017 to March 2022. She was employed as a senior data analyst by a non-government employer from March to August 2022 and unemployed from August to October 2022. She has lived with a cohabitant since December 2021, and they were recently married. She has no children. She has never held a security clearance.

Applicant's father is a native-born U.S. citizen. He owned and operated two small private businesses for about 34 years and is now retired. He testified in support of Applicant's security clearance application and vouched for her loyalty to the United States. (Tr. 79-80)

Applicant's husband holds a security clearance, and he vouched for Applicant's loyalty to the United States. (Tr. 85-91) One of Applicant's fellow classmates and a long-time friend testified that Applicant is very honest and dependable. (Tr. 98-100) Applicant's current supervisor has known her since March 2023, and he vouched for her trustworthiness and dependability. (Tr. 101-08) A previous supervisor vouched for Applicant's trustworthiness and described her as an "exceptional resource to the team." She. (Tr. 109-16)

The SOR alleges that Applicant has multiple family connections to Israel. The evidence concerning those allegations is set out below.

SOR ¶ 1.a: Applicant's mother is a dual citizen of the United States and Israel and currently resides in the United States. Applicant's mother was born in Israel and came to the United States in 1987. She and her husband met and were married in the United States. She is employed by a state government. (Tr. 29) She periodically visits family in Israel, but she does not provide financial support to any of them. She has never held a government position in Israel other than her mandatory military service. (AX C)

SOR ¶ 1.b: Applicant's brother is a dual citizen of the United States and Israel and currently resides in the United States. This allegation was withdrawn by Department Counsel.

SOR ¶ 1.c: Applicant's cousin and her husband are citizens and residents of Israel, and both previously served in the Israel Defense Forces (IDF). Applicant's second cousin once removed completed her mandatory military service as a nature reserve ranger assistant from 1999-2001. She is currently a licensed occupational therapist working with children with special needs in an institution operating under the Israeli Ministry of Education. (AX E; AX F) Her husband is a pediatrician and specialist in pediatric infectious diseases, working in a medical center in Jerusalem. (AX F) She and her husband lived in the United States for about four years while her husband worked in a U.S. medical center. Applicant visited them periodically while they lived in the United States.

SOR ¶ 1.d: Applicant's cousin and her husband are citizens and residents of Israel, and both previously served in the IDF. Applicant's second cousin resides in Israel and completed her service in the IDF as a teacher from 1972-74. She is now a retired teacher and school headmaster. (AX G) Her husband completed his mandatory military service as an artillery team commander from 1970-1973. He is a retired financial and tax adviser. (AX H)

SOR ¶ 1.e (as amended): Applicant's cousin and her husband are citizens and residents of Israel, and both previously served in the IDF. (AX I) Applicant's cousin completed her mandatory service in the IDF on dates not reflected in the record and then operated a small convenience store until she retired. Her husband is deceased. (AX I)

SOR ¶ 1.f: Applicant's aunt is a citizen and resident of Israel and previously served in the IDF. Applicant's aunt completed her mandatory military service and then continued her military service as an educator. She is currently serving as a lieutenant in the IDF. Her husband completed his mandatory service in the IDF on dates not reflected in the record. (AX J)

In 2012, when Applicant was 17 years old, she spent one semester living in a kibbutz and studying Hebrew. She was not required to sign any kind of oath or pledge to the government of Israel or to perform military service. When she completed her four months of studies, she returned to the United States and began attending college. (Tr. 46-47)

Applicant has contacts with her relatives in Israel every few months through a family group text program, consisting primarily of family updates. (Tr. 41-42, 48-49) Her contacts have not included any discussions about Israeli politics, and no one has asked about her work or tried to persuade her to move to Israel, join any groups, or support any political causes. (Tr. 39, 43)

The mother of Applicant's husband submitted an affidavit describing Applicant as honest, trustworthy, kind, a hard worker, and of good character. (AX N) Applicant's mother and a long-time friend submitted affidavits vouching for her trustworthiness, honesty, and her ethical and moral standards. (AX O; AX P)

I have taken administrative notice that Israel is a parliamentary democracy with a diversified, technologically advanced economy. The United States was the first country to recognize Israel as a state in 1948, and the first to recognize Jerusalem as the capital of Israel in 2017. A long-standing U.S. priority is to promote a comprehensive and lasting solution to the Israeli-Palestinian conflict.

Almost half of Israel's exports are high technology, including electronic and biomedical equipment. The United States is Israel's largest trading partner.

The U.S. and Israel have close cultural, historic, and political ties. They participate in joint military planning and training, and they have collaborated on military research and weapons development. Commitment to Israel's security has been a cornerstone of U.S. Middle East policy since Israel's creation in 1948.

Israel has been identified as a major practitioner of industrial espionage against U.S. companies. There have been instances of illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel. Israel has become a major global leader in arms exports, and the United States and Israel have periodically disagreed over Israeli sales of sensitive U.S. and Israeli technologies to third-party countries, including China.

Israel generally respects the rights of its citizens. When human-rights violations have occurred, they have usually involved Palestinians.

Israel considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. U.S. citizens visiting Israel have been subjected to prolonged questioning and thorough searches by Israeli authorities upon entry or departure.

Terrorist suicide bombings are a continuing threat in Israel, and U.S. citizens in Israel are advised to be cautious. On October 7, 2023, Hamas militants launched combined ground and rocket attacks into southern Israel. Hamas has been the de facto governing authority in the Gaza strip since 2007. The Department of State has issued a “do not travel” advisory for Gaza due to terrorism and armed conflict. It has also issued a “reconsider travel” advisory to Israel and the West Bank due to terrorism and civil unrest.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.” *Egan* at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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 maybe 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 following disqualifying conditions are relevant:

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified 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).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). It is a level of risk one step above a State Department Level 1 travel advisory ("exercise normal precaution") and equivalent to the Level 2 advisory ("exercise increased caution"). When family ties to a foreign country are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

The security concern in this case is based heavily on Applicant's family members' military service in the IDF. However, only one of Applicant's many cousins and aunts and

their spouses continued to serve in the IDF after completing mandatory service, and she is a low-ranking officer performing duty as an educator. In the past, we have recognized that an applicant's ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. See, e.g., ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009) (Applicant's brother was a high-level foreign government official); ISCR Case No.11-04980 at 2 and 6 (App. Bd. Sep. 21,2012) (Applicant's sister-in-law was married to a retired high-ranking official in a foreign army);and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015) None of Applicant's aunts, cousins and their spouses have occupied or now occupy high-ranking positions in the IDF, the Israeli government, intelligence services, or defense-related industries.

Applicant's feelings of a cultural connection to Israel were demonstrated when she chose to live in Israel to study Hebrew for four months. Her interest in Israeli culture and the large number and frequency of her family contacts in Israel are sufficient to establish the "heightened risk" in AG ¶ 26(a) and the potential conflict of interest in AG ¶ 26(b).

The following mitigating conditions 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; and

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(a) is established. Israel is a friendly country and the positions and activities of Applicant's aunts, cousins, and their spouses (medical professionals, teachers, a tax adviser, store owners, and retirees) are such that a conflict of interest is unlikely.

AG ¶ 8(b) is established. Applicant's deep and longstanding loyalties to her parents, husband, brother, friends, and career in the United States are such that she can be expected to resolve any conflict of interest in favor of the United States.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere and credible at the hearing . After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her connections to Israel.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c-1.f:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge