



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



In the matter of: )  
 )  
----- ) ISCR Case No. 06-07292  
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 her Security Clearance Application (SF 86), on April 30, 2004. 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 25, 2007, and she 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 her husband's hearing was considered and granted, based upon a showing of good cause. (See, ISCR 06-07293, November 27, 2007). A notice of hearing was issued on July 10, 2007, scheduling the hearing for August 23, 2007. At the hearing the Government presented one exhibit. The Applicant presented four exhibits and called one witness, her husband. She also testified on her own behalf. 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, 2008, granting the Applicant's security clearance. Department Counsel 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. The Appeal Board stated in a footnote that "The Judge's favorable finding under Guideline E is not challenged on appeal". (See ISCR Case No. 06-07192, at 2 (App. Bd. April 16, 2008).) Therefore, only Guideline B will be addressed in this remand decision. The Appeal Board noted that:

"The Judge should issue a new decision which discusses the application of DC7(d) in light of the Judge's ultimate findings and conclusions with regard to Applicant's husband." (See Id. at 3).

### **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 57 years of age and has a Master of Business Administration degree. She is Vice President and Chief Financial Officer of a defense contracting company. As an officer of the corporation it is required that she have a clearance for the corporation to have a Facility Security Clearance. She seeks a security clearance in connection with her 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 she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant is a native born American citizen. Her husband was a dual citizen of the United States and Israel. He has now surrendered his Israeli passport and renounced his Israeli citizenship. (See Tr. 97). The Applicant's husband has worked in the defense industry for over thirty years, and has held a security clearance for many of those years. He is highly respected in the defense industry and has demonstrated loyalty and responsibility toward the United States. He is President and Security Officer of the company for which the Applicant is employed. There is no evidence in the record that the relationship between the Applicant and her husband creates a heightened risk of foreign inducement, manipulation, pressure or coercion. (See Remand Decision 06-07293 (May 1, 2008).)

The Applicant's mother-in-law and sister-in-law are citizens and residents of Israel. The Applicant's mother-in-law and the Applicant do not communicate well together. Her mother-in-law does not speak English and the Applicant's Hebrew is very limited so their communication is very difficult. Her sister-in-law speaks English, but very little. Although the Applicant's husband speaks to his mother and sister in Israel on a monthly basis, the Applicant, for the most part, is unable to communicate with them.

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.

A letter of recommendation submitted on behalf of the Applicant by the Senior Rabbi at their synagogue indicates that he considers her to be a honest, trustworthy, upstanding and respectable member of society. (See Applicant's Exhibit D).

## **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.

Conditions 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;

7(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign 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. (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 an acceptable security risk. 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.”

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in Foreign Influence that indicates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then 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. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has foreign contacts in Israel (Guideline B). This evidence can indicate poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant’s conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Under Guideline B, 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*, and 7(d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply. However, Mitigating Conditions 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., and 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 apply.*

The Applicant's husband is a United States citizen who has held a security clearance for many years, and who has an impeccable record demonstrating responsibility, honesty and trustworthiness, toward the United States government and the defense industry. There is no evidence in the record indicating that the Applicant's relationship with her husband would create a heightened risk of foreign inducement of any kind.

The Applicant has little or no contact with her mother and sister-in-law in Israel. In fact they don't even speak the same language. Furthermore, her relatives in Israel are not affiliated in any way with the Israeli government, nor do they know or understand what the Applicant does for a living. Sufficient mitigation has been shown. Accordingly, I find for the Applicant under this guideline.

In addition to the disqualifying and mitigating conditions in this case, I have also considered the "whole person" concept. The Applicant is 57 years of age and is the Vice President and Chief Financial Officer for a defense contracting company. She has enormous responsibilities within her company and on behalf of the United States. She is a native born United States citizen who has four children all born in the United States who reside here. Her husband was, at one time, a dual citizen of Israel. He has formally and forever renounced his dual citizenship with Israel and surrendered his Israeli passport. There is nothing in the record to question her loyalty or show that she will not uphold and protect the national interests of the United States above all. Furthermore, there is no evidence in the record to conclude that the Applicant would succumb to any inducement, manipulation, pressure or coercion by the government of Israel or through her husband. Considering all of the facts and circumstances, I find that she has mitigated the concerns arising from her foreign influence.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B Foreign Influence and Guideline E Personal Conduct of the SOR. Accordingly, I find for the Applicant under Guidelines B and E.<sup>1</sup>

On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

---

<sup>1</sup> 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.

## **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.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the 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 a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge