KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 26-year-old employee of a defense contractor. He holds dual U.S. and Israeli citizenship, as do his fiancé and all members of both of their immediate families. His sister, and his fiance's father and sisters reside in Israel. During his four visits to Israel in the eight years since he turned 18 years old, Applicant traveled using the active Israeli passport which he intends to maintain. Applicant submitted no mitigating evidence for consideration, and did not meet his burden to overcome foreign preference and foreign influence security concerns. Clearance is denied.

CASENO: 06-22954.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 06-22954
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
DAVID M. WHITE

APPEARANCES

FOR GOVERNMENT
Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is a 26-year-old employee of a defense contractor. He holds dual U.S. and Israeli citizenship, as do his fiancé and all members of both of their immediate families. His sister, and his fiance's father and sisters reside in Israel. During his four visits to Israel in the eight years since he turned 18 years old, Applicant traveled using the active Israeli passport which he intends to maintain. Applicant submitted no mitigating evidence for consideration, and did not meet his burden to overcome foreign preference and foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

Applicant applied for a security clearance on March 13, 2006, in conjunction with his employment by a defense contractor. On December 5, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline C (Foreign Preference), Guideline B (Foreign Influence), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a notarized letter dated December 14, 2006, admitting the truth of all of the allegations, and elected to have his case decided on the written record in lieu of a hearing.[1] Applicant did not submit any matters for consideration in extenuation or mitigation of his admissions. Department Counsel submitted the government's written case on January 31, 2007. A complete copy of the file of relevant material (FORM)[2] was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of his copy of the FORM on February 12, 2007, and returned it to DOHA. He did not submit any further response to the FORM by the March 12, 2007 due date, nor did he request an extension of time to respond. The case was assigned to me on March 28, 2007.

FINDINGS OF FACT

Applicant admitted the truth of every factual allegation set forth in the SOR pertaining to foreign preference under Guideline C (subparagraphs 1.a through 1.c), and foreign influence under Guideline B (subparagraphs 2.a through 2.c). Those admissions are incorporated herein as findings of fact. After complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

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[1]Gov X 3 (Applicant's letter response to SOR dated Dec. 14, 2006).

[2]The government submitted four items in support of the allegations, and seven source documents in support of a request to take administrative notice of material facts concerning Israel.

Applicant is a 26-year-old employee of a defense contractor seeking to obtain a security clearance for the first time.[3] He was born and educated, through graduate school, in the United States, and is a dual citizen of the United States and Israel.[4] Applicant reported on his security questionnaire, and admitted in response to the SOR, that his father, his mother, and his fiancé are dual citizens of Israel and the U.S., currently residing in the U.S. He further reported and admitted that his sister, and his fiance's father and sisters are dual citizens of the U.S. and Israel who currently reside in Israel. His father was born in Israel and became a naturalized U.S. citizen in 1985. His sister was born in Israel and was registered as a U.S. citizen born abroad, based on their mother's U.S. citizenship. Both his mother and his fiancé were born in the U.S.[5] Applicant and his fiancé live in an apartment together.[6]

Applicant possesses a valid Israeli passport, and stated he has no specific plans regarding it.[7] He used this Israeli passport instead of his U.S. passport during trips to Israel from July to August 1999, July to August 2002, June to July 2004, and December 2005 to January 2006.[8] He was over age 18 during each of these trips. Applicant neither asserted that any mitigating conditions applied to his circumstances, nor provided any evidence on which such a finding could be made.

Department Counsel sought administrative notice of the material facts concerning Israel set forth in part III of the FORM, and provided seven official U.S. Government source documents supporting the truth of those facts.[9] I did take administrative notice of those facts in reaching my decision in this case. Among the most pertinent of these facts are that Israel is a close ally of the United States, and is a parliamentary democracy with close historic and cultural ties and many mutual interests. Israel has, however, been identified as an active collector of sensitive and proprietary industrial information, and several individuals have been recently convicted of conducting espionage through unauthorized disclosure or sale of classified information to Israel. Anti-western terrorist activity in Israel is a continuing threat to Americans, and others.

POLICIES

[3]Gov X 4 (e-QIP security clearance questionnaire, dated Mar.13, 2006) at 6, 15, 31-32. (Note: Gov X 4 contains pages 6 of 34 through 34 of 34 of Applicant's e-QIP, but does not include pages 1to 5 of 34. Citations are to the numbers on each page, starting with 6.)

[4]*Id.* at 1, 7, 8, 13-14.

[5]*Id.* at 20-25.

[6]*Id.* at 9, 24.

[7]*Id.* at 25-26.

[8]*Id.* at 26.

[9]Although Department Counsel lists eight source documents on pages 4 and 5 of the FORM, document II, the Consular Information Sheet dated February 8, 2006, was not actually provided in the file. Department Counsel only attempted to cite this document once (at FORM footnote 1), from what I can tell. The subsequent "*Id.*" citations appear to refer to document I (the first source cited in footnote 1), since the information matches. Accordingly, the omission of source document II does not affect the validity of taking administrative notice of the facts supported by the other seven source documents. The FORM also incorrectly cites the date of source document IV as "January 17, 2006," when the correct date is "January 17, 2007."

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs must be considered in deciding whether to grant, continue, deny or revoke an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision of the Directive,[10] to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the "whole person concept." All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (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) the 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.

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.[11] 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, facts must be established by "substantial evidence."[12] The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. "Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that

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[10]Directive, Enclosure 2, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, dated August 2006 ¶ 2.

[11]*Id*., at ¶¶ 2(b), 2(c).

[12]"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).

have been controverted."[13] "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision."[14] Once it has met its initial burden of production, the burden of persuasion (including any burden to disprove a mitigating condition) never shifts to the government.[15]

A person who seeks access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified 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 information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 specifically provides that any adverse industrial security clearance decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

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 each allegation set forth 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."[16] Appellant admitted the truth of three SOR allegations that raise security concerns under this guideline.

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 [including but not limited to] 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")

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[13]Directive ¶ E3.1.14.

[14]Directive ¶ E3.1.15.

[15]ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); "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).

[16]Directive, Enclosure 2 ¶ 9.

apply to Applicant's ongoing possession, and consistent use during overseas travels, of an active Israeli passport. He was born in the United States, yet acquired Israeli citizenship through his dual citizen parents, and maintains dual citizenship as an adult. During each of his four visits to Israel since turning age 18, he has used his Israeli passport to gain entry as a citizen, in lieu of identifying himself as an American. The elections by his sister and his fiance's immediate family members to reside in Israel also demonstrates a strong affinity for that country by those to whom he is bound by close ties of affection.

I have considered each potentially applicable Foreign Preference Mitigating Condition (FP MC), even though none was asserted by Applicant in his response to the SOR or FORM. FP MC 11(a) ("dual citizenship is based solely on parents' citizenship or birth in a foreign country") does not apply. Applicant was born in the United States, and some process was required for him to obtain and actively maintain his Israeli passport and dual citizenship. There is no evidence from which to possibly conclude that FP MC 11(b) ("the individual has expressed a willingness to renounce dual citizenship") could apply to Applicant. He has expressed no such willingness, and his actions indicate an unwillingness to do so.

FP MC 11(c) ("exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor") does not apply. Applicant was born a U.S. citizen. His alleged and admitted exercise of Israeli citizenship occurred after he turned age 18, and continues to present – some eight years later. FP MC 10(d) ("use of a foreign passport is approved by the cognizant security authority") does not apply because no such authority approved his use of the Israeli passport, nor (possibly excepting the most recent visit when he was working as an intern for his current employer but had not yet applied for a clearance) did he hold any position in which he would have had a "cognizant security authority" during his visits to Israel. Finally, Applicant provided no evidence to indicate that FP MC 10(e) ("the passport has been destroyed, surrendered to the cognizant security authority or otherwise invalidated") applies. He, in fact, indicated that he has no particular plans for the passport which I interpret to mean he plans to keep it and use it again in the future.

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. 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."[17]

All of Applicant's immediate family members, as well as his fiancé and her father and sisters, are dual citizens of the U.S. and Israel. His sister and his fiance's family also reside in Israel. Applicant and his fiancé live together in the United States. These circumstances raise security concerns under 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

[17]Directive, Enclosure 2 ¶ 6.

a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion"). Israel is active in the collection of protected information, including from U.S. citizens, and there is heightened risk of anti-Israeli and anti-American terrorism by groups active within its borders. 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 this information") also potentially applies to Applicant's Israeli connections. There need not be evidence of an actual conflict of interest to raise security concerns, the potential conflict, arising from Applicant's numerous and close ties to Israeli citizens and residents, is sufficient to shift the burden to him to disprove its existence or otherwise mitigate the concerns. In addition, Applicant lives with his fiancé, so security concerns are raised under FI DC 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"), because his fiance's father and sisters are dual citizens residing in Israel and subject to the same heightened risk arising under FI DC 7(a).

Applicant has neither asserted that any foreign influence mitigating condition (FI MC) applies to his circumstances, nor is there any evidence in the record that would support the application of any FI MC. I have reviewed each potential FI MC and conclude that none apply.

Whole Person Analysis

Applicant, his entire known family and his fiance's entire known family are dual citizens of the United States and Israel. Applicant's sister and father were born in Israel. Applicant, his mother and his fiancé were all born in the United States and actively sought and maintain their Israeli citizenship. During each of his four documented visits to Israel in the eight years since he turned age 18, Applicant exercised his Israeli citizenship, and traveled using the active Israeli passport which he apparently plans to maintain for future use.

Applicant submitted neither evidence nor other information from which any mitigating condition or circumstance might be applied to lessen the security concerns raised by the potential for conflict of interest, coercion, pressure or manipulation created by his foreign connections and his indications of foreign preference. Applicant is a mature and educated individual who is accountable for his choices, and who demonstrated no effort to alleviate security concerns in the face of his burden to do so. Given Israel's reportedly active collection of protected information and heightened risk of anti-western terrorist activity within its borders, this burden is a heavy one and Applicant failed to meet it. For the reasons stated, I conclude Applicant has not demonstrated that it is clearly consistent with the interests of national security to grant him access to classified information.

FORMAL FINDINGS

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

DECISION

In light of all 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.

David M. White
Administrative Judge