

KEYWORD: Foreign preference

DIGEST: Applicant is 55 years old and works as an instructor for a defense contractor. He was born in the U.S. He lived in Israel from 1975 until 1981 and became a citizen. He was conscripted into the Israeli army. He returned to the U.S. and retired from the U.S. military after 20 years of honorable service. He returned to Israel in 2002 and lived there until 2003. While there he voted in an election. He failed to mitigate security concerns arising from foreign preference. Clearance is denied.

CASENO: 06-05903.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-05903
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old and works as an instructor for a defense contractor. He was born in the U.S. He lived in Israel from 1975 until 1981 and became a citizen. He was conscripted into the Israeli army. He returned to the U.S. and retired from the U.S. military after 20 years of honorable service. He returned to Israel in 2002 and lived there until 2003. While there he voted in an election. He failed to mitigate security concerns arising from foreign preference. Clearance is denied.

STATEMENT OF THE CASE

On December 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statements of Reasons (SOR) stating it was unable to find it was clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline C (Foreign Preference), of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In a sworn statement, dated June 19, 2006, Applicant responded to the SOR allegations and elected to have his case decided at a hearing. On February 27, 2007, the case was assigned to me. On March 14, 2007, the notice of hearing was issued. On March 27, 2007, the hearing was held. Applicant waived his right to the 15 day notice requirement. At the hearing, the government submitted three exhibits which were marked and entered into the record without objection as GE 1-3. Applicant submitted six exhibits which were marked and entered into the record as Applicant Exhibit (AE) A through F. At the close of the hearing, Applicant requested the record remain open for a post-hearing submission. On March 27, 2007, Applicant sent a receipt of registered mail, dated March 27, 2007. This was marked as AE G and entered into the record without objection.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a through 1.c). Those admissions are incorporated as findings of fact. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant, who is 55-years-old, has worked as an instructor for a defense contractor since 2004.² He was born in the U.S. but left the country with his parents when he was 13 years old to live in Europe.³ His father worked for the military as a civilian. Applicant graduated from high school in 1970. He joined the U.S. Air Force in 1972 for three years. In August 1975, he decided to move to Israel to attend college.⁴ He traveled on his U.S. passport. He took courses but did not receive a degree. While he lived in Israel he was conscripted into the Israeli army from 1977 until May 1978. During that time he married a woman he met in Taiwan. He left Israel in 1981 to return to the U.S. He has since divorced his first wife who is now deceased.⁵

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²GE 1 (Standard Form 86 (SF 86), Security Clearance Application , dated April 10, 2005) at 1-11.

³Tr. 64.

⁴Tr. 65.

⁵Tr. 83-84.

Under the Israeli Law of Return, Applicant acquired Israeli citizenship. He has maintained his dual citizenship throughout the years. When he returned to the U.S., he joined the U.S. Army and served for 20 years. He retired in 1998.⁶ He also received a Meritorious Service Medal.⁷ He held a security clearance (at one point in time a top secret) while in the U.S. military. He completed his undergraduate degree in 1985.

After his military retirement, Applicant worked in the private sector doing security work from 1998 until 2002.⁸ He decided to return to Israel in November 2002 due to his spiritual connection with Israel based on his Jewish faith. He applied for a one-year temporary passport. He describes the time as a "chilling out" or vacation and sightseeing time. He rented a room from a family and was not working for the U.S. government at the time.⁹ In 2003, he voted in an Israeli election for a parliament seat. He did not think anything of this, and acknowledged he did it because others were doing it. He believed he was promoting U.S. policies in the region.¹⁰

Applicant proclaims he would not bear arms for Israel and has no financial ties to the country. He does not plan to vote again in Israel. He signed a notarized document on March 11, 2007 renouncing his Israeli citizenship. On the day of the hearing, he again affirmed his renunciation. He surrendered his Israeli passport to the Embassy by mailing it on the day of the hearing. He wants to go on with his work and believes this one-time occurrence should not have any bearing on his retaining a security clearance.¹¹

He submitted a security clearance application on April 10, 2005.¹² During his two years as an instructor for the defense contractor he has garnered praise from his supervisors.¹³ He has the recommendation of his Chief Operating Officer.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny

⁶AE A (Certificate of release or Discharge from Active Duty, dated 1998) at 1.

⁷AE B (Meritorious Service Medal, dated April 23, 1998) at 1.

⁸*Id.*

⁹Tr. 72.

¹⁰Tr. 73.

¹¹Tr. 74-76.

¹²GE, *supra* n. 1 at 1-11.

¹³AE C (Letters of Reference, dated March 2007) at 1-6.

or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2, Enclosure 2, of the Directive are intended to assist the administrative judge in reaching fair and impartial commonsense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C - Foreign Preference: 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.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest." For the purposes herein, despite the different wording in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.¹⁴ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to

¹⁴ISCR Case No. 96-0277 (July 11, 1997) at 2.

overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.¹⁵

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that 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, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.¹⁶

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance 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. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR.

Foreign Preference

The government established its case under Guideline C. Applicant admits that he voted in a 2003 election in Israel. He cites no reason for doing so. He served in the Israeli Army for a year. He resided in Israel and obtained citizenship under the Law of Return. These raise a security concern, under Foreign Preference Disqualifying Condition (FI DC) AG ¶ 10 (a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member*) and (b) *action to acquire or obtain recognition of a foreign citizenship by an American citizen*.

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case.

¹⁵ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.

¹⁶Directive, Enclosure 2, Para. E2.2.2

Applicant has renounced his Israeli citizenship and has surrendered his passport to his Embassy. Thus, Foreign Preference Mitigating Conditions (FP MI) AG ¶ 11 (b) *the individual has expressed a willingness to renounce dual citizenship* and FP MI AG ¶ 11 (e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* apply.

I have considered the other mitigating conditions and find that none apply.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. As noted above, the adjudicative process is a careful weighing of a number of variables in considering the whole person concept. It recognizes a person be viewed by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered both the record evidence and Applicant in light of the whole-person concept. I have also considered the fact that Applicant is a mature individual with a 20 year military service record. He successfully held a security clearance for many years. However, his long term attachment to Israel and his recent outreach to live there for a period of time and vote in an election are clear exercises of Israeli citizenship. Granted he now renounces the citizenship and has surrendered his passport, but that does not outweigh his reaching out to Israel in 2003. Applicant failed to meet his burden of persuasion. Under the current guideline, Applicant's conduct represents an unacceptable security risk. I find the allegations regarding foreign preference against Applicant. Clearance is denied.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch
Administrative Judge