



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



In the matter of:)
)
) ISCR Case No. 06-23135
)
Applicant for Security Clearance)

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

January 16, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

On August 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, C and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 27, 2007. He answered the SOR in writing on August 30, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on November 16, 2007, and I received the case assignment on November 16, 2007. DOHA issued a notice of hearing on November 20, 2007, and I convened the hearing as scheduled on December 11, 2007. The government offered Exhibits (GE) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits

(AE) A through J, without objection. DOHA received the transcript of the hearing (Tr.) on December 17, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Israel. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

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 has been a senior principal consulting engineer for a federal contractor since 2003. He was born in Israel in 1954 and he immigrated with his family to the U.S. in 1965. He became a naturalized U.S. citizen in 1973. He has one brother who is also a naturalized citizen of the U.S. His brother is married and lives with his wife and child in the U.S. Applicant's father is no longer living and his mother resides in California. Applicant is married and has two children. They are all U.S. citizens.

Applicant attended college and went through Navy ROTC. Upon graduation from college in 1976 he was commissioned in the Navy and served until 1980. He continued to serve in the Naval Reserves until 1983. He was a nuclear qualified submarine officer until he resigned to pursue an engineering career in the defense industry. During his military and civilian career he held a top secret clearance and had access to Sensitive Compartmented Information (SCI) and held a Department of Energy "Q" clearance to allow him to work in the nuclear field. He also passed a lifestyle polygraph and special background investigation.¹ He is also a member in good standing of the Coast Guard Auxiliary and is attached to a Flotilla based in the state where he lives.²

In 2002 Applicant went to Israel for approximately two weeks to vacation and attend his brother's wedding. While at the wedding he visited with aunts, uncles and cousins. He does not stay in contact with these relatives and has only had contact 3-4 times with them in the past 40 years. They all work in the private sector. He does not maintain contact with anyone else in Israel.³

¹ Tr. 43-47.

² AE A.

³ Tr. 50-54.

When Applicant entered Israel he used his U.S. passport. He was advised by Israeli authorities that because he was born in Israel in order to leave he would be required to obtain an Israeli passport. He went to the appropriate office and he advised them he was a U.S. citizen and lives in the U.S. In lieu of having to obtain an Israeli passport he was given an Israeli travel document that would allow him to leave Israel. This document may be used in lieu of a passport. He used this document to leave Israel.⁴

Applicant's brother was a successful doctor in the U.S. and had residences in both the U.S. and Israel at one time. He retired from the medical field and is now involved in venture capital investments. He and his wife had a child in April 2006. His brother's wife is German and she has a U.S. green card.⁵ They were in Israel and when she obtained her green card she was required to enter the U.S. by December 2006. Applicant anticipated they would be arriving in the U.S. in June or July of 2006. He anticipated seeing his new niece when his brother and family arrived. His brother's arrival date kept being delayed. Applicant's wife found inexpensive plane tickets and Applicant had a week of vacation to use, so although they had not planned on going back to Israel, they decided to go and see the new baby. They traveled to Israel in October 2006 for the purpose of visiting his brother, his wife and new baby. Applicant was required to renew the Israeli travel document he obtained in 2002. This document only allowed him to travel in and out of Israel. He could not travel to any other country on this document. His brother and his family moved permanently back to the U.S. in December 2006. His brother had always maintained a residence in the U.S. He had business contacts in Israel and the U.S., but his primary residence was in the U.S. He no longer maintains a residence in Israel.

Applicant does not have an Israeli passport. He had an Israeli travel document that was issued to him so he could leave Israel. He denies he is a dual citizen of Israel. He has formally renounced any citizen rights he may have had with Israel.⁶ He requested confirmation of his request, but had not received it at the time of the hearing. At the present time he does not have any plans to travel to Israel.⁷

When providing information for his security clearance application (SCA), Applicant listed his brother's address in California as his brother's place of residence. At the time his brother was living in Israel, but was traveling back and forth to the U.S. Applicant provided an address where he knew his brother could be located in the event someone wanted to interview him as part of his background check. He also knew his brother would be returning shortly to the U.S. to reside permanently. He did not deliberately conceal the information that his brother had a residence in Israel as this

⁴ Tr. 53-61, 64-66; AE G.

⁵ Tr. 47-49.

⁶ AE B, C.

⁷ Tr. 90-94.

information had been previously disclosed as early as 2003. He was merely attempting to provide an address where he believed his brother would be easily located. Applicant on previous occasions advised the government that his brother was living in Israel.⁸

When answering question 17 on his SCA that inquired if Applicant had a foreign passport, he answered "No." Applicant answered this question correctly and honestly. The document he held was not a passport. He answered "No" on interrogatories that asked the same question and specifically indicated he had a "pass" document and attached a copy of it to the interrogatories.⁹ Applicant did not intend to mislead anyone. He simply answered the questions truthfully and provided an explanation of the document he did hold.¹⁰

On June 27, 2006, Applicant was interviewed by a government investigator. He indicated that he had no plans to visit Israel. At that time he did not have plans to travel to Israel and this statement was true. However, his plans changed when his brother delayed his move back to the U.S. That is when he and his family decided to go and visit their new niece.¹¹ At the time he completed his SCA he did not intend on returning to Israel. His plans changed after completion of the SCA. He did not deliberately provide false or misleading information. The information he provided at the time he completed the SCA was truthful and honest.

Applicant does not own any property in Israel.

Israel is a parliamentary democracy. Israel's prime minister leads the executive branch of the government. The United States is Israel's leading trading partner. Israel respects the rights of its citizens; however, there are some concerns about Israel's detention and interrogation of alleged terrorists, and discrimination against Arabs. Terrorism is a continuing threat to Israel, and American interests in Israel. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Occasionally, Israeli and American interests have diverged. Several U.S. government employees have been prosecuted for disclosure of classified information to persons connected to the Israeli government. Israel has an active program to gather proprietary information from U.S. companies.¹²

⁸ Tr. 71-75.

⁹ GE 2.

¹⁰ Tr. 76-78.

¹¹ Tr. 78-89.

¹² HE I.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises: 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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered AG ¶ 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 (b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen.) Applicant did not have a foreign passport nor did he take any action to obtain or acquire recognition as a foreign citizen. He merely complied with Israel's requirements to obtain a travel document when he attempted to enter Israel as a U.S. citizen born in Israel. I find none of the disqualifying conditions apply. However, if the Israeli travel document is construed to be an exercise of foreign citizenship, I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11 (a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country); (b) (the individual has expressed a willingness to renounce dual citizenship) and (e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.) Applicant was born in Israel and as a child his family immigrated to the U.S. and he became a naturalized U.S. citizen. AG ¶ 11 (a) applies. Applicant does not consider himself an Israeli citizen, but because Israel considers him one he has formally renounced any citizenship ties with Israel. AG ¶ 11 (b) applies. Applicant does not have an Israeli passport. The Israeli travel document he was required to obtain to exit Israel is expired. I find AG ¶11 (c) applies if it was applied to a travel document.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR alleged under this guideline that Applicant traveled twice to Israel. I have considered all of the disqualifying conditions under AG ¶ 7. Even taking

the most expansive interpretation of the disqualifying conditions I find none apply. Although he traveled to Israel and AG ¶ 7 (i) (conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country) might be considered, there was no evidence offered about Applicant's conduct while he was traveling and there was nothing to show he is vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered (a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) and (b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative) under this guideline. I have considered all of the facts and find Applicant did not deliberately omit, conceal, mislead, or falsify any information. He did not have an Israeli passport, but rather had a travel document that he provided when he submitted his interrogatories. The question was clear when it asked if he had a passport. It did not ask if he had any documents from a foreign country and it is unfair to extrapolate such an interpretation. The fact is when provided the opportunity to explain what document he had in his possession he did so and provided a copy of it. Applicant provided the best address for his brother so that he could be easily contacted for a background check. He knew his brother was in the process of moving back to the U.S. but did not know the exact date. Applicant was not attempting to mislead, but rather was attempting to assist investigators. When Applicant completed his interrogatories he did not intend on returning to Israel. Due to the delay of his brother's return and securing inexpensive plane tickets, he and his family decided to go visit their new niece. Altering his plans after he completed the interrogatories is not a deliberate falsification. I find none of the disqualifying conditions apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine

adjudicative process factors listed at AG ¶ 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Israel and is a naturalized U.S. citizen. He has served his country in the Navy and held a Top Secret Security Clearance. He was required to comply with Israel’s exit rules and obtain a travel document because he was born there and not by choice. He has not exercised any dual citizenship rights and in an abundance of caution has formally renounced any citizenship ties he may have with Israel. Israel is a close ally with the U.S. and it is unlikely to exploit U.S. citizens through coercion. Applicant answered all questions in his SCA honestly. He did not deliberately omit, mislead or falsify any information.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign preference, foreign influence and personal conduct.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CAROL G. RICCIARDELLO
Administrative Judge