

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has initiated the renunciation of his Israeli citizenship, and has surrendered his Israeli passport. The Applicant’s mother, two sisters, a brother, and in-laws are citizens of and reside in Israel. However, his wife, three children, and 12 grandchildren, are all American citizens and reside in the U.S. His financial interests are also in the U.S. The Applicant has lived in the U.S. for over 40 years. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that he “will be placed in a position of having to choose between the interests of . . . [his foreign relatives] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

CASENO: 06-20180.h1

DATE: 02/28/2007

DATE: February 28, 2007

In Re:	)	
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	)	
-----	)	ISCR Case No. 06-20180
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

Edward O. Lear, Esquire, Applicant’s Counsel

## SYNOPSIS

The Applicant has initiated the renunciation of his Israeli citizenship, and has surrendered his Israeli passport. The Applicant's mother, two sisters, a brother, and in-laws are citizens of and reside in Israel. However, his wife, three children, and 12 grandchildren, are all American citizens and reside in the U.S. His financial interests are also in the U.S. The Applicant has lived in the U.S. for over 40 years. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his foreign relatives] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

## STATEMENT OF THE CASE

On October 16, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on October 30, 2006.

The case was received by the undersigned on January 19, 2007. A notice of hearing was issued on January 19, 2007, and the case was heard on February 5, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on February 13, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 68 years of age, has a Ph.D. from an American university, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant (TR at page 24 line 3 to page 35 line 6). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

### Guideline C - Foreign Preference

The Applicant was born in Israel, but came to the U.S. 40 years ago to pursue a Masters Degree (TR at page 24 line 3 to page 25 line 2). He stayed on in the U.S., and later pursued a Ph.D. (TR at page 25 lines 3~5). The Applicant's wife, three children, and 12 grandchildren, are all U.S. citizens and reside in the U.S. (TR at page 49 line 11 to page 50 line 16, and at page 51 line 23 to page 52 line 15). His property and financial interests are also all in the U.S. (TR at page 49 lines

1~8, and at page 52 line 16 to page 53 line 12).

1.a.~1.d., and 2.d. The Applicant has initiated the renunciation of his Israeli citizenship, and has surrendered his Israeli passport (Applicant's Exhibit (TR at page 38 line 16 to page 39 line 21, and AppX) A at pages 1 and 2). Before surrendering his Israeli passport, the Applicant traveled to Israel to visit his parents about 18 or 19 times using his Israeli passport from about 1969~2006 (Answer). His father is now dead, and his mother, due to Alzheimer Disease, barely recognizes the Applicant; and as a result, his visits to Israel will be less frequent (*Id*, TR at page 40 lines 1~16, and at page 42 lines 7~16).

## Guideline B - Foreign Influence

2.a. The Applicant's mother, and two sisters are citizens of and reside in Israel (TR at page 39 line 22 to page 40 line 16, and at page 43 line 12 to page 45 line 4). The Applicant's mother is 92 years of age; and as mentioned above, she suffers from dementia as a result of Alzheimer's Disease (TR at page 40 lines 4~12). Because of her disease, he has little cognizant contact with his mother (*Id*). She was seamstress (TR at page 43 lines 12~19). One of the Applicant's sisters is a retired social worker, and the other is a "self-employed as a psychotherapist" (TR at page 44 lines 1~24).

2.b. The Applicant's brother is also a citizen of and resides in Israel (TR at page 54 lines 5~25, and at page 53 line 13 to page 54 line 5). The Applicant has little to do with this brother, with whom he cut all ties about 15 years ago (*Id*).

2.c. The Applicant has only occasional contact with his in-laws, who are citizens of and reside in Israel (TR at page 42 line 22 to page 43 line 10, and at page 47 line 15 to page 48 line 25). His parents-in-law are elderly, and none of his in-laws have any connection with the Israeli government (*Id*).

Israel is a parliamentary democracy who's prime minister heads the government and exercises executive power. Israel has a diversified, technologically advanced economy that is growing at about 5.2% per year, and the U.S. is Israel's largest trading partner. Almost half of Israel's exports are high tech and its major industrial sectors include high-technology electrical and biomedical equipment. 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. The most recent Report, released in 2006, states that the major collectors remain active. Israeli military officers have been implicated in this type of technology collection in the U.S. (*See* the Government's Request for Administrative Notice at pages 1 and 4).

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant, until recently, was a dual national with Israel, and maintained an Israeli passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen . . . . This includes but is not limited to: (1) possession of a current foreign passport; . . ." This is countered, however, by the second and fifth mitigating conditions. “[T]he individual has expressed a willingness to renounce dual citizenship,” and “the passport has been . . . otherwise invalidated.” Here, the Applicant has not only initiated the renunciation of his Israeli citizenship, but has also surrendered his Israeli passport.

The Applicant's mother, and two sisters are citizens of and reside in Israel. He also has occasional contact with his in-laws. The first and second disqualifying conditions are arguably applicable as this contact “creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and creates “a potential conflict of interests between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person . . . by providing that information.” Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the

Applicant's relationship with his Israeli relatives is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S." Also, the Applicant "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."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

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### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Financial                      FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2: Financial                      FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

## **DECISION**

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In light of 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.

Richard A. Cefola  
Administrative Judge