DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-06276
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: David P. Price, Esq.

12/20/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

The foreign influence concerns that exist because of Applicant's close ties to Israeli citizens, including her spouse and his family members, are mitigated because Applicant can be expected to act in the United States interests. Clearance granted.

Statement of the Case

On June 20, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant filed a *pro se* response to the SOR allegations on July 9, 2013, and she requested a hearing before an administrative judge from the Defense Office of Hearings

and Appeals (DOHA). On August 22, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant's Counsel entered his appearance on August 28, 2013. On August 30, 2013, I scheduled a hearing for September 26, 2013.

At the hearing, three Government exhibits (GEs 1-3) and four Applicant exhibits (AEs A-D) were admitted without objection.[1] Applicant, her spouse, two of her co-workers, and a close friend of Applicant's testified, as reflected in a transcript (Tr.) received on October 4, 2013.[2] The Government requested that I take administrative notice of several facts pertinent to Israel and its foreign relations, including with the United States.[3] Applicant submitted nine documents for administrative notice and objected to my consideration of one source document relied on by the Government. Department Counsel had no objection to Applicant's administrative notice documents. I agreed to take administrative notice, as discussed below.

On October 18, 2013, Applicant requested that the record be reopened to include an exhibit, which she received after the hearing. The Government submitted no objection by the October 31, 2013 deadline for comment. The document was admitted into the record as AE E. The record closed on November 15, 2013, on receipt of Applicant's response to a Government submission concerning its request for administrative notice.

Administrative Notice Ruling

At the hearing, the Government requested administrative notice of several facts pertinent to Israel and its foreign relations, including with the United States. Applicant submitted no specific facts but offered several documents for administrative notice.[4]

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[1] AE A consists of 52 documents pertinent to Applicant's spouse and his family: A1; A2(a)-2(g); A3(a)-3(b); A4(a)-4(e); A5(a)-5(jj); and A6. AE B consists of 41 documents regarding Applicant's professional qualifications and personnel records (B1-B41). AE C consists of five records about Applicant's financial assets in the United States (C1-C5). AE D consists of 19 character reference letters (D1-D19).

[2] On October 29, 2013, Applicant proposed corrections to the hearing transcript. On October 30, 2013, I gave Department Counsel a November 8, 2013 deadline for comment on Applicant's corrections, and for the Government to propose any revisions. On November 6, 2013, Department Counsel objected to four of Applicant's proposed changes to the transcript on the basis that they were too speculative. Department Counsel's concerns have merit. Accordingly, I accept the revisions to the transcript with the limited exception of the four identified by Department Counsel in her email of November 6, 2013. The corrections and corresponding emails are included in the file as a hearing exhibit (HE) 3.

[3]The Government's request for administrative notice, dated August 13, 2013, and source documents was incorporated in the record as HE 1. Applicant's request for administrative notice, dated September 21, 2013, was incorporated in the record as HE 2. The respective requests for administrative notice and source documentation were not provided to me before the hearing, although the parties had exchanged copies before the hearing.

[4] The Government's request for administrative notice was based on the U.S. State Department's *Country Specific Information: Israel, the West Bank and Gaza*, dated April 24, 2013; the National

Applicant objected to one source publication relied on by the Government, excerpts from the *Intelligence Threat Handbook* dated June 2004, on the basis that the document was prepared by a commercial enterprise rather than a U.S. government agency. Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (*see* ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. I withheld ruling on whether I would consider the excerpts from the *Intelligence Threat Handbook* as a reliable source of information for administrative notice, and I initially held the record open for two weeks after the hearing for the Government to respond in writing to Applicant's objection. On October 23, 2013, I extended the deadline to November 7, 2013, for the Government's response because of the partial shutdown of the U.S. government in early October.

On November 6, 2013, Department Counsel submitted that the *Intelligence Threat Handbook* is proper for administrative notice purposes as a publication of the Interagency OPSEC Support Staff in its capacity as an interagency organization established by the Director of the National Security Agency as required by the National Security Decision Directive 298 of January 22, 1988. Department Counsel also requested that I specifically take administrative notice that "in addition to other entities and individuals, Israeli military officers have been implicated in collecting/attempting to collect protected technology from the U.S." On November 15, 2013, Applicant expressed a continuing objection to my considering the *Intelligence Threat Handbook* without further comment.[5]

After considering the positions of both parties, Applicant's objection to my review of the extracts from the *Intelligence Threat Handbook* is overruled. National Security Decision Directive 298, promulgated by then President Reagan, tasked the Director of the National Security Agency with specific operational security (OPSEC) responsibilities, including establishing and maintaining an Interagency OPSEC Support Staff (IOSS), "whose membership shall include, at a minimum, a representative of the Department of Defense, the Department of Energy, the Central Intelligence Agency, the Federal Bureau of Investigation, and the General Services Administration." While the

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Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2000* and its *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2005*; excerpts from the Interagency OPSEC Support Staff's *Intelligence Threat Handbook*, dated June 2004; the Congressional Research Services publication *CRS Report for Congress–Israel: Background and U.S. Relations*, dated June 12, 2013; and six news releases from the U.S. Department of Commerce's Bureau of Industry and Security reporting export violations committed by U.S. firms, and in one case, by an Israeli citizen. The Applicant submitted nine administrative notice exhibits consisting of documents from the Israel Ministry of Foreign Affairs pertaining to renouncing Israeli citizenship and to its Law of Return; the U.S. Office of the National Counterintelligence Executive's annual reports to Congress on foreign economic collection and industrial espionage for 2001, 2002, 2003, 2004, 2007, and 2008; and the Office of the National Counterintelligence Executive's *Report to Congress on Foreign Economic Collection and Industrial Espionage*, 2009-2011.

[5] The Government's response and Applicant's renewal of her objection, forwarded by electronic mail, are incorporated in the record as HE 4.

IOSS is an organization that acts as a consultant to Executive departments and agencies in connection with the establishment of OPSEC programs, surveys, and analyses, it also provides an OPSEC technical staff for the Senior Interagency Group for Intelligence. The report was prepared for official use only.

Administrative notice is not taken of the source documents in their entirety, but of specific facts properly noticed and relevant and material to the issues. Concerning the Government's request that I take administrative notice of the fact that Israeli military officers have been implicated in collecting or attempting to collect protected technology from the United States, the incident reported in the *Intelligence Threat Handbook* occurred in 1986. Like the Jonathan Pollard case, that information must be evaluated in light of its dated nature. As for the Department of Commerce press releases, which were presumably presented to substantiate that Israel actively pursues collection of U.S. economic and proprietary information, none of the cases involved Applicant personally or involved espionage through any family relationships. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, given there is no evidence that Applicant or any member of his family was involved in any aspect of the cited cases. With these caveats, the facts administratively noticed are set forth below.

Summary of SOR Allegations

The SOR alleges Guideline B (foreign influence) security concerns because Applicant is married to an Israeli citizen (SOR 1.a), whose parents (SOR 1.b), brother (SOR 1.c), and grandmother (SOR 1.d) are resident citizens of Israel. Applicant admitted the allegations but indicated that her spouse has dual citizenship with Israel and the United States. He became a naturalized U.S. citizen in February 2013.

Findings of Fact

Applicant's admissions to her spouse having Israeli citizenship and to the Israeli citizenship and residency of her spouse's family members are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 33-year-old college graduate who has worked for a DOD contractor since July 2002. Applicant held a DOD Secret clearance from December 2002 until late October 2010, when she was granted an interim Top Secret clearance. As of September 2011, she was not using the interim Top Secret clearance. At her hearing, she indicated that she held a Secret clearance. (GEs 1, 3; AE B1; Tr. 173, 207.) Applicant is required to hold a Secret clearance or higher to work for her employer. (Tr. 45, 63.) While the investigation for her Top Secret clearance was pending, her Secret clearance came up for periodic reinvestigation. (Tr. 203.)

Applicant was born, raised, and educated in the United States. (GEs 1, 2; Tr. 171.) Her parents and brother are U.S. native citizens who reside in the United States,

and she has a close relationship with them. (GE 1; AEs D11, D12.) In May 2002, she was awarded a Bachelor of Arts degree in chemistry with honors. (AEs B1, B2.) In July 2002, Applicant started working for her current employer in an assistant staff position. (GE 1; AE B3; Tr. 172.) Applicant showed an ability to work independently and some expertise in chemistry, biology, data analysis, and hardware skills. Over the next five years, she worked on over 25 programs sponsored by various U.S. government departments and agencies, and her employer continued to be pleased with her performance. (AEs B1-B8.) In November 2007, she was promoted to associate staff. (GE 3.)

In April 2008, Applicant met her future spouse (hereafter spouse), then a resident citizen of Israel, through an online dating site.[6] A computer science graduate of an Israeli university, he was employed as a chief technical officer and project manager at a development center in Israel for a small, U.S.-based search engine marketing company. (GE 3; AEs A5(h), A6; Tr. 127-128.) In May 2008, he came to the United States on a B1 business visitor visa. (Tr. 130.) He planned a vacation with friends and then a trip to his company's headquarters. He and Applicant arranged to meet in person during his stay. (Tr. 128-129.) They got along so well that he changed his plans, and he primarily worked for his company from her area until August 2008. (GE 3; Tr. 179.)

In September 2008, Applicant and her spouse went to Israel for 41 days so that she could meet his family and friends. Applicant stayed with her spouse in his apartment while in Israel, and they visited with his parents weekly. In addition, Applicant met her spouse's brother, aunt, grandmother, and four of his friends, all Israeli resident citizens.[7] (GEs 1-3; Tr. 179.) On her return to the United States, she reported the trip to her security office at work. (Tr. 206.) When she realized that her relationship with her spouse was becoming serious, she disclosed her involvement to her facility security officer (FSO) and to her supervisor so that their government sponsor could decide whether she should remain on the program. Applicant knew that having a serious relationship with a foreign national could be an issue because of her security clearance (Tr. 196-197), although she was given no indication that it was a problem for her employment or clearance. She would have chosen to pursue the relationship if it meant the loss of her employment or clearance. (Tr. 208-209.)

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[6] Applicant's spouse dropped out of boot camp to become a [redacted] in the Israeli Defense Force in August 1998 because of [redacted] reasons. After passing a two-month [redacted] course, he was drafted as a volunteer into the enlisted ranks in November 1999. He served as an administrative worker for four months and then as a software systems designer in a [redacted] unit. (Tr. 115-116.) Due to an increase in his [redacted], he was required to perform boot camp in 2001 at the rank of corporal. (AEs A5(n), A6.) In [redacted], then a staff sergeant, he applied for early release from active duty because he had been accepted into a computer science program to start in [redacted], a month before his scheduled release date. (AEs A5(j), A6.) His request was approved, and he was discharged from his compulsory active duty service into the reserve on [redacted]. (AEs A5(i), A6; Tr. 117.) Applicant's spouse served a total of 14 days of active reserve duty between January 12, 2003 and June 10, 2007. (AE A6.) He has not performed any active duty service since June 2007. (Tr. 118-119.)

[7] Applicant's father-in-law completed compulsory active duty military service for Israel in October 1966. As of July 1992, he no longer had any reserve duty obligation to Israel. (AEs A1, A6.) Applicant's mother-in-law was granted a religious exemption from serving in the Israeli military. (AE A2(a).)

In November 2008, Applicant's spouse moved to the United States. (Tr. 118.) He and Applicant decided to marry, and they became formally engaged in December 2008. They briefly discussed the possibility of living in Israel but decided that they wanted to live, work, and raise children in the United States. (Tr. 180.) They retained the services of an immigration attorney to help with his application for U.S. permanent residency. Applicant's spouse could not be employed legally in the United States. His business inactivity and their engagement invalidated his existing visa. (GE 3; Tr. 131.)

Applicant and her spouse married in the United States in [redacted] 2009. At her wedding, Applicant met for the first time two of her spouse's uncles, who are U.S. residents with dual citizenship (Israel and the United States).[8] (GE 1.) Applicant's spouse registered their marriage with the Israeli Consulate. (GE 3; Tr. 144.) Under Israeli law, Applicant did not have to obtain Israeli citizenship, and she took no steps to do so. (Tr. 166.)

In April 2009, Applicant sponsored her spouse's application for U.S. permanent residency. To ensure that they were in full compliance with U.S. law, Applicant's spouse did not seek employment in the United States until July 2009, when he received his work permit. (GE 3; Tr. 181.) In August 2009, he was granted conditional permanent residency for two years. (GE 3; AE A5(y); Tr. 132.) He had little success finding challenging work in his area, so in April 2010, he began consulting in search engine marketing and optimization in electronic commerce. (GE 3; AE A5(hh); Tr. 137-138.)

As required under Israeli law, Applicant's spouse has held an Israeli national identification (ID) card since he was 16. (AEs A5(u), A6.) Around late November 2010, he obtained a new national ID card because of his change in marital status. He used his parents' address in Israel for his ID card. (AEs A5(t), A6.) For purposes of its national insurance law (akin to U.S. social security), Israel determined on [redacted] 2011, that he was no longer a resident of Israel as of [redacted] 2009. (AEs A5(g), A6; Tr. 113.)

At the request of her supervisor, Applicant applied to upgrade her security clearance to Top Secret in October 2010. On her Questionnaire for National Security Positions (e-QIP), Applicant reported the Israeli citizenship and residency of her spouse's immediate family members (parents, brother, and grandmother). Applicant also disclosed that her spouse had two uncles and four first cousins living in the United States, who had Israeli-U.S. dual citizenship, and an aunt in Israel with Israeli citizenship. Applicant listed foreign contacts, primarily of her spouse, varying from three to more than 15 times a year with six Israeli resident citizens and six U.S. residents with Israeli or dual Israeli-U.S. citizenship. Concerning foreign activities, Applicant reported that her spouse had banking account deposits of less than $10,000 in Israel; three "continuing education" funds and a pension fund in Israel totaling $16,921; and a half-

[8] Applicant's spouse's maternal uncle and this uncle's four children all have U.S. citizenship. They have been living in the United States for over 20 years. On his father's side, an uncle and his three children are U.S. citizens. They immigrated to the United States either in the late 1980s or early 1990s. Applicant's spouse's paternal aunt and her two children are Israeli citizens. (AE A5(jj); Tr. 163.)

share with his cousin in an apartment in Israel valued around $350,000.[9] The apartment was rented out and managed by her parents-in-law, but the plan was to sell it in the next year. (GE 1.)

On November 12, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about her spouse's foreign ties and contacts. About his bank deposits in Israel, Applicant indicated that the account had a zero balance rather than the approximate $10,000 previously reported. Her spouse's education funds in Israel were in his name only and not important to her overall financial situation. About her spouse's apartment in Israel, Applicant reiterated that it was being sold. Concerning her parents-in-law's occupations, Applicant related that her father-in-law had been a city planner and her mother-in-law had been an educator before their respective retirements.[10] Her spouse had monthly telephone contact with his parents. Applicant spoke to her mother-in-law two or three times a month and to her father-in-law only two to three times yearly. Applicant disclosed that her brother-in-law worked as a vice president for a security company in Israel. In addition to annual in-person contact, her spouse spoke to his brother four to five times a year. Regarding her spouse's relatives in the United States, contact was generally limited to once or twice a year, although her spouse had quarterly contact with a cousin and about eight times yearly contact with an uncle. Applicant added that her spouse had contact ranging from 6-15 times a year with his friends in Israel.[11] Applicant indicated that she complied with her obligation to report foreign contacts and that none of these foreign nationals, including her parents-in-law and brother-in-law, knew about her background investigation. (GE 2.)

In November 2010, Applicant and her spouse traveled to Israel for three weeks to visit his family. Applicant's parents accompanied them. Applicant and her spouse stayed with his parents during that trip. (GEs 2, 3.)

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[9] In September 2004, Applicant's spouse's mother and his uncle transferred without compensation their respective ownership interests in a family apartment in Israel to Applicant's spouse and a cousin. (Tr. 110-111.) At the time, the apartment was valued around [redacted] NIS (new Israeli shekels) or about $200,000 US. (AEs A5(a)-A5(c), A6.) Applicant had been living in the apartment since 2000. His cousin, a dual citizen of the United States and Israel, was a longtime resident of the United States. When Applicant's spouse moved to the United States in 2009, he gave control of the apartment to his parents, who kept the rental income. (GE 3.)

[10] Applicant's mother-in-law worked for the Israeli government in business and trade matters from 1983 to 1986 before becoming an educator. She earned her master's degree in public administration in the United States in 1995. (AEs A2(c), A2(d).)

[11] On her e-QIP (GE 1), during her interviews with the OPM investigator (GE 2), and even more so in an affidavit of September 22, 2011 (GE 3), Applicant provided details about the nature of her and her spouse's acquaintance and contacts with several Israeli citizens or dual citizens of Israel and the United States. Most of her spouse's friends had attended high school with him in Israel, although one friend had served with him in the Israeli Defense Force. (Tr. 156.) This friend lives in the United States, and Applicant has met him a few times. The extended family and friend relationships were not alleged to be of security concern under Guideline B. Applicant's candor about these contacts is relevant to the whole-person evaluation, however.

On January 13, 2011, Applicant was re-interviewed by the OPM investigator about her spouse and her other foreign contacts. Applicant reported in-person contact with her parents-in-law two to three times per year in the United States or Israel since 2008. (GE 2.)

In May 2011, Applicant's spouse began working for a small U.S. software company. (GE 3.) That summer, he began divesting himself of his financial assets in Israel because he and Applicant did not want to manage any foreign assets. He did not know about Applicant's background investigation at that time. (Tr. 187-191.) On July 14, 2011, he and his cousin sold their apartment in Israel. They each received about 1,012,500 NIS (about $300,000 US) from the sale. (GE 3; AEs A5(e), A5(f), A6.) Sometime after September 2011, Applicant's spouse gave half of his proceeds from the sale of the apartment to his parents and grandmother. (GE 2; Tr. 112.) In November 2011, Applicant withdrew the funds from his three education accounts in Israel. The funds were transferred to his checking account in Israel and then to the United States. (GE 3; AEs A5(p)-A5(r), A6; Tr. 121.)

On September 22, 2011, Applicant provided updated information to another OPM investigator about her spouse's legal status in the United States and the extent of his foreign contacts and assets. (GE 3; Tr. 185.) He had applied to remove the condition on his U.S. legal residency and intended to apply for U.S. citizenship when eligible to do so. Applicant did not believe that he would renounce his Israeli citizenship because he had no reason or need to do so. He did not plan to obtain a position that would require renunciation of his Israeli citizenship. Concerning his reserve obligation to the Israeli military, he was in a "virtual unit" and could not be called to active duty.[12] However, if he was to regain his Israeli residency, he would have to resume his reserve duty. Applicant disclosed recent travel to Israel in September 2011 with her spouse to visit his parents and his grandmother. During that trip, Applicant and her spouse attended a reunion of his former military unit. Her interaction with others at the reunion was limited because of the language barrier and lack of any personal ties. Applicant reported that she had telephone contact with her parents-in-law once or twice a month and by Skype with her mother-in-law as frequently as four or five times a week. (GE 3.)

In December 2011, Applicant and her spouse bought their current residence for [redacted]. They used half of his proceeds (about $150,000) from the sale of his apartment in Israel as a down payment. (GE 2; AE C4; Tr. 112-113.) In January 2013, Applicant and her spouse refinanced their mortgage, taking on a primary loan of $459,000. (AE C5.) They also have a home equity loan around $100,000 on the property. (GE 2; AE C.) In November 2012, their home was appraised at $915,000. (AE C4.)

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[12] Reservists in Israel who cannot be called for service because they are living abroad are placed in Grouped List (GL) 70. (AEs A5(w), A6.) Israel provides for a reserve duty exemption for those soldiers placed in the GL 70 "virtual unit." Enlisted personnel are exempted from security service at age 35, and Applicant's spouse is age 33. (GE 1; AEs A5(v), A5(y), A6; Tr. 120.) In September 2013, Applicant's spouse received a letter (in response to his inquiry) notifying him of the liaison office for his unit in the Israeli Defense Force. The letter was addressed to him at his parents' address. (AEs A5(m), A6.)

Around March 2012, Applicant's spouse obtained his U.S. permanent residency. (GE 2; AE A5(y).) In August 2012, he applied for naturalization in the United States. (GE 2.) In January 2013, he terminated operation of his home-based web application consulting service in his former city of residence and registered his business in his current locale. (AE A5(hh)-A5(ii).) In February 2013, he became a naturalized U.S. citizen, and in March 2013, he obtained his U.S. passport. (AE A5(aa).)

Sometime after Applicant and her spouse moved into their home in December 2011, his mother came from Israel to help them. (Tr. 153.) In the summer of 2012, Applicant and her spouse had a daughter. (GE 2; Tr. 153.) They chose not to report their daughter's birth to the Israeli consulate or to inquire about her citizenship status with Israel. (Tr. 166-167.) His parents came from Israel on the birth of their granddaughter. Applicant's father-in-law stayed one month, her mother-in-law a bit longer. Applicant returned to work in late 2012. Applicant's mother-in-law came from Israel and cared for her granddaughter until February 2013, when the child was placed in daycare. (GE 2; Tr. 153.)

In August 2013, Applicant's spouse went to Israel to care for his ill mother. He did not know at that time that Applicant's security clearance eligibility was being questioned.[13] After she was notified of her hearing, Applicant called her spouse and told him to return to the United States by September 26, 2013. She provided little detail as to why. (Tr. 145-146, 198.) On his arrival home, Applicant told him about her hearing at which he was going to testify. She also needed his assistance procuring some of the information about his family that was submitted in evidence at her hearing. (Tr. 146, 191-192.)

As of September 2013, Applicant and her spouse had frequent contact with his parents by Skype so that they can see their granddaughter. (Tr. 143.) Applicant's father-in-law is age 67. (GE 1.) He worked as a civil engineer and was involved in the construction of neighborhoods, roads, and bridges in Israel after he completed his military service. (Tr. 96-97.) He was last employed in 2005. (GE 1; Tr. 96-97.) Applicant's mother-in-law, now age 66 (GE 1), retired in 2009 from her employment in education technology at a college in Israel. She acquired pension rights with the Israeli government during her employment as a teacher advising in computer subjects from September 1983 to March 1986. (AEs A2(f), A2(g).) Her pension rights were transferred to a worker's union pension fund in 1995 when she began working at a teacher's college. (AEs A2(e), A6; Tr. 97-100.) In addition to her pension funds, Applicant's

[13] At the hearing, there arose an issue about what Applicant's spouse, his parents, and two of his friends knew about Applicant's security clearance. (Tr. 199-203.) Applicant signed an affidavit in September 2011 (GE 3) indicating that her spouse knew that she had a Top Secret clearance. Applicant denies telling her spouse, parents-in-law, or her personal references about her clearance, but admits they could reasonably infer that she held a clearance. Her spouse knew enough about her employer; she had to ask her parents-in-law for information; and she told her friends they might be questioned about her. The issue is relevant to determining how circumspect Applicant has been with foreign citizens about her clearance. Even so, there is no evidence that Applicant has discussed details about her work with any of them.

parents-in-law live off rental income from two apartments that they own in Israel. They own their residence as well. (Tr. 97.)

Applicant's spouse's paternal grandmother is now 89. In June 2011, she began living in a retirement home due to her functional and cognitive decline. (GEs 1, 2; AEs A3(b), A6.) In April 2013, she was transferred to the nursing department because of her disabled state. In August 2013, Applicant's father-in-law and his sister were named her guardians. (AEs A3(a), A3(b), A6.)

Applicant's brother-in-law is six years older than her spouse. He was drafted into the Israeli military at age 18 in a pilot training program that he did not complete. He had software engineering duties in the intelligence corps for about seven or eight years when he resigned from active duty as an officer. He did not gather intelligence but rather focused on operational software. (Tr. 103-104.) After his discharge from active duty, Applicant's brother-in-law worked for a computer software company for 12 years, advancing to the position of senior vice president. (Tr. 105.) He completed an executive MBA in Israel in a program affiliated with a school of management at a U.S. university. (AE A4(a).) As of September 2011, Applicant's brother-in-law was employed as a vice president for a company in Israel that had commercial and military customers in Israel. To Applicant's understanding, he worked in the commercial side of the business. (GE 3.) By September 2013, he had a new employer. He currently works as chief technology officer for a global, publicly-traded company providing software services for service providers in the communications, media, and entertainment industries. (AEs A4(b)-A4(d); Tr. 105.) He lives near his parents in Israel, is married, and has three children ranging in age from three to eleven. (Tr. 158.) Applicant's spouse and his brother do not have a particularly close personal relationship. They are in contact when his brother wants him to procure an item commercially unavailable in Israel or when matters arise involving family members, such as their father's hospitalization in 2012 and their mother's recent medical issues. (Tr. 107-108.) Applicant's spouse saw his brother when he went to Israel to help care for his mother in August 2013. (Tr. 157.) Applicant sees her brother-in-law about three times a year, when he comes to the United States on business or during her trips to Israel in 2008, 2010, and 2011. (Tr. 142.)

Applicant's spouse's best friend is an Israeli citizen, who lives in the United States. They contact each other once a month on average, although at times they have been in contact as frequently as daily. Applicant's friend works with his father, who has a business consulting in mall security and the fashion industry. (Tr. 155.) Applicant has limited contact with her spouse's best friend, less than once a year in person. (GE 2.)

Applicant's spouse accompanied or joined Applicant on two business trips for her employer. He worked from their hotel while she was on the job site for her employer. She has been circumspect with him and with her parents, brother, and personal and family friends about her work. (AEs D11-D17; Tr. 79-80, 141, 178.) Of Applicant's spouse's family members and friends in Israel, only his parents and brother know that Applicant works for a defense contractor. Applicant needed information from them for the DOD, and when it became evident to Applicant and her spouse that further inquiries

of his brother could expose her or her work to undue scrutiny, they stopped asking him for information. (Tr. 191-193.) Should Applicant find herself with a conflict between her responsibility to protect classified information and her foreign family members, Applicant understands that her first priority is to protect the classified information and then notify security officials or law enforcement. In the event she could not mitigate that conflict of interest, she testified that she would remove herself from the situation, surrender her security clearance, and resign from her job. (Tr. 195-196, 209.)

Applicant and her spouse discussed him possibly renouncing his Israeli citizenship. He would be required to submit a form to Israel's Ministry of Interior giving reasons for renouncing his Israeli citizenship and to appear in person at the Israeli consulate. (Tr. 133-134.) Applicant's spouse recently learned that he could obtain a travel permit that would allow him to enter and exit Israel in lieu of his Israeli passport. He has taken no steps to obtain a travel permit. (Tr.134-135.) Under Israel's Law of Return, Applicant's spouse would be eligible to reacquire his Israeli citizenship in the future should he renounce his Israel citizenship. (Tr. 135.) He has chosen not to pursue renunciation of his Israeli citizenship at this time, although he does not have any plan to reestablish residency in Israel. (Tr. 136.) He and Applicant have chosen not to compromise Applicant's career, and they prefer living in the United States. (Tr. 159-160, 165.)

Applicant is held in very high regard by her co-workers and supervisors where she is employed (AEs D1-D6, D9, D18; Tr. 56, 71), including some colleagues who are well acquainted with her husband. (AEs D4, D6) Their program sponsor, who was informed early on about Applicant's relationship with an Israeli citizen, has never once questioned Applicant's trustworthiness or reliability with regard to handling classified or sensitive proprietary information. (AE D8.) Applicant serves as deputy on a classified program, and she takes her work and the protection of classified information very seriously. She has shown herself to be very circumspect about the nature of her duties. (AEs D1-D6.) Her group leader attests to her being "incredibly diligent" in safeguarding classified information. This group leader has never heard Applicant discuss classified information outside of the appropriate secure workspace or with co-workers who have no need to know the information. (Tr. 49-53.) Applicant's group leader, who holds a Top Secret clearance and sensitive compartmented information (SCI) access (Tr. 44), is aware that Applicant has family ties through her spouse to Israel. He met Applicant's spouse but does not have a personal relationship with him. (Tr. 57.) Applicant's group leader has no reservations about Applicant's reliability and trustworthiness with regard to handling classified information. (AE D3; Tr. 55-57.)

A senior staff member works with Applicant in his capacity as technical lead on the classified program. They have prepared classified reports together, and he has observed her in classified meetings. This senior staff member considers Applicant to be "a model" on how to run classified meetings. Applicant has also shown herself to be very meticulous about properly marking classified documents. This senior staff member knows Applicant is married to an Israeli-U.S. dual citizen, who has family in Israel. His acquaintance to Applicant's spouse is limited to one social function. (Tr. 72.) This senior

staff member has thought about the potential for a conflict of interest because of Applicant's ties of affection to Israeli citizens. He has no concerns about Applicant handling classified information. Should a conflict of interest arise, he believes Applicant would seek advice from the security department or law enforcement. (AE D9; Tr. 66-70.)

A major in the Army National Guard with nearly 20 years of military service had the opportunity to observe Applicant on a highly sensitive government project between January 2009 and December 2012. In support of Applicant's continued clearance eligibility, he opined that he had never met a more dedicated group of people than those on Applicant's team, and of them, Applicant was the most dedicated. Extremely industrious, she worked long hours, at times under difficult physical circumstances in the field, and she "managed to expertly balance the need of participating partners for information while ensuring that classified information was carefully protected in every conceivable manner." He believes Applicant understands what it means to put service to the Nation before her personal interest. (AE D-7.)

A full-time Air National Guard Reserve officer, who commands a weapons of mass destruction civil support team, has worked with Applicant several times since February 2008. Applicant showed herself to be extremely professional in all of their dealings, and she erred on the side of caution when questions arose about whether information was classified. (AE D19.)

Applicant has been rewarded for her excellent work performance through several salary increases since July 2003. Her current income is $9,245 per month from her defense contractor employment. (AE B.) Applicant and her spouse's net worth in the United States exceeds $500,000, while his bank deposits in Israel total around $630. Applicant's spouse has kept the account to pay for his cell phone bills when he is in Israel. (Tr. 122.) Applicant's spouse has severance pay from a previous employer and a pension that total less than $10,000 in Israel. He believes he could withdraw the funds before they mature, but he would have to pay half of the balance in taxes. (GE 2; AEs A5(s), A6, C1-C3; Tr. 123.)

Applicant and her spouse have volunteered their time to youth science programs in their community. (AEs A5(dd), A5(ee), D6.) Her spouse received formal recognition from a local municipality after he won an "inspire award" at a technical challenge world championship. (AE A5(dd).)

Administrative Notice

After reviewing the documents submitted by the parties concerning Israel and its foreign relations, including with the United States, I take administrative notice of the following facts:

Israel is a parliamentary democracy of about 7.70 million people with a modern economy. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a diversified,

technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment. Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem as a result of the 1967 war. In 1994, the Palestinian Authority was established in the Gaza Strip and West Bank, although the Islamic Resistance Movement (HAMAS), a U.S. designated foreign terrorist organization (FTO), took control of the Gaza Strip in June 2007. The U. S. State Department advises U.S. citizens to take due precautions when traveling to Israel, the West Bank, and Gaza. U.S. citizens, including tourists, students, residents, and U.S. government personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. All persons applying for entry to Israel, the West Bank, or Gaza are subject to security and police record checks by the Israeli government and may be denied entry or exit without explanation. The Israeli government considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. Children born in the United States to Israeli parents usually acquire both U.S. and Israeli nationality at birth. U.S. citizen visitors have been subjected to questioning and thorough searches by Israeli authorities on entry or departure. Israeli authorities have denied access of some U.S. citizens to U.S. consular officers, lawyers, and family members during temporary detention.

The relationship between Israel and the United States is friendly and yet complex. Since 1948, the United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest single trading partner. Other than Afghanistan, Israel is the leading recipient of U.S. foreign aid and is a frequent purchaser of major U.S. weapons systems.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being, predicated on Israel maintaining a "qualitative military edge" over other countries in its region. The United States is the principal international proponent of the Arab-Israeli peace process. Negotiations to end the Israeli-Palestinian conflict are presently at a stalemate. Israel perceives threats from Iran and Iranian-sponsored non-state actors, such as the Lebanese Shiite group Hezbollah, as well as Hamas and other Sunni Islamist Palestinian militants in Gaza. Israel's concerns about a nuclear-weapons-capable Iran as an imminent threat to its security have led Israel to seek increasingly punitive international measures against Iran's nuclear program. Recently, Israel has become more concerned about the threats to its security posed by violent jhadist terrorist groups in light of the political upheaval in Egypt and Syria's civil war. Demographic trends in Israel have led to the emergence of nationalistic and conservative elements, more hawkish on foreign policy and security.

Strong U.S. congressional support for Israel has resulted in the country being designated as a "major non-NATO ally" and receiving preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. U.S. bilateral aid to Israel is in the form of foreign military financing (FMF). Under a 10-

year bilateral memorandum of understanding, the United States is committed to $3.1 billion in FMF annually to Israel from fiscal years 2013 to 2018, subject to continuing congressional appropriations. Israel uses approximately 75% of its FMF to purchase arms from the United States. Israel and the United States are partners in the "Star Wars" missile defense project, and have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the United States have established joint groups to further military cooperation. The two countries participate in joint military exercises and collaborate on military research and weapons development.

The transfer by sale of U.S. defense articles or services to Israel and all other foreign countries is subject to the Arms Export Control Act and implementing regulations as well as the 1952 Mutual Defense Assistance Agreement between the United States and Israel. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The United States is concerned about Israeli settlements; Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. U.S. government employees (e.g., Jonathan Pollard in 1985, who acted as an agent for Israel) and U.S. government contractors have been implicated in providing classified and sensitive information to Israel. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence in 2000. Israel was not named specifically in the National Counterintelligence Executive's (NCIX) *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage—2005.* Nor was Israel listed in the NCIX's reports for subsequent years through 2012 when dual-use technologies and information systems technology were most targeted.[14] Yet in March 2005, a U.S. company pleaded guilty to exporting digital oscilloscopes to Israel without a license. The items were reportedly capable of being utilized in the development of weapons of mass destruction and in missile delivery fields. In 2009, a U.S. government

[14] According to the NCIX's report for 2007, the bulk of collection activity came from a core group of fewer than 10 countries. China and Russia were named specifically as the primary collectors, although Israel was included in a chart showing the number of foreign visitors to Department of Energy facilities in fiscal year 2007. Israel was fifth in foreign visits, behind China, India, Russia, and Taiwan, among the 12 countries reported. Foreign government organizations, including intelligence and security services, frequently target and collect information through official contacts and visits to the United States. These include visits to U.S. military posts, armament-producing centers, and national laboratories. One could infer from Israel's inclusion with China, France, India, Iran, Japan, Kazakhstan, Pakistan, Russia, South Korea, Taiwan, and Ukraine, that there was some concern about collection efforts by Israel through its foreign visits. Israel was not included in selective lists of economic collection and industrial espionage cases for fiscal years 2007-2011. Through fiscal year 2011, increasingly through the use of cyberspace, Chinese actors continued to be the most active and persistent perpetrators of economic espionage, and Russia's intelligence services conducted a range of activities to collect economic information and technology from U.S. targets and also its allies. As reported by the NCIX, some U.S. allies and partners continued to use their broad access to U.S. institutions to acquire sensitive U.S. economic and technology information, primarily through aggressive elicitation and other human intelligence tactics. The allies and partners were not named in the report, however.

employee pleaded guilty to one count of conspiracy to act as an unregistered agent of Israel. In March 2011, a U.S. company agreed to pay a civil penalty to settle allegations that it violated Export Administration Regulations related to the export of titanium alloy and aluminum bar to Israel in July 2007 without the required export license.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense 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. 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 to obtain 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 that the applicant may deliberately or inadvertently fail to 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 B—Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

> 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.

Applicant's spouse is a dual citizen of his native Israel and of the United States, where he was naturalized in February 2013. His parents, brother, and paternal grandmother are resident citizens of Israel. AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence:

> (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.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Israel and the United States have long had a close friendship. The United States is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in its region. Israel receives preferential treatment in bidding

for U.S. contracts and substantial economic aid from the United States. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." *See* ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Recent NCIX reports of economic espionage do not show direct involvement by the Israeli government targeting the United States. However, U.S. government employees and U.S. government contractors have been implicated in economic espionage activity in the United States to benefit Israel as recently as 2009. The United States remains concerned about Israeli settlements, Israel's military sales to other countries such as China, and Israel's inadequate protection of U.S. intellectual property.

There is no evidence that Applicant's spouse or his family members in Israel have been targeted or pressured. Considering the nature of the Israeli government and society, it is unlikely that the Israeli government would attempt coercive means to obtain sensitive information. There is no evidence that Israel has used coercive methods. However, it does not eliminate the *possibility* that Israel would employ some non-coercive measures in an attempt to exploit a relative. Israel faces threats by jhadist groups, other terrorist organizations, and states in the region that are avowedly anti-Israel. Within Israel, many of those attacks are directed at, not only Jewish or Israeli interests, but American interests as well. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to combat and minimize the risk presented by terrorism. Also, there is no evidence that terrorists have approached or threatened Applicant, her spouse, or his spouse's family for any reason.

Yet, there are several factors, which collectively if not also on their own, create the heightened risk addressed in AG ¶ 7(a). Applicant's spouse enjoys the protections of U.S. citizenship and residency. Even so, since moving to the United States in November 2008, he has traveled to Israel at least three times: in November 2010 and September 2011 with Applicant, and alone in August 2013 to help care for his mother. He continues to hold an Israeli ID card and is required to comply with the obligations of his Israeli citizenship when he is in Israel. Moreover, Applicant's spouse and his brother served their compulsory military obligation in Israel's intelligence service. Their duties were in operational software of [redacted] systems and not in intelligence gathering, but information technology has been a target of economic collection and espionage activities. Applicant's spouse's brother served as an officer, and he still has a continuing reserve duty obligation for the Israeli military.[15] He works in the commercial sector as a chief technology officer for a global, publicly-traded company providing software services for service providers in the communications, media, and entertainment industries. There is no indication that his duties have security or intelligence

[15] Israeli resident citizens who are officers have a reserve duty obligation until age 45. (Tr. 150-151.)

implications, but his position in the company could bring attention to his activities and relationships. Applicant's spouse's parents are pensioners who live off rental income from two apartments and a pension from his mother's career as an educator in Israel, for a few years as an employee for the Israeli government, and then at a teacher's college. The risk of undue foreign influence is minimized but not completely eliminated by their retirement status.

AG ¶ 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," and AG ¶ 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," also apply. Applicant's spouse understandably has close bonds of affection to his parents in Israel. After he moved to the United States in November 2008, his parents managed his apartment in Israel for him and they kept the rental income. He gave his parents and grandmother between them about half of the $300,000 he realized from the sale of his apartment in Israel. He has had ongoing telephone contact with his parents since moving to the United States in November 2008, and he has visited them in Israel several times, including in August 2013 when he went to Israel to help care for his mother when she had health issues.

As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. *See, e.g.*, ISCR Case No. 08-10099 (App. Bd. Jan. 28, 2011); ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005). The evidence shows that Applicant has developed a relationship of her own with her parents-in-law since the fall of 2008. In addition to ongoing contact by telephone and Skype, Applicant traveled to Israel with her spouse three times to visit them. Applicant's parents-in-law visited Applicant and her spouse in the United States on a couple of occasions before September 2011. When Applicant and her spouse had their daughter in 2012, his parents came from Israel. When Applicant returned to work full-time, her mother-in-law returned to the United States in late 2012 and stayed for another 2.5 months to care for her infant granddaughter. Applicant and her spouse's contacts with his parents have only increased in frequency since they had their daughter.

In contrast, Applicant has limited contact with her spouse's grandmother, who resides in a nursing home and is no longer capable of attending to her affairs. The Government's case for a heightened risk with regard to her spouse's grandmother is not particularly persuasive in light of her elderly age and dementia. To the extent that AG ¶¶ 7(a), 7(b), and 7(d) are established with respect to her spouse's grandmother, there is less of a risk than in 2011, when Applicant and her spouse could sustain a meaningful relationship with her.

Applicant's spouse has infrequent contact with his brother. While not close siblings, their relationship is amicable. His brother calls him when he needs something

that he cannot get in Israel, or when matters arise involving their parents. His brother called him from Israel when their mother was ill in August 2013. Applicant and her spouse see his brother once or twice a year when they go to Israel or his brother is on business in the United States. Applicant does not otherwise have contact with her brother-in-law, but the tie through her spouse implicates AG ¶ 7(b) and ¶ 7(d).

Up until July 2011, Applicant's spouse had substantial financial assets in Israel, consisting primarily of an apartment that he co-owned with a cousin who lived in the United States. Presumably because of the sale of the property and his transfer of other assets from Israel to the United States, the DOD did not allege any foreign financial or property interest that could heighten Applicant's risk of any undue foreign influence or exploitation under AG ¶ 7(e) ("a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation"). Applicant's U.S. assets dwarf the pension funds (less than $10,000) and checking account deposits ($630) that her spouse still has in Israel.

Concerning potential factors in mitigation, AG ¶ 8(a) provides as follows:

> (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.

AG ¶ 8(a) is difficult to satisfy because of the closeness of Applicant's foreign ties, especially to her spouse and his parents; her brother-in-law's position with his employer in Israel and his ongoing reserve duty obligation in Israel; Israel's history of economic espionage directed at the United States; the risk of terrorist activity in Israel that has led the U.S. State Department to caution travelers to the country; and to some extent, her spouse's friendships with several Israeli resident citizens.[16]

Applicant has had limited contact with her spouse's friends who have Israeli citizenship and reside in Israel, or in some cases, in the United States. However, AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," cannot reasonably mitigate the risk of undue foreign influence because of the spousal relationship (her spouse still has Israeli citizenship) and her close and frequent contact with his parents in Israel. The contacts between them have increased since the birth of

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[16] The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Directive Section 6.3. *See, e.g.*, ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

her daughter. Applicant's contact with her brother-in-law in Israel may be infrequent, but the familial bond is not a casual one.

Applicant has demonstrated no loyalty to the country of Israel. Nonetheless, because of the closeness of her ties to Israeli citizens, especially to her spouse,[17] Applicant cannot arguably make a case for mitigation under the first prong of AG ¶ 8(b), which provides as follows:

> (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.

Several factors weigh in Applicant's favor in determining whether she can be expected to resolve any conflict of interest in favor of the United States, however. Applicant was born, raised, and educated in the United States. Her parents and brother are U.S. native-born citizens who reside in the United States. She has worked for the same U.S. defense contractor since shortly after she earned her bachelor's degree. Over the past 11 years, she has earned the respect of her professional colleagues and their U.S. government sponsor, not only for her technical contributions and dedication to her work, but also for her strict compliance with security regulations.

There is no evidence that she had any ties to Israel before she met her spouse online in April 2008. When she realized her relationship with an Israeli citizen was serious, she reported her involvement with a foreign national to her security office. She reported her trips to Israel on her return as required by her employer. Almost immediately after their engagement, she and her spouse sought legal assistance to ensure that he was in the United States legally. At that time, they briefly discussed the possibility of her moving to Israel, but they chose the United States in which to live, work, and raise any children. Applicant's spouse reported their marriage to the Israeli consulate, to ensure its legality and not to obtain any benefit from Israel. He was reasonable in doing so in light of his citizenship status as a citizen only of Israel at that time. In 2011, Applicant's spouse began divesting himself of his financial assets in Israel, well before he learned that Applicant's security clearance eligibility was under review because of his foreign contacts and interests. With $150,000 from the sale of his apartment in Israel, Applicant and her spouse bought their current residence in the United States. His remaining financial assets in Israel total less than $10,000 and are not likely to be a source of potential conflict for Applicant. Also consistent with their intent to pursue life in the United States, Applicant and her spouse made no effort to register the birth of their daughter with the Israeli authorities. Her spouse became naturalized in the United States in February 2013 and he is employed here. The

[17] Applicant's daughter was born before her spouse's U.S. naturalization. Israel may well consider their daughter to be a citizen of Israel, although Applicant and her spouse took no steps to report her birth to Israeli authorities.

persons to whom Applicant is closest (her spouse, child, parents, and brother) are all U.S. resident citizens.

Applicant has been forthright from the start about disclosing her spouse's foreign contacts and interests. She has had to balance her need for information and the risk that she might expose herself or her work to undue foreign attention. She understood the risk to her security clearance by becoming involved with a foreign national, and admitted that she would have continued to pursue a relationship with her spouse even at the cost to her job or clearance eligibility. Her priority for her spouse and their life together is only human, but it raises some concern about what she would do if placed in the untenable position of having to choose between him and her security responsibilities. Applicant testified credibly that she would report any conflict to her security office and appropriate law enforcement, and then resign from her job if necessary. Her resolve in this regard is untested. On the other hand, her professional colleagues, family members, and friends (AEs D1-D19) have the utmost confidence in her integrity, mature judgment, reliability, and trustworthiness. They are confident she would put the interests of the United States above those of her husband and his family if the situation arose. The steps her spouse has taken to divest himself of his financial interests in Israel and to acquire U.S. citizenship and a U.S. passport minimize the risk. After weighing the nature of her foreign ties to her spouse's family members against her lifelong and very substantial connections to the United States, I conclude AG ¶ 8(b) applies.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[18] Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

> Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that

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[18] The factors under AG ¶ 2(a) are as follows:

> (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.

an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. *See* ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant is cognizant of the potential risk of undue foreign influence because of her close familial ties to Israeli citizens. By reporting the issues to her employer and government sponsor and being careful not to disclose information that could compromise her or her work, Applicant has been proactive in dealing with the risk. The birth of her daughter has led to more frequent contacts with her parents-in-law, but there is nothing untoward about the nature of those contacts. Over the past five years since she met her spouse, she has continued to fulfill her duties with dedication as she has taken on responsibilities beyond her years and education level. Her spouse has established significant ties to the United States during that time that lessen rather than increase her vulnerability.

Applicant has handled classified material appropriately for the past 11 years. Her co-workers and her program sponsor have confidence in her ability to continue to abide by her security obligations. After carefully considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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

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

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge