DATE: June 27, 2006

In re:	)	
	)	
----------	)	ISCR Case No. 03-21190
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT
Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT
Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant is employed by a federal contractor. He is a naturalized citizen, having immigrated from Israel. He is divorced. He has two children that are U.S. citizens, one by birth, the other by naturalization. He is a dual citizen of the U.S. and Israel. He has an expired Israeli passport and he is willing to renounce his dual citizenship. He has mitigated security concerns about foreign preference. Using the "whole person concept," he successfully mitigated security concerns about foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On August 30. 2004, the Defense Office of Hearings and Appeals (DOHA) issued a

Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleged reasons under Guidelines C (foreign preference) and B (foreign influence) and detailed 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 Applicant's security clearance.

In a written statement dated October 14, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on April 22, 2005. A Notice of Hearing was issued June 9, 2005, scheduling the hearing for June 29, 2005. On June 24, 2005, Applicant retained new counsel who requested a continuance. I granted the motion. On September 15, 2005, a Notice of Hearing was issued setting the hearing for October 24, 2005. On October 21, 2005, both parties requested a continuance. That same day I granted the motion and set the hearing for November 14, 2005. The hearing was held as scheduled. At the hearing, the government offered eight exhibits and asked for administrative notice of eight additional exhibits. I sustained objections to administrative exhibits 3 and 7. Applicant submitted forty-two exhibits. I sustained objections to Applicant's Exhibits G-N, W-Z, AA, CC, and DD1-DD4.[1] He requested I take administrative notice of Appeal Board case No. 02-26978, September 21, 2005, which was granted.[2] Applicant called two witnesses and he testified in his own behalf. Applicant's third witness was unavoidably detained and I recessed the hearing until November 28, 2005.[3] On that date Applicant called one witness and the record was closed. The transcript (Tr.) was received December 1, 2005, and December 8, 2005.

FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 2.d. and 2.e. All other allegations were denied. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 66-year-old employee of a federal contractor.[4] From 1957 to 1960 he served in the Israeli army as military service was compulsory.[5] He immigrated to the U.S. from Israel in 1968 to complete work on a Ph.D. in systems engineering.[6] After 1968, he never voted in Israeli elections, never ran for office, never worked for the Israeli government, never received any financial

[1]Tr. at 189.

[2]*Id*. at 8-9.

[3]*Id*. at 105.

[4]*Id*. at 97.

[5]*Id*. at 98.

[6]Tr. at 100-101.

benefits from the government of Israel, paid no taxes to Israel, and owned no property in Israel.[7] He became a naturalized U. S. citizen in 1982.[8] He had been married to an Israeli citizen and was divorced in 1986. He has not remarried.[9] He raised two daughters, one born in Israel and now a naturalized U.S. citizen and the other born in the U.S.[10] He has little contact with his former wife.[11]

Applicant has two brothers and a sister who are citizens and residents of Israel.[12] One brother was a general officer in the Israel Air Force, then headed the Israeli equivalent of the U.S. Federal Aviation Administration, and is now retired.[13] He talks by phone with his brother 3-4 times per year and emails him about the same frequency.[14] He last saw his family in Israel in 1998 when he traveled there for their mother's funeral.[15] His brother came to the U.S. to visit him in 2000, when he had heart surgery.[16]

Another of Applicant's brothers is a bus driver and tour guide, with no connection to the Israeli government.[17] He talks with this brother by phone 3-4 times per year.[18] His brother never inquires about Applicant's work nor has he ever asked him for any classified information.[19] This brother and his wife came to the U.S. to visit in 1999.[20]

His sister is a retired teacher, and he has telephone contact with her the same as with his brothers, 3-4 times per year. He only discusses family matters with her, and she has never asked him about his work.[21]

---

[7] *Id*. 141-142.

[8] *Id*. at 106.

[9] *Id*. at 120, 122.

[10] *Id*. at 120-122.

[11] *Id*. at 122.

[12] *Id*. at 123-132.

[13] *Id*. at 123-124.

[14] *Id*. at 124, 128.

[15] *Id*. at 125.

[16] *Id*. at 124.

[17] *Id*. at 126-127.

[18] *Id*. at 131.

[19] *Id*. at 130.

[20] *Id*. at 129.

[21] *Id*. at 130-132.

Allegation 2.d. of the SOR alleges he has a friend who is a citizen and resident of Israel. During one of his trips to Israel, he met a lady who worked at an Israeli university. They dated socially and were considering marriage. She wished to remain in Israel, however, because both of her parents were living. Applicant did not want to move to Israel and the relationship ended more than two years ago. She never inquired about his employment. He no longer has contact with her.[22]

Applicant traveled to Israel three times in 1995, once in 1996 or 1997, and in 1998 for his mother's funeral.[23] His father died in 1985, but Applicant did not attend the funeral because of his pending divorce.[24] Since 1998, there also have been two family weddings and the funerals for a sister-in-law and a brother-in-law which he did not attend.[25] Each time he has traveled to Israel he used his Israeli passport because the government of Israel requires persons with dual citizenship to possess and use an Israeli passport.[26] On one trip he forgot his Israeli passport and was allowed into the country using his U.S. passport, but he was warned that it would not be allowed in the future.[27] He has never been asked by anyone in Israel what his work entailed or for other such information.[28]

Around 1979, Applicant worked for a different contractor who had a job with an Israeli government contractor. He was assigned to assist because he spoke Hebrew and could communicate with the Israeli employees.[29] A contract dispute arose between his company and the Israeli government that had nothing to do with Applicant's work. He defended his company in negotiations between Israel and his employer.[30]

Applicant applied for and was issued an Israeli passport in November 2001, and it expired in November 2002. It has not been renewed. He obtained this passport because of illness in his Israeli family and he thought about visiting them.[31]

---

[22] *Id*. at 133-135.

[23] *Id*. at 136.

[24] *Id*. at 137.

[25] *Id*.

[26] *Id*. at 138.

[27] *Id*. at 138-140.

[28] *Id*. at 141.

[29] *Id*. at 159.

[30] *Id*. at 160-164.

[31] *Id*. at 143-144.

The Money Memorandum[32] clarifies policy with respect to denial of security clearances if one holds an active foreign passport. Applicant was unaware of this policy until October 2004, when he received a copy of the Memorandum with the SOR.[33] He is willing to surrender his expired Israeli passport, but he cannot find it or his U.S. passport.[34] In the past he signed statements indicating he might renew his passport.[35] With his understanding of the Money Memorandum, he is willing to surrender his Israeli passport and does not intend to renew it.[36] He would side with the U.S. if diplomatic ties between Israel and the U.S. were to be broken,[37] but would not bear arms against Israel.[38] At age 66 and with a history of heart surgery, it is most unlikely he would be asked to bear arms against any country.[39] If a family member were to be held hostage or a foreign government asked him for classified information, he would contact the appropriate U.S. security authorities.[40] If Applicant were to travel to Israel in the future, he would request permission from the Israeli Embassy to travel as an American on a U.S. passport.[41]

Applicant commenced proceedings to obtain a security clearance in 1984, but abandoned the request when he changed employment.[42]

In describing Applicant, the president of his company used terms such as "good-hearted, quiet, does his work, true gentleman, contributes to company social events, professional, honest, and quality work."[43] His immediate supervisor used terms such as "committed, dedicated, reliable, strong work ethic, thorough, accurate, and no question of his honesty and integrity" in describing Applicant.[44] A final witness was Applicant's Ph.D. thesis adviser. Applicant and he have stayed in touch since university days, have written joint papers, collaborated on projects together, and have

---

[32]Memorandum, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, subject *"Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline,"* August 16, 2000. It is known administratively as the 'Money Memorandum' because it was issued by Arthur L. Money, Assistant Secretary of Defense. It is also known as the ASD C3I Memorandum.

[33]*Id*. at 145-146.

[34]*Id*. at 146-147.

[35]Government Exhibit 3 (Signed Statement, dated June 17, 2003) at 1; Tr. at 147.

[36]*Id*. at 148.

[37]*Id*. at 151.

[38]*Id*. at 152.

[39]*Id*.

[40]*Id*. at 155.

[41]*Id*. at 168.

[42]*Id*. at 150-151.

[43]*Id*. at 76.

[44]*Id*. at 85-86.

become good friends. He believes Applicant to be honest and a person of the very highest integrity.[45] All recommend Applicant for a security clearance.[46]

Israel is a multiparty parliamentary democracy with an independent judiciary.[47] The government generally respects human rights except there are some cases of discrimination primarily towards Arabs living in Israel.[48] The U.S. and Israel have maintained close and supportive relations since President Harry Truman recognized the State of Israel in May 1948, moments after Israel declared its independence.[49] The U.S. gives Israel about $3 billion per year in economic and military aid.[50]

The government asked for administrative notice of Israeli espionage activities. The exhibit was admitted over objection.[51] In 1985 and 1986, there were five incidents involving espionage and classified information being given to Israel. Israel denied any part in the espionage activities or claimed the operations were being run by renegade agents.[52] Th exhibit did not identify any activity by the Israeli government in espionage activities against the United States.[53]

POLICIES

"[No] one has a 'right' to a security clearance."[54] 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 occupy a position that will give that person access to such

---

[45]Transcript 2 (Tr.2.) at 6-23.

[46]Tr. at 78, 92-93; Tr.2. at 24.

[47]Government Administrative Exhibit 2 (United States Department of State Publication, *Israel: Country Reports on Human Rights Practices - 2004*, dated February 28, 2005) at 1.

[48]*Id*. at 13-15.

[49]Government Administrative Exhibit 5 (Congressional research Service Issue Brief for Congress, *Israeli-United States Relations*, updated November 9, 2004) at 2.

[50]*Id*. at 1.

[51]*Id*. at 39-44; Government Administrative Exhibit 5, *supra*, note 49, at 1.

[52]Government Administrative Exhibit 5, *supra*, note 49, at 14-15.

[53]*Id*.

[54]*See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

information."[55] The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."[56] Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.[57] The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.[58]

Once the Government establishes its case, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.[59] An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."[60] A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.[61] Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

---

[55]*Id*. at 527.

[56]Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

[57]*Egan, supra*, at 531.

[58]*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

[59]*See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

[60]*Id.*, at 3.

[61]*See Egan*; Directive ¶ E2.2.2.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline C (foreign preference)

E2.A3.1.1.The Concern: *(When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States)*.

Guideline B (foreign influence)

E2.A2.1.1. The Concern: *(A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure*).

CONCLUSIONS

Foreign Preference

The Government has established its case under Guideline C by showing that Applicant exercised dual citizenship with Israel, possessed and used an Israeli passport, and served in the Israeli Army. Therefore, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship),* E2.A3.1.2.2. *(Possession and/or use of a foreign passport),* and E2.A3.1.2.3. (*Military service or a willingness to bear arms for a foreign country*) are applicable.

The Money Memorandum[62] of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It requires that "any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."[63] Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country. Applicant's Israeli passport

[62]Money Memorandum, *supra*, at 1.

[63]*Id*.

expired in 2002, and he does not intend to renew it. Further, he lost this passport which is the functional equivalent of destroying it. Therefore, the Money Memorandum does not apply.

Applicant is a citizen of Israel because he was born there. Foreign Preference Mitigating Condition E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) is applicable. .

In as much as Applicant's mandatory service in the Israeli Army ended eight years before he immigrated to the U. S., Foreign Preference Mitigating Condition E2.A3.1.3.2.*(Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*) applies.

Applicant expressed his willingness to renounce his Israeli citizenship in his testimony and in his amended response to the SOR. Foreign Preference Mitigating Condition E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) is applicable.

Applicant's passport expired in November 2002. He has no intention of renewing it. Accordingly, I find Applicant has mitigated the security concerns under Guideline C.

Foreign Influence

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U. S., or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

The government has established its case under Guideline B. Applicant's two brothers and a sister are citizens and residents of Israel. Therefore, Foreign Influence Disqualifying Conditions (FI DC) E2.A2.1.2.1. (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) and FI DC E2.A2.1.2.3. (*Relatives, cohabitants, or associates who are connected with any foreign government*) both apply.

Under the Directive, potentially disqualifying conditions may be mitigated through the application of the "whole person" concept and specific mitigating conditions. When the Government produces evidence raising potentially disqualifying conditions, an Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the conditions.[64] The government never has the burden of disproving a mitigating condition.[65]

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. provides (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be*

[64]Directive, ¶ E3.1.15.

[65]ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States). Applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States.[66]

Applicant's brothers and sister do not meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, they would not be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. The available evidence indicates his brothers and sister have no ties to or economic dependence upon the Israeli government. His relationship with a person living in Israel ended over two years' ago and he has no contact with her.

The second prong of the test is whether the relatives in question are "in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States."[67] The federal statute, 50 U.S.C. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government.

To determine whether Applicant was "in a position to be exploited by a foreign power," I must examine Applicant's connection to his family in the foreign country. His family residing in Israel present somewhat of a vulnerability; although they have no connection to or dependence upon a foreign power, they are still under the physical control of the Israeli government. Applicant's record of successful employment, the fact that Israel and the U.S. enjoy a good relationship, that the Israeli government respects human rights, and Israel's dependence on the U.S. for military and economic aid make it unlikely that he would be vulnerable to improper influence through his relatives in Israel.

However, as discussed above, in order to apply the second prong of FI MC E2.A2.1.3.1., the Appeal Board requires that applicants affirmatively prove that there is no possibility that anyone would attempt to exploit a foreign relative in the future. Also, the Appeal Board prohibits any consideration of evidence that is not dispositive of the issue. Finally, the Appeal Board finds it irrelevant to this issue whether an applicant is likely to be improperly influenced by a foreign relative or associate. Applying that standard, FI MC E2.A2.1.3.1. does not apply.

The "whole person" concept – not the potentially disqualifying or mitigating conditions – is the heart of the analysis of whether an applicant is eligible for a security clearance.[68] Indeed, the

---

[66]ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).

[67]Directive, ¶ E2. A2. 1.3.1.

[68]Directive, ¶ E2.2.3.

Appeal Board has repeatedly held that an administrative judge may find in favor of an applicant where no specific mitigating conditions apply.[69]

In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. "Although the position of an applicant's foreign family members is significant and may preclude the favorable application of FI MC E2.A2.1.3.1., the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors."[70]

One of the "whole person" factors which must be considered is "the potential for pressure, coercion, exploitation, or duress."[71] First must be considered the character of the foreign power in question, including the government and entities controlled by the government within the country. A friendly relationship is not determinative, but it may make it less likely that Israel would attempt to exploit a U.S. citizen through his relatives or associates.[72]

It is also helpful to consider Applicant's relatives' vulnerability to exploitation by foreign powers in Israel. While Applicant's three siblings live in Israel they may not be more vulnerable to the Israeli government. While it may be argued that his brother who is a retired general officer in the Israeli Air Force could be a direct conduit of information from Applicant to the government of Israel, it is just as conceivable that because of his brother's standing with the government, his family is less likely to suffer harm.

Most importantly, it is necessary to consider Applicant's vulnerability to exploitation through his relatives. Applicant is a mature individual with almost thirty-five years of successful employment in this country. He is a U.S. citizen as are his children. He was educated in this country. Applicant has strong ties to the United States. Because of Applicant's deep and long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the United States. Further because of Israel's financial and military dependance on the U.S., I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk.[73]

Applicant has no assets in Israel. FI MC E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies.

---

[69]ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

[70]ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

[71]Directive, ¶ E2.2.1.8.

[72]Much of this discussion may be found in ISCR Case No. 03-21423 at 7-15 (May 24, 2006).

[73]Directive, ¶ E2.2.1.8.

If a suggestion is made that Applicant might divulge classified information to his brother, it is not a plausible argument. Applicant has waited 38 years since immigrating to this country, at the age of 66, and after heart surgery, to apply for a clearance.

I carefully evaluated the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I considered Applicant's demeanor while testifying and considered his credibility. He has a reputation for honesty, integrity, and good work ethic. I conclude Applicant has mitigated the potential security concerns arising under Guideline B, foreign influence.

FORMAL FINDINGS

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

Paragraph 1. Guideline C:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant
Subparagraph 2.c.	For Applicant
Subparagraph 2.d.	For Applicant
Subparagraph 2.e.	For Applicant
Subparagraph 2.f.	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

_____
Christopher Graham
Administrative Judge