DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 12-10042
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Jon Levin, Esq.
Brad English, Esq.
Andy Watkins, Esq.

08/04/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant, a naturalized U.S. citizen, mitigated the security concerns about his ties to and interests in Israel. He also mitigated the security concerns about his possession and use of an Israeli passport. Clearance is granted.

On March 6, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew a security clearance required for his work as an employee of a defense contractor. A review of the results of the ensuing background investigation, which included Applicant's responses to interrogatories from adjudicators for the Department of Defense (DOD), showed that it was not clearly consistent with the national interest for Applicant to have access to classified

information.[1] On February 11, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines[2] about foreign influence (Guideline B) and foreign preference (Guideline C).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on May 13, 2014, and I convened the requested hearing on June 18, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 and 2.[3] The Government also requested that I take administrative notice of general information germane to the issues in this case contained in 12 documents presented as enclosures to a legal memorandum.[4] Applicant proffered Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objection, and I granted Department Counsel's administrative notice request. Two witnesses also testified for Applicant.

Additionally, I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on July 7, 2014, when I received Applicant's post-hearing submissions. They have been included in the record without objection as Ax. D.[5] DOHA received the transcript of hearing (Tr.) on June 25, 2014.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's mother (SOR 1.a), father (SOR 1.b), two brothers (SOR 1.c), and two sisters-in-law (SOR 1.d) are citizens of and reside in Israel. It also was alleged that Applicant maintains contact with two friends who are citizens of and reside in Israel (SOR 1.e); that he maintains weekly contact with a business associate who is a dual citizen of Israel and Thailand (SOR 1.f); and that Applicant has an Israeli bank account containing about $13,000 (SOR 1.g). Under Guideline C, the Government alleged that Applicant possessed and used an Israeli passport after becoming a U.S. citizen; and that, although he had surrendered the foreign passport to his company security officer in February 2012, he retrieved it and used it for travel in May 2013. (SOR 2.a)

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[1] Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

[2] The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

[3] A copy of Department Counsel's letter forwarding the Government's exhibits to Applicant in advance of hearing is included in the record as Hearing Exhibit (Hx.) 1. Also, an index listing each exhibit is included in the record as Hx. 2.

[4] Included in the record as Hx. 3.

[5] Hx. 4 is an email from Department Counsel forwarding Ax. D, and waiving objection thereto. Ax. D is three pages long and consists of information showing the transfer of funds from Applicant's foreign bank account to his U.S. checking account.

Applicant admitted, with explanations and arguments, all of the SOR allegations. Based on my review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 36 years old. He was born and raised in Israel, and immigrated to the United States in 2005. Applicant became a naturalized U.S. citizen on August 1, 2011. He received a U.S. passport on December 8, 2011. It expires in December 2021. At the time he became a U.S. citizen, Applicant held an Israeli passport that was issued May 20, 2004 and expired on May 19, 2014. As of the hearing, he was still in possession of the expired Israeli passport. (Answer; Gx. 1; Ax. A; Tr. 100 - 101)

Applicant and his wife have been married since September 2007. She is a U.S. citizen by birth, as are their two children, ages four and two. Applicant was hired in February 2012 by a defense contractor. Applicant has not yet started work for the contractor pending the outcome of his clearance adjudication. Applicant has an excellent reputation in the community for honesty, volunteering, and reliability. (Gx. 1; Gx. 2; Ax. C; Tr. 20 - 28, 92 - 99)

After graduating from high school in 1995, Applicant served three years in the Israeli military, as is required of all Israeli males once they reach age 18. He has had no ongoing contact with the Israeli military and has no continuing military obligations in Israel. After he left military service, Applicant worked in Israel in the hotel industry, then went to school to learn information systems technology (IT). This led him to work for a bank as an IT specialist for about five years. During that time, Applicant enrolled in college but did not finish his degree. A cousin who owned a jewelry business in the United States offered Applicant a job in the U.S. Applicant accepted and, after he completed training in Israel, he moved to the United States in 2005 on a business visa. (Ax. 1; Gx. 1; Gx. 2; Tr. 29 - 36)

Applicant lived and worked for his cousin's company in State A until 2006, when he was hired by a different jewelry company and moved to State B, where he met his future wife in 2007. In 2009, Applicant left his job to follow his wife to State C, their current residence, after she accepted a job there. In September 2009, after a few months of unemployment, Applicant started his own jewelry business that still serves as his principal source of income. Applicant employs four salespersons and estimates his business is worth about $500,000. (Gx. 1; Gx. 2; Tr. 36 - 39)

As part of Applicant's jewelry business, he travels to annual international jewelers' shows in Thailand and Hong Kong every February. There he meets with prospective partners for manufacturing as well as gem suppliers. In 2013, he met an individual with whom he is now associated for manufacturing of Applicant's products. As alleged in SOR 1.f, that person is a dual citizen of Israel and Thailand. However, their relationship is strictly through arms-length business dealings. Applicant last saw this person at the 2014 jewelry show in Thailand. (Answer; Gx. 1; Gx. 2; Tr. 42 - 44, 82 - 84)

When Applicant was a child, his parents opened a savings account for him in Israel. When he disclosed it on his EQIP, he estimated it had a balance of about $13,000. At hearing, he testified he had learned the balance was actually about $27,000. Applicant has never drawn from that account, and has had the funds transferred to his bank in the United States. He will likely use it to benefit his two young children. Applicant has no other financial interests in Israel. He estimates his net worth in the United States to be about $30,000 excluding the value of his jewelry business and the funds recently transferred from Israel. Applicant and his wife bought a condo when they lived in State B. In 2009, they used the proceeds from the sale of their condo to purchase their current residence in State C for about $217,000. (Answer; Gx. 1; Gx. 2; Ax. B; Ax. D; Tr. 57 - 60, 70 - 72, 81 - 82)

Applicant's parents, two brothers, and his brothers' wives are all Israeli citizens. They all live and work in Israel. Applicant's father is retired. His mother was a kindergarten teacher, but now works only as a substitute teacher. Applicant's mother draws retirement benefits equivalent to a social security payment, but his father draws retirement income from his former employer and from insurance annuities the couple purchased as part of their retirement planning while they still worked full time. Neither of Applicant's parents have ever worked for the Israeli government. (Gx. 1; Gx. 2; Tr. 49 - 53)

Applicant's brothers also served for three years in the Israeli army as required. One brother works at a telephone company, where the brother's wife also works. The other brother owns a landscaping company. His wife works as a bank teller. Neither of Applicant's brothers or his sisters-in-law are employed by or in any way connected with the Israeli government or military. (Gx. 2; Tr. 53 - 57)

As alleged in SOR 1.e, Applicant also has two friends from high school with whom he stays in contact. Both are employed in private businesses. Aside from mandatory military service around the same time as Applicant, neither friend has any connection with the Israeli government or military. Applicant speaks with them a few times each year. (Answer; Gx. 1; Gx. 2; Tr. 77 - 80)

Applicant last saw his parents in January 2014, when they visited him in the United States. He has traveled back to Israel several times since 2005. All of his travel to Israel has been for family visits. Applicant speaks by telephone with his parents about once a week. He has monthly contact with his brothers and their families. He rarely uses email to communicate with his family. (Answer; Gx. 1; Gx. 2; Tr. 66, 72, 74)

Before he became a U.S. citizen, all of Applicant's travel included use of his Israeli passport. Applicant's first visit to Israel after his naturalization occurred in February 2012. When he entered Israel he used his Israeli passport instead of his U.S. passport. I regarded as credible his testimony that he did so without thinking and did not consider that he should have used his U.S. passport instead. When he returned to the U.S., he relinquished his Israeli passport to his facility security officer (FSO). He next traveled to Israel in June 2012 and did not take his Israeli passport. When he went

through customs on his way out of Israel, he was detained by authorities who wanted him to present his Israeli passport because, despite his naturalization in the U.S., he was still considered to be an Israeli citizen. In June 2013, when Applicant again traveled to Israel. He retrieved his Israeli passport from his FSO and used it to enter and leave Israel. He did so because of his previous experience with Israeli authorities. Applicant's Israeli passport expired in May 2014, but he did not use it again after June 2013. He has since applied to the Israeli government to renounce his Israeli citizenship so that he can travel to Israel solely on his U.S. passport without difficulty. He has been told that he will relinquish his expired Israeli passport when the renunciation of his Israeli citizenship is complete. (Answer; Gx. 2; Ax. A; Tr. 45 - 48, 65 - 69, 87)

Israel has an advanced, industrial market economy, and its government is characterized as a multi-party parliamentary democracy. (Hx. 3, Attachment I and IV) Since its founding in 1948, Israel and the United States have had close political, economic, and military ties based, in large measure, on common democratic values and mutual security interests in the Middle East. Israel has an independent judiciary and the government's human rights record is generally free of reports of widespread abuse by government officials. What human rights concerns exist stem predominantly from reports of discrimination and arbitrary detention in the course of Israeli counter-terrorism efforts. Israel is also one of the most active countries engaged in military and industrial espionage. Their efforts have been directed at hostile and friendly countries alike, including the United States. Overall, however, their interests are generally aligned with ours, especially where matters of regional security are concerned. (Hx. 3, Attachments II - IV)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,[6] and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

> (1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

[6] *See* Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest[7] for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.[8]

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.[9]

Analysis

Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about Applicant's personal relationships with Israeli citizens, and about his financial interests in Israel. The security concern about foreign influence is stated at AG ¶ 6 as follows:

> [f]oreign 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

[7] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[8] *See Egan,* 484 U.S. at 528, 531.

[9] *See Egan;* AG ¶ 2(b).

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.

More specifically, the following AG ¶ 7 disqualifying conditions pertain here:

(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;

(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

(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 has immediate family members who are citizens of and live in Israel. He also keeps in touch with two boyhood friends who are Israeli citizens and live in Israel. Applicant sees his parents and siblings whenever he travels to Israel, which he does at least annually. Applicant also has a business associate who is an Israeli citizen. As to Applicant's family members and boyhood friends, available information, including his frequent trips to Israel for family visits, shows that his foreign contacts are close and frequent. This is not the case regarding his business associate, with whom Applicant has infrequent contact limited to arms-length business communications. Nonetheless, the record requires consideration of AG ¶¶ 7(a) and (b). To be fully applicable, there must be "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Israel is an open democratic society with a good human rights record and close ties to the U.S. based on generally similar political, military and cultural interests. However, in pursuit of its own interests, Israel is also known to aggressively engage in industrial and economic espionage targeted against, inter alia, the United States. Thus, it must be acknowledged that such a heightened risk exists. AG ¶¶ 7(a) and 7(b) apply.

By contrast, the security significance of Applicant's association with Israeli citizens is mitigated through application of the following AG ¶ 8 mitigating conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of Applicant's family or friends is associated with the Israeli government. Applicant's father is retired from private industry and his mother is a part-time substitute teacher. Applicant's brothers and his high school friends work in private industry, and none of Applicant's family or friends in Israel are aware of Applicant's potential employment as a part-time translator. Further, Applicant has established a life in the United States that shows he is likely to act in the best interests of this country. He is married to a U.S. citizen and has two children born here. He also is a homeowner who has established a business in the United States that will continue to support him and his family even when he is working for a defense contractor. All of Applicant's financial assets are now in the United States and he has established a solid reputation in his community. The foregoing supports application of AG ¶¶ 8(a) and (b).

As to Applicant's financial interests in Israel, available information shows it was a savings account set up by his mother when he was young and that Applicant did not rely on its contents or contribute to it. The $27,000 balance is not insignificant when compared to Applicant's estimated net worth in the United States of about $30,000. Accordingly, AG ¶ 7(e) applies. But the funds are being transferred to his bank account in the United States, thus eliminating Applicant's only financial interest abroad. In addition to his personal net worth, Applicant also owns a small business in the United States estimated to be worth about $500,000. All of the information about his financial interests supports application of AG ¶ 8(f). On balance, I conclude that Applicant has mitigated the security concerns about foreign influence that were raised by the Government's information.

Foreign Preference

Available information about Applicant's possession and use of a foreign passport after obtaining U.S. citizenship is sufficient to raise a security concern about possible foreign preference. That concern is expressed at AG ¶ 9, as follows:

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.

More specifically, available information requires application of the disqualifying condition at 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.

Applicant used his Israeli passport twice after he became a U.S. citizen and had acquired a U.S. passport. In February 2012, during one of his frequent trips to Israel, Applicant used his Israeli passport to enter and exit Israel. He credibly testified that he did so without thinking because he had only recently acquired his U.S. passport. When he returned from Israel, he relinquished his Israeli passport to his FSO. When he next traveled to Israel later in 2012, he left his Israeli passport with his FSO and traveled solely on his U.S. passport. Despite his U.S. citizenship, however, Israeli authorities detained Applicant at the airport when he was to return to the U.S. They demanded he present an Israeli passport because Israel still considered him an Israeli citizen. After returning to the U.S., Applicant retrieved his Israeli passport from his FSO before he traveled to Israel in June 2013. AG ¶ 10(a)(1) applies.

Applicant did not use his Israeli passport again. It is still in Applicant's possession but is now expired, and Applicant has begun the process with the Israeli government to renounce his Israeli citizenship. Once that process is complete, Applicant will be able to relinquish the passport to the Israeli government. This information supports the following AG ¶ 11 mitigating conditions:

> (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.

Under the Guideline C mitigating conditions, an applicant is not required to actually relinquish his foreign citizenship. Here, the process to renounce Applicant's Israeli citizenship has begun. Also, his foreign passport has expired and is not likely to be renewed because of Applicant's renunciation action. Available information supports application of both AG ¶¶ 11(b) and 11(e). Applicant is not likely to exercise his rights as an Israeli citizen and has demonstrated a clear preference for the interests of the United States. I conclude Applicant has mitigated the security concerns raised by the Government's information under Guideline C.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible married father of two. Although Applicant has family and friends in Israel, he has established his life and loyalties in the United States. He is a successful businessman and father. He has a reputation in the workplace and his community for integrity and reliability. Applicant recognizes the security implications of his ties to Israel and his use of a foreign passport. To address the Government's concerns, he has been open and candid about his foreign ties, and he has taken the extraordinary step of renouncing his Israeli citizenship. The record supports a fair and commonsense determination that he has mitigated the disqualifying information in his background.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge