



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-07293
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: Sheldon I. Cohen, Esquire

May 1, 2008

Remand Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on March 10, 2006. On April 12, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR on April 22, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 29, 2007. A motion to join both the Applicant's hearing and his wife's hearing was considered and granted, based upon a showing of good cause. (See, ISCR 06-07292, November 27, 2007). Accordingly, a notice of hearing was issued on July 10, 2007, scheduling the hearing for August 23, 2007. At the hearing the Government presented three exhibits. The Applicant presented nine exhibits and called one witness, his wife. He also testified on his own behalf. The Applicant submitted one Post-Hearing Exhibit consisting of two pages. The official transcript (Tr.) was received on September 6, 2007.

The initial decision in this matter was issued by the undersigned Administrative Judge on November 27, 2007, denying the Applicant's security clearance. Applicant appealed the decision to the Appeal Board, and both Applicant and Department Counsel filed appeal briefs. On April 16, 2008, the Appeal Board remanded this case to the Administrative Judge for a new decision under Guideline B stating, "the Board concluded that Guideline C had been resolved in favor of the Applicant. Therefore that Guideline is no longer at issue." (See ISCR case No. 06-07293 at 3, fn 7 (App. Bd. April 16, 2008).) Accordingly, only Guideline B will be discussed in this Remand Decision. The Appeal Board further noted that:

In her new decision, the Judge's analysis should address all relevant circumstances relating to the Guideline B allegations, including the current significance of the Applicant's foreign family ties, Applicant's ties to the U.S., the circumstances under which the Applicant has previously held a security clearance, the evidence as to Applicant's character, and the identity of the country in accordance with Directive. (Id. at 3 (footnote omitted).)

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 60 years of age and has a Ph.D in Engineering. He is President and Security Officer of a defense contracting company. As an officer of the corporation it is required for him to have a security clearance for the corporation to have a Facility Security Clearance. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born and raised in Israel. He moved to the United States in 1973, for graduate school, and obtained his doctorate degree in Engineering in 1978. Since then, he has worked in the defense industry and has held a security clearance much of that time. From 1978 to 1987, even before becoming a United States citizen, he held a DoD security clearance. (Tr. p. 123). In 1987, he became a United States citizen. Sometime later, the Applicant formed his own company, where he has used his scientific, engineering and management experience, and has for the past sixteen years worked as a defense contractor. His company employs 16 people and runs several millions of dollars of research and development in support of DoD, with a significant portion in classified fields. (See Applicant's Exhibits C, D and E).

The Applicant's elderly mother is 85 years old and in poor health, and his sister, who is his mother's caretaker, is 51 years old. Both are citizens of and reside in Israel. His mother has always been a housewife, and his sister works part time selling tupperware and dietary supplements. She lives with the Applicant's mother in an apartment that they own, worth approximately \$90,000. Neither of them have any

technical education or are affiliated with the Israeli government in any way. The Applicant contacts his mother or sister at least once a month or so. When Applicant has an occasion to speak to his mother or sister, they discuss his mother's health. (Tr. p.71). Since coming to the United States, he has traveled to Israel every two to three years to visit his mother. The Applicant provides no financial support to his mother or sister of any kind. His mother is a Holocaust Survivor who is supported by the lifetime compensation she receives from Germany and social security from her deceased husband.

The Applicant's wife and four children were born and reside in the United States. He has many extended family members from his wife's side that reside in the United States. His net worth in the United States is approximately \$5,000,000. He has no assets of any kind in Israel. (See Applicant's Exhibit B).

Numerous character references that include his past supervisor, professional colleagues in the defense industry, and his rabbi, all attest to the Applicant's reliability, trustworthiness and good judgment. They highly recommend the Applicant for a security clearance. (See Applicant's Exhibit G).

The Applicant has made many significant technical contributions to the United States security and defense industry over the past 30 years. (See Applicant's Exhibit E, tabs 1 through 10). He has also received many awards, commendations and special recognition for his major contributions to the defense industry. (See Applicant's Exhibit G).

I have considered the relationship that does exist between the United States and Israel. The fact that Israeli tourists may enter the United States without a visa, the large financial assistance the United States provides to Israel, and the treaties between the United States and Israel, specifically bi-lateral agreements involving defense, commerce, atomic energy, aviation, energy, mutual security, and terrorism. (See Applicant's Exhibit H).

I have taken administrative notice of the current political conditions in Israel. Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. According to the Department of State Report on Human Rights, the Israeli government generally respected the human rights of its citizens, but there are some issues with respect to treatment of Palestinian detainees, conditions in some detention and interrogation facilities, and discrimination against Israel's Arab citizens. Terrorist suicide bombings are a continued threat in Israel and the U. S. Government has received information indicating that American interests could be the focus of terrorist attacks. American citizens have been urged to exercise a high degree of caution and common sense when visiting restaurants, businesses, and other places associated with U.S. interests and/or located near U.S. official buildings. The theft of sensitive and proprietary information threatens the national security in both military and economic terms, and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies. 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. Furthermore, Israeli

military Officers have been implicated in this type of technology collection in the United States.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign person, the country in which these person are located, or the positions or activities of those person 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 U.S.;

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 interest in favor of the U.S. interest.

8. (c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant by reason of birth, was at one time, an Israeli citizen. However, he has lived in the United States since 1973, obtained an advanced education, became a respected United States citizen, and made the United States his permanent home. He has a wife and four children who were all born in the United States and reside here. He has a net worth of approximately \$5,000,000 in the United States and no assets in Israel. He has worked in the defense industry for over 30 years, held a security clearance for many of those years, and has incurred no security violations. He is highly respected in his field and has made major contributions to the United States security and defense program. The Applicant has so much invested in the United States that the possibility that he could succumb to foreign influence of any type is extremely minimal.

The Applicant has only two family members in Israel that include his elderly mother and caretaker sister. He has limited conversation with them that revolve around his mother's health. Neither his mother or sister have any association with the Israeli government. Although they know that the Applicant owns a company that is somehow affiliated with defense, they are not capable of understanding what the Applicant does for the Defense Department, nor do they know that the Applicant has applied for a security clearance. The Applicant has no assets in Israel and does not stand to inherit any. Furthermore, Israel is a close ally of the United States.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Condition 8(c) *Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* also applies.

In addition to the disqualifying and mitigating conditions in this case, I have also considered the “whole person” concept. The Appellant is 60 years of age and is the President and Security Officer of a defense contracting company. He has worked in the defense industry and held a DoD security clearance for a considerable period of time. He has an impeccable record demonstrating the utmost respect, responsibility, honesty and trustworthiness toward the United States government. Under the particular facts of this case, I find that he has mitigated the concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.¹

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

2.d.: For the Applicant

2.e.: For the Applicant

2.f.: For the Applicant

2.g.: For the Applicant

¹ The Applicant’s counsel submitted “Applicant’s Brief to the Administrative Judge on Remand” on April 30, 2008. This document has not been considered in making this decision.

DECISION

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

Darlene Lokey Anderson
Administrative Judge