DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 06-20171
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Philip Carter, Esq.

May 30, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Influence. Clearance is granted.

History of Case

Applicant submitted his Security Clearance Application (SF 86), on March 10, 2005. On August 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 23, 2007. He answered the SOR in writing through counsel on September 18, 2007, and requested a hearing

before an Administrative Judge. DOHA received the request on September 20, 2007. Department Counsel was prepared to proceed on October 31, 2007, and I received the case assignment on November 5, 2007. DOHA issued a notice of hearing on November 16, 2007, scheduling a hearing for December 20, 2007. The hearing was held as scheduled.

Before the hearing commenced Department Counsel and Counsel for Applicant stipulated that the documents identified *infra* be admitted for my consideration. The government offered Government Exhibits (GE) 1 through 15, which were received without objection. Applicant offered Applicant Exhibits (AE) A through Q, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearings (Tr.) on January 4, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 1.f., alleging, "You and your wife held Ukrainian security clearances which restricted your emigration from the Ukraine." Tr. 84. After argument by both counsel, I denied Department Counsel's Motion to Amend. Tr. 84-86.

Request for Administrative Notice

Department Counsel submitted a formal request (AE 3) that I take administrative notice of certain facts relating to Israel and the Ukraine contained in AE 4 through 15. As noted *supra,* these documents were included in counsels' stipulation. As requested and without objection, I took administrative notice of AE 3 through 15. Tr. 7-9.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. *See* Stein, Administrative Law, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Israel were derived from documents offered by Department Counsel under subheadings "Israel" and "Ukraine" of this decision. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR dated September 18, 2007 submitted through counsel, Applicant admitted the factual allegations in ¶¶ 1.a. through 1.e.

Applicant is a 62-year-old systems staff engineer, who has been employed by a defense contractor since February 2005. He was granted an interim secret security clearance in March 2005 and seeks a permanent clearance to enhance his opportunities within his company. Tr. 12, 49, 79-81.

Applicant was born in 1945 in Russia, and was raised in the Ukraine, when both countries were part of the Union of Soviet Socialist Republics (USSR). He attended a five-year college program in the Ukraine from August 1963 to June 1968, and was awarded "the qualification of Military Engineer in Radio-Technology," the equivalent of a master's degree. GE 1, AE M, Tr. 16, 73-74. Upon finishing his studies, he was commissioned as a junior officer in the Soviet Army and served four years of mandatory military service as a military engineer for radar systems. When discharged from the Army in 1972, he went to work for a government-owned civilian research and development (R & D) institute located in the Ukraine as a systems engineer and later as software programmer in embedded systems for military application. Tr. 17, 51. While working for the R & D institute, he began and completed coursework for a Ph.D., but did not complete his thesis. Tr. 11-12, Tr. 74. He left the R & D institute in 1993, and worked briefly as a programmer before he immigrated to the U.S., discussed *infra.* Tr. 18.

Applicant was married to his first wife from January 1969 to January 1982, which ended by divorce. His marriage and divorce were in the Ukraine. GE 1. He has a 36-year-old daughter from his first marriage. She is married and lives with her husband and two young children in the Ukraine. (SOR ¶ 1.c.) She is employed as an executive for a telecommunications company. Her husband is an engineer for a communications company. Applicant's daughter and son-in-law both work for private companies. Applicant communicates with his daughter and her family in the Ukraine "[m]aybe three, four time(s) per year." Applicant stated he is not "close" to his daughter because he and his former wife divorced when she was 11 years old; he remarried and has a family with his second wife, and he along with his second wife and two children live in the U.S., discussed *infra.* Applicant last saw his daughter living in the Ukraine during a visit there in September 2005. He recently started sending monetary gifts to his daughter and grandchildren. GE 2, Tr. 15, 37-40, 56, 62, 65-66. (SOR ¶ 1.d.) None of Applicant's family members in the Ukraine work for or are associated with the Ukrainian government.

Applicant married his second and current wife in February 1982 in the Ukraine. He met her at the same R & D institute where he was employed. At the time he met her, she had a young daughter from a previous marriage. After marrying his second wife, he adopted her daughter, who is now 32 years old and married. They also have a 22-year-old son born during their marriage. His second wife was born in Russia and their two children were born in the Ukraine. Tr. 13-14.

While working at the R & D institute, he and his wife were required to have and maintain a Soviet security clearance at the "first level," or a "secret clearance," which expired some time after they left institute. Tr. 18, 21. As a former military officer and

employee of a Soviet owned R & D company, he was required to be a member of the Communist party. He resigned from the Communist Party in 1989 because he decided he wanted to "finish with this lie." He "expect[ed] some punishment" for resigning from the Party such as losing his job, but "nothing happened." Tr. 47, 52-53.

In 1994, Applicant, his second wife, and two children from his second marriage, entered the U.S. State Department's Diversity Visa Lottery (Green Card Lottery), and in 1995 were notified they had won the Lottery and were eligible to immigrate to the U.S. Tr. 18-19. Applicant described this period as "financially very hard." Tr. 19. Having won the Green Card Lottery, he needed money to pay for the air fare to the U.S. for him and his family. To earn air fare, he took a construction job in Israel for a three month period, where his elderly mother and younger brother were residing. They had already immigrated to Israel from the Ukraine, discussed *infra.* Tr. 19. Having earned the air fare to pay for his family to fly to the U.S., Applicant returned to the Ukraine to make arrangements for him and his family to immigrate to the U.S. Tr. 20, 71-73.

With visas in hand, Applicant and his family returned to the Ukraine to liquidate their assets, which included a city condominium and a country home. Notably, Applicant and his wife were forbidden to leave the Ukraine as a result of having held security clearances at the R & D Institute. Tr. 21. Applicant, his wife, and two children left the Ukraine for Poland "pretend[ing] to be tourists" where they traveled in order to fly to the U.S. Tr. 21. They "pretended" to be tourists because it was "no problem with American visa" and their Ukrainian passports to fly from Poland versus the Ukraine to the U.S. Tr. 21. While pretending to be tourists, Applicant and his wife agreed that if they were discovered by the authorities leaving the Ukraine, they would split up and reunite at a later time. Tr. 67-68.

When Applicant was asked why he wanted to come to the U.S., he answered:

> For some reason [it was a] dream for me and my family because . . . America I believe is the best place in the world for [a] professional life, [and] for [a] private life . . . . I have some . . . experience . . . working three months in Israel, it's not so much [of a] pleasant place for people who do not have – who do not have Jewish heritage . . my wife is a Ukrainian woman . . . America is the best for . . . [many] reasons. Tr. 21.

Asked how he felt about the U.S., he responded, "I believe it's the best place in the world." Tr. 48.

Applicant and his family arrived in the U.S. in August 1996. Because of his inability to speak English proficiently, he took a job assembling billiard tables by day and delivering newspapers at night. Beginning in February 1997, Applicant secured the first of several professional jobs related to his background and training, and as indicated *supra* began his current job in February 2005. Tr. 22, 69-70, GE 1.

Applicant became a naturalized U.S. citizen in July 2002, and was issued his U.S. passport in October 2002. He never used his Ukrainian passport after arriving in the U.S. He recently surrendered his Ukrainian passport to his Facility Security Officer, who destroyed it. Tr. 28. Applicant presented evidence which states that a Ukrainian citizen loses their citizenship if they voluntarily acquire citizenship of another state. Tr. 29, AE C. Like Applicant, his wife and two children became naturalized U.S. citizens in 2002. GE 1.

Applicant's son is a college student finishing his last year of studies, and his daughter is married with two young children. Tr. 70-71. Applicant and his wife are involved with and are close to their children and their family members in the U.S.

Applicant stated that if he or any of his family members were ever approached or threatened by a foreign agent to provide classified information, he would immediately report such an overture to his security officer. Tr. 26-27. Applicant owns no property nor does he have any financial interests in the Ukraine or in Israel. He does not stand to inherit any property in Israel when his mother passes away. Tr. 42.

Applicant's annual salary is $110,000.00 per year. He has two U.S. IRA accounts with respective balances of $100,035.63, and $22,763.34. He also has two U.S. bank accounts with a combined approximate balance of $4,220.00. Tr. 43-46, AE H through K.

Applicant's father served in the Russian Army in World War II. After the War, he was employed as a chemical engineer program manager. He died in 1983. Tr. 30, GE 1. Applicant's mother is 87 years old. She along with Applicant's younger brother's family immigrated to Israel from the Ukraine in 1992. They chose to leave the Ukraine because living conditions at the time were very poor. As a result of their Jewish heritage, they were allowed to immigrate to Israel and were granted Israeli citizenship. Tr. 32-33, GE 1.

Applicant's mother is retired, receives a pension from the Israeli government, and lives in Israel with Applicant's younger brother. Tr. 58-59. (SOR ¶¶ 1.a., 1.b.) Applicant sends monetary gifts to his mother "sometime[s]" on her birthday. In the past, Applicant spoke to his mother by telephone every other month, but more recently he began telephoning her every month to check on her health. Tr. 32-33. Applicant does not consider himself to be "close" to his mother and stated she is closer to his younger brother. He explained that he left home at age 18 and never returned whereas his brother remained near his mother his entire life. For similar reasons, he does not consider himself to be "close" to his brother either. Tr. 34, 37, 77.

His younger brother is employed as an assembly worker for a medical equipment company in Israel. His brother is married with two adult daughters. Applicant speaks to his brother by telephone "maybe five, six, seven time[s] per year," and exchanges e-mails with him "[v]ery occasionally, maybe one per year for [his] birthday." Tr. 36. He traveled to Israel in December 2002/January 2003 and again in January 2006 for his

mother's 85th birthday. (SOR ¶ 1.e.) Tr. 36, 59-60, 65, GE 2. None of Applicant's family members in Israel work for or are associated with the Israeli government.

Applicant votes in the U.S., pays taxes, has served on jury duty, and exercises all rights of U.S. citizenship. Tr. 49-50.

Applicant submitted two annual performance evaluations for years 2005 and 2006. Both evaluations document Applicant's sustained above average performance and evidence the fact Applicant is making a positive contribution to the defense industry. Applicant's director of security submitted a signed declaration stating that Applicant "is a very honest and trustworthy person" and that "he would follow the rules if entrusted with classified material." Applicant's chief engineer for radar projects submitted a signed declaration stating the company "never had any problem with [Applicant's] handling of sensitive information" and that he "[h]e understands the rules for this area and abides by them." Applicant's former engineering supervisor submitted a signed declaration stating he "was always comfortable with [Applicant's] ability to safeguard sensitive information," that Applicant "displayed a high level of integrity," and he found him to be "honest and truthful." Applicant's chief systems engineer submitted a signed declaration stating Applicant was "very careful about managing information" and that he "never had any reasons to doubt his honest[y], trustworthiness or integrity." AE L through Q.

Ukraine[1]

Ukraine has a parliamentary system of government that has been independent of the Union of Soviet Socialist Republics since August 24, 1991. The country is undergoing profound political and economic change as it moves from its Soviet past toward a market economy and multi-party democracy. The first free election in the Ukraine was held on December 1, 1991; however, international observers have criticized aspects of later elections. In particular, the October 2004 presidential election was characterized by government intimidation of the opposition and of the independent media, abuse of state administrative resources, highly skewed media coverage, and numerous provocations. In the wake of massive demonstrations against the former regime's electoral fraud, Viktor Yushchenko became President in January 2005. Subsequent parliamentary and local elections in March 2006 were in line with international standards.

The Ukraine inherited a large military force from the Soviet Union, which is seeking to modernize in accordance with NATO standards. The Ukrainian government's foreign policy goals center on Euro-Atlantic integration, and it seeks entry into the World Trade Organization, the European Union, and NATO. At the same time, the government seeks to maintain good relations with Russia, however, that relationship is difficult and complex. For example, while President Yushchenko has called Russia a "permanent strategic partner" of Ukraine, relations with Russia have been troubled by energy dependence, the stationing of the Russian Black Sea Fleet in Sevastopol, and by

[1] The contents of the Ukraine and Israel sections are taken in whole or in part from GE 3 through 15.

Russia cutting off natural gas supplies in January 2006. Ethnic Russians, concentrated in the southern and eastern parts of the Ukraine, make up 17.3% of the country's population. Ethnic Ukrainians in these regions tend to be Russian speaking, and are suspicious of Ukrainian nationalism and support close ties with Russia.

The Department of State Report on Human Rights describes serious human rights abuses involving Ukrainian security forces and police. Specifically, the report lists torture, wrongful confinement in psychiatric hospitals, and arbitrary and lengthy pretrial detention. In addition to violent abuses, the Ukrainian government and its security forces illegally monitor private communications, harass minorities, and have arbitrarily arrested and charged opposition politicians. The government, military, police forces, and judiciary are embroiled in "serious corruption."

Israel

The relationship between Israel and the United States is friendly and yet complex. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. U.S. - Israeli bilateral relations are multidimensional. The United States is the principal proponent of the Arab-Israeli peace process, but U.S. and Israeli views differ on various peace process issues, such as the control of the Golan Heights, Jerusalem, and the West Bank as well as expansion of Israeli settlements. The United States and Israel concluded a free-trade agreement in 1985, and the United States is Israel's largest trading partner. Since 1976, Israel has been the largest recipient of U.S. foreign aid. The two countries also have very close security relations.

Israel is a parliamentary democracy whose 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. Almost half of Israel's exports are high tech and its major industrial sectors include high-technology electric and biomedical equipment.

According to the Department of State Report on Human Rights, the Israeli government generally respects 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.

Israel has given a high priority to gaining wide acceptance as a sovereign state and to ending hostilities with Arab forces. To that end, the Israeli Defense Force has close ties to the United States and in 1983; the two countries established a Joint Political Military Group which meets twice a year. 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 and cultural ties as well as mutual interests.

There are several Issues of concern regarding U.S. relations with Israel. These include Israel's military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. In November 1985, Jonathan Pollard (a civilian U.S. Naval intelligence employee), and his wife were charged with selling classified documents to Israel and Mr. Pollard was sentenced to life in prison. Four Israeli officials also were indicted, although the Israeli government claimed the espionage was a rogue operation. On June 13, 2005, U.S. State Department analyst Lawrence Franklin was indicted for the unauthorized disclosure of classified information to a foreign diplomat. He later pled guilty and was sentenced to a 12-year prison term. It was reported that the diplomat in question was a political counselor at the Israeli embassy.

The theft of sensitive and proprietary information threatens U.S. national security in both military and economic terms, and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies. Industrial espionage is intelligence-gathering "conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining commercial secrets." Industrial espionage is not limited to targeting commercial secrets of a merely civilian nature, but rather can include the targeting of commercial secrets that have military applications, sensitive technology that can be used to harm the United States and its allies, and classified information.

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 have been repeatedly identified targeting multiple U.S. Government organizations since at least 1997. Furthermore, Israeli military officers have been implicated in this type of technology collection in the United States.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These AGs are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these AGs in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 2(a):

> (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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security. AG ¶ 2(b). 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 grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"[2] demonstrating, 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. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[3]

[2] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth*., 36 F.3d 375, 380 (4th Cir. 1994).

[3] "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

A person seeking access to classified or sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. It is 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 such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

> If the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case, including:

> (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

> (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contacts with his daughter in the Ukraine, and his mother and brother in Israel. At a minimum, these relationships carry a sense obligation with his relatives in Israel and the Ukraine and create a heightened risk of foreign pressure or attempted exploitation.

The Government produced substantial evidence of these two disqualifying conditions primarily as it pertains to Applicant's contacts and relationship with his daughter, mother and brother, and his travel to the Ukraine and Israel. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

> (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 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
>
> (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.

AG ¶ 8(a) partially applies. Applicant's daughter and family in the Ukraine and his mother and brother and family are not associated with or connected with the Ukrainian or Israeli governments, respectively.

Although Applicant testified he does not have a "close" relationship with his daughter and her family in the Ukraine or with his mother and brother's family in Israel, he has significant ties to them, as evidenced by his frequent telephone calls, monetary gifts, and visits to the Ukraine and Israel. With regard to his daughter in the Ukraine and

mother and brother in Israel, Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his daughter, mother and brother] and the interests of the U.S." His frequent contacts with his relatives in Israel and the Ukraine could potentially force him to choose between the United States and those respective countries. On balance, he did not fully meet his burden of showing there is "little likelihood that [his relationship with his parents and siblings] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant, his wife and two children have lived in the United States the last 12 years. He is completely vested in the U.S. Applicant, along with his wife and two children became naturalized U.S. citizens in 2002. Applicant and his wife are fully integrated in the U.S. Applicant has launched on a successful career in the U.S. and is considered a valued employee by his employer. The same successful integration in the U.S. applies to Applicant's wife and two children. His daughter is married and has two young children. His son is in his last year of college. Applicant sincerely professed his loyalty and allegiance to the U.S. The circumstances under which he left the Ukraine did not leave him much opportunity to return until 2005 when he went there for his only visit since leaving in 1996. His association with Israel is somewhat limited inasmuch as his mother and brother with his family immigrated there in 1992. His time spent in Israel is limited to a three-month period he worked there to earn the money to pay for air fare for him and his family to immigrate to the U.S.

Applicant's wife and two children from his second marriage are naturalized U.S. citizens. His closest living relatives are his wife, two children and their families, who all live in the U.S. Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant, his wife and two children became U.S. citizens in 2002.

Applicant has become the embodiment of achieving the American dream. The efforts and sacrifices he and his family made to immigrate to the U.S. are noteworthy. Arriving in the U.S. in August 1996 and unable to speak proficient English, he took a job assembling pool tables by day and delivering newspapers by night. In February 1997, he successfully secured a job consistent with his background and training and has worked in that field ever since. He and his wife put their children through college, are financially responsible, and are productive members of society. Applicant has been employed by his defense contractor employer since February 2005 and is highly regarded at work. Applicant's contacts and linkage to the U.S. are substantially greater than his linkage to Israel or the Ukraine. He is heavily vested in the U.S., financially and emotionally, and his connections to Israel and the Ukraine are very much attenuated by the passage of time.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept,

the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."[4] The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[5] In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant's family connections and personal connections to Israel and the Ukraine. He lived in Ukraine for a significant portion of his formative years and professional life. He was educated in the Ukraine, served in the Soviet military, and held a security clearance while employed at an R & D institute. His daughter from his first marriage and her family are citizens and residents of the Ukraine. His remaining immediate family members consisting of his mother, brother and his family immigrated to Israel from the Ukraine in 1992. He has frequent, non-casual contact with his daughter living in the Ukraine and his mother and brother living in Israel. Applicant traveled to the Ukraine one time in 2005 and to Israel two times in 2002 and 2006. He held a Ukrainian passport. However, he never used it since arriving in the U.S. in 1996 and recently surrendered it to his Facility Security Officer, who destroyed it. His Ukrainian citizenship expired by operation of Ukrainian law when he became a U.S. citizen in 2002.

Substantial mitigating evidence weighs towards grant of Applicant's security clearance. Applicant has lived in the United States for the past 11 years, and he has been a naturalized U.S. citizen for almost six years. He has strong ties to the U.S. His

[4] ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

[5] *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

wife and two children from his second marriage reside in the U.S. Applicant's immigration to the U.S. was not without challenges. After successfully winning the Green Card Lottery, he went to Israel for three months to earn the air fare for him and his family to travel to the U.S. Before leaving the Ukraine, they liquidated all of their assets; hence, having nothing to come back to if their plans to immigrate to the U.S. were failed. Knowing they were not allowed to leave the Ukraine because they held security clearances, Applicant and his wife and children posed as tourists to travel to Poland for the flight to the U.S. They decided in advance if one of them was discovered, the other would continue on and meet later.

Other than giving occasional gifts to his daughter and grandchildren in the Ukraine, and his mother in Israel, he provides them no support as they are financially stable. Applicant and his family have fully integrated into the U.S. way of life. They are all U.S. citizens, his daughter is married and has two young children, and his son is in college. All of Applicant's financial holdings are in the U.S. He votes in U.S. elections and exercises all rights of U.S. citizenship. It was clear from his evidence and his demeanor that he feels a strong sense of loyalty to the U.S. He is fully aware of the security requirements and has proven to his superiors that he is trustworthy since being granted an interim secret security clearance in March 2005. His ties to the United States are stronger than his ties to Israel of the Ukraine. He has no financial ties to Israel or the Ukraine in contrast to his U.S. financial ties. There is no evidence he has ever taken any action which could cause potential harm to the United States.

Applicant's employer's confidence and trust in him is high so as to warrant recommending him for a clearance. This was clearly demonstrated by various company officials going on record in support of Applicant being granted a security clearance. Applicant takes his loyalty to the U.S. very seriously, and he has worked diligently for a defense contractor for five years. His company officials assess him as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He enjoys a very good reputation as a friend, family member, employee and U.S. citizen. The individuals who submitted documentary evidence recommend him for a security clearance. No evidence was presented recommending denial of his security clearance nor was any derogatory information submitted against him.

Applicant's family members in Israel and the Ukraine are not, and never have been, Israeli or Ukrainian agents. Israel is a highly developed, stable, democratic republic with a modern economy that has supported the U.S. war against terrorism. Israel is a country that has been and continues to be friendly with the U.S. for more than 50 years. The Ukraine has made substantial progress since becoming independent from the USSR in 1991. *See* country summaries under subheadings "Israel" and "Ukraine."

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Israeli or Ukrainian governments or its agents might

exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[6] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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 B:	FOR APPLICANT
Subparagraphs 1.a. – 1.e.:	For 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 Applicant. Clearance is granted.

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Robert J. Tuider
Administrative Judge

[6] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).