

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has surrendered his Israeli passport. His wife and native born children are all Americans. He has lived in the U.S. for more than 20 years, and has been a citizen for more than 10 of those years. All of the Applicant's net worth, nearly \$1,000,000, is in the U.S. The Applicant's 80 year old parents are retired and live in Israel. His sister works in a private hospital. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his foreign relatives] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

CASENO: 06-23644.h1

DATE: 08/28/2007

DATE: August 28, 2007

In Re:)	
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-----)	ISCR Case No. 06-23644
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has surrendered his Israeli passport.¹ His wife and native born children are all Americans. He has lived in the U.S. for more than 20 years, and has been a citizen for more than 10 of those years. All of the Applicant's net worth, nearly \$1,000,000, is in the U.S. The Applicant's 80 year old parents are retired and live in Israel. His sister works in a private hospital. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his foreign relatives] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 16 , 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about February 6, 2007.

The case was received by the undersigned on April 10, 2007. A notice of hearing was issued on April 12, 2007, and the case was heard on May 8, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on May 17, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 52 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline C - Foreign Preference

The Applicant came to the U.S. from Israel in 1986, over 20 years ago, to find a better life for his family (TR at page 15 line 2 to page 16 line 14). He became a U.S. citizen in 1996 (TR at page 19 lines 19~25). His wife is also naturalized, but his three children are native born Americans (TR at page 17 line 14 to page 19 line 1). All of the Applicant's net worth, nearly \$1,000,000, is in the U.S. (TR at page 21 line 24 to page 23 line 1).

¹Dual nationality is not alleged in the Statement of Reasons.

1.a. and 1.b. The Applicant has surrendered his Israeli passport, which he acquired in 1998, after he was naturalized (TR at page 25 line 6 to page 26 line 23, at page 33 line 22 to page 34 line 18, Government Exhibit (GX) 3, and Applicant's Exhibit A). He traveled to Israel seven times, using this Israeli passport, to visit his parents (TR at page 20 lines 1~20, and GX 3). His last visit was in 2005 (*Id*).

Guideline B - Foreign influence

2.a. The Applicant's 80 year old parents are retired and live in Israel (TR at page 23 lines 12~24, at page 27 line 8 to page 28 line 15, at page 30 lines 8~19 and GX 1 at pages 14~16). His father is a retired "Irrigation Engineer," and his mother is a "housekeeper" (*Id*).

2.b. The Applicant's sister works in a private hospital as an "X-Ray Technician" (TR at page 31 line 13 to page 32 line 5). The Applicant is not subject to coercion vis-a-vis any of his Israeli relatives (TR at page 29 line 5 to page 30 line 7, and at page 32 lines 16~24).

As the Applicant has Israeli relatives, I must also consider the country of Israel. Israel is a parliamentary democracy who's prime minister heads the government and exercises executive power. Israel has a diversified, technologically advanced economy that is growing at about 5.2% per year, and the U.S. is Israel's largest trading partner. Almost half of Israel's exports are high tech and its major industrial sectors include high-technology electrical and biomedical equipment. The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the active collectors of proprietary information. The most recent Report, released in 2006, states that the major collectors remain active. Israeli military officers have been implicated in this type of technology collection in the U.S. (*See* the Government's Request for Administrative Notice).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have

a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant, until recently maintained an Israeli passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen This includes but is not limited to: (1) possession of a current foreign passport; . . ." This is countered, however, by the fifth mitigating condition. "[T]he passport has been . . . surrendered to the cognizant security authority . . ."

The Applicant's parents, and sisters are citizens of and reside in Israel. The first and second disqualifying conditions are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with his Israeli relatives is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S." Also, the Applicant "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."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating

conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Preference FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge