

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 35-year-old employee of a defense contractor. Applicant was born in the United States. Because his parents are Israeli citizens, he also has Israeli citizenship. Applicant obtained an Israeli passport in 2004, and used it to enter Israel the same year. Applicant renewed the passport in 2006, and it will not expire until 2014. Applicant gave his Israeli passport to his company's facility security officer, who certified that if Applicant requests the return of his Israeli passport, the FSO will document the facts and circumstances surrounding the return by an entry in the Joint Personnel Adjudication System. Applicant failed to mitigate the security concerns raised by his action to obtain recognition of his Israeli citizenship, and his exercise of a right of Israeli citizenship. Clearance is denied.

CASENO: 06-19378.h1

DATE: 06/29/2007

DATE: June 29, 2007

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In re:)	
-----)	
SSN: -----)	ISCR Case No. 06-19378
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 35-year-old employee of a defense contractor. Applicant was born in the United States. Because his parents are Israeli citizens, he also has Israeli citizenship. Applicant obtained an Israeli passport in 2004, and used it to enter Israel the same year. Applicant renewed the passport in 2006, and it will not expire until 2014. Applicant gave his Israeli passport to his company's facility security officer, who certified that if Applicant requests the return of his Israeli passport, the FSO will document the facts and circumstances surrounding the return by an entry in the Joint Personnel Adjudication System. Applicant failed to mitigate the security concerns raised by his action to obtain recognition of his Israeli citizenship, and his exercise of a right of Israeli citizenship. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 28, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on January 31, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on April 5, 2007. A notice of hearing was issued on April 12, 2007, scheduling the hearing for May 2, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on May 10, 2007.

RULINGS ON PROCEDURE AND EVIDENCE

The Government offered five exhibits that were marked as Government Exhibits (GE) 1 through 5, and admitted without objections.

Department Counsel requested administrative notice be taken of the facts contained in Hearing Exhibits (HE) XVI and XVII. The source documents for the facts are U.S. Department of State, Background Note: Israel, dated February 2007 (HE I); U.S. Department of State, Consular Information Sheet: Israel, the West Bank and Gaza, dated February 8, 2006 (HE II); U.S. Department of State, Country Reports on Human Rights Practices - 2006: Israel and the occupied territories, dated March 6, 2007 (HE III); U.S. Department of State, Travel Warning: Israel, the West Bank and Gaza dated January 17, 2007 (HE IV); Congressional Research Service, CRS Report for Congress, Israel: Background and Relations with the United States, updated November 14, 2006 (HE V); Office of the National Counterintelligence Executive, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2005 (HE VI); National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000 (HE VII); Interagency OPSEC Support Staff, Intelligence Threat Handbook, select pages (HE VIII); U.S. Department of State, Background Note: China, dated January 2007 (HE IX); U.S. Department of State, Consular Information Sheet: China, dated March 19, 2007 (HE X); U.S. Department of State, Country Reports on Human Rights Practices - 2006: China, dated March 6, 2007 (HE XI); U.S. House of Representatives Select Committee Report, U.S. National Strategy and Military/Commercial Concerns with the People's Republic of China, dated January 3, 1999 (HE XII); Interagency OPSEC Support Staff, Intelligence Threat Handbook, select pages (HE XIII); U.S. Department of State, Background Note: Hong Kong, dated March 2007 (HE XIV); and U.S. Department of State, Consular Information Sheet: Hong Kong SAR, dated August 1, 2006 (HE XV).

I took administrative notice of the facts contained in HE I through VI, IX through XII, XIV and XV, as requested in HE XVI and XVII. In accordance with ISCR Case No. 03-21434 (App. Bd.

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

Feb. 20, 2007), I did not take administrative notice of the facts contained in HE VI, VII, and XIII. Those exhibits were remarked as Government Exhibits (GE) 3 through 5, and admitted.

Applicant testified and offered three exhibits that were marked Applicant Exhibits (AE) A through C, and admitted without objections. The record was left open to allow Applicant an opportunity to submit additional material. He did so in a timely manner. Applicant submitted his letter and three character letters, which were marked AE D through G, and admitted without objections. Department Counsel's letter forwarding the three letters is marked HE XVIII.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since 2005. He is married with two children. Applicant has a bachelor's degree from college.²

Applicant's father was born in Iraq. He is an Israeli citizen, with permanent residence status in the United States. Applicant's mother was born in Yemen. She was an Israeli citizen who became a U.S. citizen. She maintained dual citizenship with Israel. Applicant has two younger brothers. Applicant, his two brothers, his wife, and his two children were all born in the United States. Because his parents are Israeli citizens, Israel considered Applicant an Israeli citizen.³

Applicant's father and brother formerly lived and worked together for a company in China and Hong Kong. They both left the job and no longer do business or live in China or Hong Kong.⁴

Applicant has extended family members in Israel, such as uncles and aunts. His parents told him about 18 months ago that they intend at some point to move to Israel. Their projected date at that time was about two years out. Since then, their plans have changed. Applicant's father has health issues and is not working. Applicant believes his parents would still like to retire to Israel at some point, but they have no plans for the foreseeable future.⁵

Applicant as a child with his family, and later as an adult, would visit extended family members in Israel every few years. He traveled to Israel in 1984, 1989, 1991, 1995, 1997, 2001, and 2004. On all his trips from 1984 through 2001, Applicant traveled only with his U.S. passport. In 2004, Applicant applied for and received an Israeli passport. Applicant used that passport on his

²Tr. at 40, 60-61; GE 1.

³Tr. at 38, 40, 60-61; GE 1.

⁴Tr. at 35-37; GE 1; AE A, B.

⁵Tr. at 53-54, 61-62.

2004 trip to Israel. The passport had an expiration date of August 2005. Applicant renewed the passport in August 2006. The passport now has an expiration date of 2014.⁶

Applicant obtained the passport for convenience. When he entered Israel with his U.S. passport, he was questioned by the Israeli authorities as to why he had not served in the Israeli military. Applicant estimated the most time this took was about 20 minutes. Applicant could have continued to travel to Israel on a U.S. passport and suffered only minor inconvenience.⁷

On April 26, 2007, Applicant gave his Israeli passport to his company's facility security officer (FSO). The FSO certified that if Applicant requests the return of his Israeli passport, the FSO will document the facts and circumstances surrounding the return by an entry in the Joint Personnel Adjudication System (JPAS).⁸

Applicant testified he is willing to renounce his Israeli dual citizenship. He contacted the Israeli Consulate to discuss what would be required to renounce his citizenship and/or relinquish his passport. He has done nothing further to follow up on his expressed willingness to renounce his Israeli citizenship.⁹ Applicant had planned on visiting Israel this summer. He testified if he was granted a clearance, and he was unable to enter Israel on his U.S. passport, he would forego any trips to Israel.¹⁰ Applicant does not intend to ever move to Israel.¹¹

Character letters on Applicant's behalf from supervisors, co-workers, and associates praise him for his dedication, integrity, and commitment to work and family. He is described as a well respected, honorable man who lives by his word, and a loyal citizen who takes pride in serving the U.S. Government in the role of a contractor. They recommend him for a security clearance.¹²

Israel is a parliamentary democracy in the middle east. The Israeli government generally respected the human rights of its citizens, but there are some issues with respect to its treatment of Palestinian detainees, conditions in some detention and interrogation facilities, and discrimination against Israel's Arab citizens. The U.S. government issued a travel warning to U.S. citizens about travel in Israel, the West Bank, and the Gaza Strip, dated January 17, 2007, noting its concerns about terrorist attacks in those areas targeting U.S. citizens. Israel and the United States participate in joint military planning and combined exercises, and have collaborated on military research and weapons development. Commitment to Israel's security and well being has been a cornerstone of U.S. policy in the Middle East since Israel's creation in 1948, and the two countries are bound closely by historic

⁶Applicant's response to SOR; GE 1, 2.

⁷Tr. at 40-42.

⁸Tr. at 44; AE C.

⁹Tr. at 51-53.

¹⁰Tr. at 55-59.

¹¹Tr. at 64.

¹²AE E-G.

and cultural ties as well as mutual interests. Israel is an active collector of economic and industrial information, including proprietary and classified information.¹³

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁴ 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 information.”¹⁵ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁶ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁹

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

¹³HE I-VIII, XVI; GE 3-5.

¹⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵*Id.* at 527.

¹⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁸*Id.*; Directive, ¶ E2.2.2.

¹⁹Exec. Or. 10865 § 7.

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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. This raises a security concern under the foreign preference guideline.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) 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. This includes but is not limited to: (1) possession of a current foreign passport*) and FP DC 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply in this case.

I have considered all the Foreign Preference Mitigating Conditions (FP MC), and I especially considered FP MC 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*), FP MC 11(b) (*the individual has expressed a willingness to renounce dual citizenship*), and FP MC 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Applicant was always considered a dual citizen even though he was born in the United States, because his parents were Israeli citizens. If Applicant had done nothing to actively exercise his dual citizenship, FP MC 11(a) would be totally applicable. I do not give him as much credit under FP MC 11(a), since he actively exercised his dual citizenship by obtaining and using an Israeli passport while a U.S. citizen. Applicant has verbalized a willingness to renounce dual citizenship, so FP MC 11(b) is applicable. He has done nothing to actually follow up on his expressed willingness to renounce his Israeli citizenship.

Applicant gave his Israeli passport to his FSO, which potentially invokes FP MC 11(e). Prior to the implementation of the revised Adjudicative Guidelines, it was a requirement that Applicant's clearance be denied or revoked unless Applicant surrendered the foreign passport to the issuing authority.²⁰ This provision was not included in the revised Adjudicative Guidelines, possibly because surrender of a passport to the issuing country could signal the country that this is an individual who has or is seeking a security clearance. Since the revised guidelines are new, this disqualifying condition has not yet been interpreted by the Appeal Board. The mitigating condition requires that the passport be "destroyed, surrendered to the cognizant security authority, or otherwise invalidated." The passport was not destroyed, so that language does not come into play. The key phrases are "surrendered," "cognizant security authority," and "or otherwise invalidated." I accept that "cognizant security authority" includes the FSO, so Applicant has satisfied that part of the mitigating condition. The issue is whether Applicant's actions constituted a "surrender," within the meaning of the mitigating condition. Merriam-Webster's Collegiate Dictionary, Tenth Edition, defines surrender as:

²⁰August 16, 2000 memorandum by Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline"; ISCR Case No. 03-10380 (App. Bd. Jan. 6, 2006).

1a: to yield to the power, control or possession of another upon compulsion or demand <~ed the fort> **b:** to give up completely or agree to forgo esp. in favor of another **2a:** to give (oneself) up into the power of another, esp. as a prisoner **b:** to give (oneself) over to something (as an influence) ~ *vi*: to give oneself up into the power of another : YIELD *syn* see RELINQUISH

I find the definition under 1b, to be the most appropriate, “to give up completely or agree to forgo esp. in favor of another.” The last phrase in the mitigating condition, “or otherwise invalidated,” sheds light on the interpretation of surrender. It is clear that the mitigating condition requires the passport to be invalidated. In this case the FSO has possession of the passport, but will return it to Applicant whenever Applicant desires. The FSO is doing little more than acting as a safety deposit box for Applicant. The Israeli passport has not been invalidated. I do not find this constitutes a complete surrender of the passport. FP MC 11(e) is not totally applicable.

Guideline B, Foreign Influence

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. This raises a security concern under the foreign influence guideline. 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.

I considered Foreign Influence Disqualifying Condition (FI DC) 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*), and FI DC 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information*).

Applicant’s father and brother no longer live or work in China. No disqualifying condition is raised by their former presence in China.

Applicant’s father is a citizen of Israel, but a permanent resident of the United States. His mother is a dual citizen of Israel and the United States. Israel is an active collector of economic and industrial information, including proprietary and classified information. I find FI DC 7(a) and FI DC 7(b) have been established.

I considered all the Foreign Influence Mitigating Conditions (FI MC), and especially FI MC 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely that 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 FI MC 8(b) (*there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign*

person, group, organization, 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).

Applicant's father is an Israeli citizen, and his mother is a dual citizen, but both live in the U.S. His parents would like to retire in Israel at some point. They have no set plans, and may never do so. Any movement to Israel at this point is speculative. Applicant was born in this country, and his immediate family are all native-born U.S. citizens. I find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his parents or Israel, and the interests of the United States. FI MC 8(a) is applicable. I am unable to find FI MC 8(b) because of Applicant's actions to obtain recognition of his Israeli citizenship, and his exercise of a right of Israeli citizenship, by obtaining and using an Israeli passport.

Whole Person Analysis

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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant was born in the U.S. to Israeli citizens. His two brothers were also born in the U.S. Applicant is married to a native-born U.S. citizen, and they have two children. His mother became a U.S. citizen, but maintains dual citizenship with Israel. His father is still an Israeli citizen. Both Applicant's parents live in the U.S. While they would like to eventually move to Israel, they have no immediate plans to move. Applicant's character evidence described him as a well respected, honorable man, and a loyal citizen, with dedication, integrity, and commitment to work and family.

Applicant obtained an Israeli passport in 2004, because it made it slightly easier to pass through Israel's immigration lines. When he did so, he obtained official recognition of his Israeli citizenship. His renewed Israeli passport will not expire until 2014. Applicant gave his Israeli passport to his company's FSO, who certified that if Applicant requests the return of his Israeli passport, the FSO will document the facts and circumstances surrounding the return by an entry in the JPAS. This somewhat mitigates security concerns because the U.S. will know when Applicant is utilizing the passport. It does not totally mitigate security concerns because the passport remains valid, and Applicant can access it at any time. Applicant has verbalized a willingness to renounce his Israeli citizenship, but has done nothing to actually follow up on that verbalization. While actual renunciation of dual citizenship is not required to satisfy the pertinent mitigating condition, it is easy for one to say he or she is willing to renounce dual citizenship, when one may never actually intend to do anything about the dual citizenship. In this case, Applicant's intentions and motivation for retaining his Israeli passport and citizenship are unclear.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns, but has not mitigated the security concerns based on his foreign preference.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against 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

DECISION

In light of all of 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.

Edward W. Loughran
Administrative Judge