



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00848

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: Ronald C. Sykstus, Esquire

03/18/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 10, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on July 13, 2013.² On October 31, 2013, the DOD Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

¹ GE 1 (SF 86), dated September 10, 2012.

² GE 2 (Applicant's Answers to Interrogatories, dated July 12, 2013).

modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on November 7, 2013. In a sworn statement, dated November 7, 2013, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. However, on January 13, 2014, he withdrew that decision when he submitted an amended response to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 28, 2014, and the case was assigned to me on January 29, 2014. A Notice of Hearing was issued on February 3, 2014, and I convened the hearing, as scheduled, on February 26, 2014.

During the hearing, 3 Government exhibits (GE 1 through GE 3) and 63 Applicant exhibits (AE A through AE KKK) were admitted into evidence, without objection. Applicant and eight other witnesses testified. The transcript of the hearing (Tr.) was received on March 7, 2014.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the State of Israel (Israel), appearing in 12 written submissions. Facts are proper for administrative notice when they are easily verifiable by an authorized source, and relevant and material to the case. In this instance, the Government relied on source information regarding Israel in publications or press releases of the U.S. Department of State,³ U.S. Department of Commerce,⁴ the Congressional Research Service (CRS),⁵ the Interagency Operations

³ U.S. Department of State, *Country Specific Information: Israel, the West Bank and Gaza*, dated June 19, 2013.

⁴ U.S. Department of Commerce, Bureau of Industry and Security, Order Relating to Telogy LLC, dated May 5, 2010; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *New Jersey Firm Fined \$700,000 for Unlicensed Exports of Specialty Powders*, dated October 1, 2009; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *California Exporter Settles Criminal and Civil Charges for Illegal Exports of High Performance Oscilloscopes to Israel*, dated April 12, 2005; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Minnesota Company Settles Charges Relating to Illegal Exports*, dated December 15, 2003; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Israeli Man Settles Charges of Concealing Material Facts*, dated February 2, 2002; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Arizona Company Settles Charges of Illegal Exports of Lasers*, dated May 22, 2001; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Pennsylvania Company Fined for Export Violations Involving China and Israel*, dated March 15, 2011.

⁵ CRS, Library of Congress, *Israel: Background and U.S. Relations*, dated June 12, 2013.

Security Support Staff (IOSS),⁶ and the Office of the National Counterintelligence Executive (ONCIX).⁷

The press releases were presented apparently to substantiate that Israel actively pursues collection of U.S. economic and propriety information, and, therefore, Applicant's relationship with an Israeli friend and the friend's Israeli wife, both of whom reside in the Hellenic Republic (Greece), raised suspicion about him. None of the cases cited involved Applicant personally or involved espionage through any familial or friend relationship. The anecdotal evidence of criminal wrongdoing of other U.S. citizens or foreign citizens or companies is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family, was ever involved in any aspect of the cited cases or ever targeted by any Israeli intelligence official.

With regard to the ONCIX reports, I note that one is 14 years old, and the cited facts are based, in part, upon a private survey of "nearly a dozen selected Fortune 500 companies." The report does not indicate how the companies were selected, what companies were selected, or how they decided upon their input to the survey. The survey results do not indicate whether the collection of economic information was accomplished through "open" methods, such as reading a newspaper, that raise no security issues under the relevant criteria, or more covert methods that might raise security concerns. Furthermore, as the selected companies are unidentified, it is impossible to assess possible bias or determine if there is an existing anti-Israel economic or political agenda. For these reasons, I conclude the factual matters asserted by Department Counsel, as demonstrated by the proffered report, should be given less weight than information from a more authoritative source. It appears that the collection method of information changed after that report, and the above concern does not pertain to the subsequent ONCIX report.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁸ as set forth below under the Israel subsection. However, while I do not reject the facts set forth in the various press releases, the inference that Applicant or his family, or his Israeli

⁶ IOSS, *Intelligence Threat Handbook*, dated June 2004 (excerpts only).

⁷ ONCIX, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2005, dated August 2006; ONCIX, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2000, undated.

⁸ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the Internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). Tr. at 12-16.

friend and the friend's Israeli wife participated in criminal activity was not argued during the hearing and is specifically rejected.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegation (§ 1.a.) of the SOR. That admission is incorporated as a finding of fact.

Applicant is a 53-year-old employee of a defense contractor for which he has served as the senior member of the technical staff and aviation integrator since September 2012. He was previously a vice president - general manager, and a director of operations with different employers, as well as a self-employed consultant. Applicant was briefly unemployed from December 2005 until February 2006, and again from May 2012 until September 2012. He served in the U.S. Army inactive reserve from July 1977 until July 1997, when he was honorably retired as a sergeant first class.⁹ Applicant is seeking to obtain a security clearance, the level of which has not been specified. He was granted a secret clearance in 1977, and a top secret clearance in 1983. An interim secret security clearance was revoked for unspecified reasons in February 2013.¹⁰

Applicant was born in the United States in 1960 to parents, both of whom were also born in the United States.¹¹ A foster child from the age of 12, following his father's death and his mother's inability to raise him, Applicant attended five different high schools before he returned home and obtained his General Educational Development (GED) diploma.¹² He immediately enlisted in the U.S. Army. He subsequently received a bachelor of science degree in business administration in management, *summa cum laude*, in July 2009,¹³ and a master's degree in business administration (MBA) in December 2010.¹⁴ Applicant was married three times: the first marriage, to a woman born in Germany, lasted from October 1978 until October 1987;¹⁵ the second marriage, to a woman born in the United States, was from March 1989 until July 1995;¹⁶ and in November 1996, Applicant married another woman born in the United States.¹⁷ In addition to his own two children (a daughter born in 1993, and a son born in 1995), he

⁹ GE 1, *supra* note 1, at 16-17; AE A (Certificate of Retirement, dated August 1, 1997).

¹⁰ Tr. at 29, 52-53.

¹¹ GE 1, *supra* note 1, at 5, 21-22.

¹² Tr. at 24-25.

¹³ AE BBB (Transcript, dated August 3, 2009).

¹⁴ AE AAA (Transcript, undated).

¹⁵ GE 2 (Personal Subject Interview, dated November 5, 2012), at 2. Applicant's first wife is now deceased.

¹⁶ GE 2 (Personal Subject Interview), *supra* note 15, at 2.

¹⁷ Tr. at 53-54; GE 1, *supra* note 1, at 19-20.

also has two stepchildren. All of the children and stepchildren were born in the United States.¹⁸

Military Service

During his military career, Applicant was awarded the Meritorious Service Medal, the Army Commendation Medal (three awards), the Army Achievement Medal (three awards), and the Good Conduct Medal (four awards),¹⁹ as well as numerous certificates of achievement or appreciation, and letters or memoranda of commendation, appreciation, or congratulations. One such letter of appreciation was from a major general.²⁰

Foreign Influence

This case is somewhat unusual for the security concerns of the DOD adjudicators regarding Applicant arise not because he was born in, or currently has family members in, Israel; because he has a business or professional associate or friend in Israel; because Applicant has a substantial business, financial, or property interest in Israel; because he is sharing living quarters with a person or persons, and that relationship creates a heightened risk of inducement, manipulation, pressure, or coercion by any governmental entity of Israel; or that Israeli representatives or nationals are acting to increase Applicant's vulnerability to possible future exploitation, inducement, manipulation, pressure, or coercion. Instead, the sole identified reason for the security concern is that Applicant has a "close association" with a citizen of Israel, who resides in Greece, and that individual owns a business that specializes in particular electronic security and surveillance systems, and he has conducted business with various foreign private businesses and governments. In other words, it is the position of the DOD CAF that Applicant's connections to that individual creates "a potential conflict of interest between [Applicant's] obligation to protect sensitive information or technology and [Applicant's] desire to help a foreign person, group, or country by providing that information."

The individual in question was born in Romania, raised and educated in Israel, and served with the Israeli Defense Force (IDF) on active duty and as a member of the reserve as a paratrooper and paramedic.²¹ He is a dual citizen, holding citizenship in

¹⁸ GE 1, *supra* note 1, at 23-25; Tr. at 54.

¹⁹ AE C (Certificate, dated September 19, 1994); AE D (Certificate, dated August 10, 1993); AE K (Permanent Orders, dated July 6, 1990); AE Q (Permanent Orders, dated ----, 1987); AE U (Certificate, undated); AE W (Permanent Orders, dated August 27, 1985); AE Z (Certificate, dated January 4, 1985); AE BB (Permanent Orders, dated January 8, 1985); AE EE (Permanent Orders, dated June 18, 1984); AE DD (Certificate, dated June 28, 1984); AE FF (Certificate, dated May 30, 1984); AE GG (Permanent Orders, dated May 3, 1984); AE II (Permanent Orders, dated January 23, 1984); AE UU (Permanent Orders, dated January 14, 1981); AE XX (Certificate, undated).

²⁰ AE G (Letter, dated December 10, 1991).

²¹ GE 3 (*Curriculum Vitae*, dated August 21, 2013); AE CCC (E-mail, dated September 9, 2012).

both Israel and Greece,²² is married to a Greek national,²³ and has permanently resided in Greece since 1997.²⁴ He has developed surveillance systems for various Greek law enforcement agencies, the U.S. Army, various types of ships, including cruise ships and research ships, worldwide, as well as hotels, colleges, casinos, and airlines in Greece, Israel, and elsewhere throughout the world.²⁵ His adult children reside in Israel, and one minor child resides with him and his wife in Greece.²⁶ Other than his active duty and reserve service with the IDF between 1975 and 1997, Applicant's "associate" never had any affiliation with the Israeli government, intelligence service, or any political party.²⁷

Applicant first met the individual in question in 2004 when Applicant was tasked by his employer at that time to train the individual in the operation of some equipment that had been purchased by the Greek Army. The individual would then, in-turn, train members of the Greek Army in Greece. The assignment was completed, but Applicant was subsequently tasked to augment the training in Greece. Applicant traveled to Greece to fulfill his obligations, accompanied by his wife. The individual and his wife met Applicant and his wife at the airport and served as chaperones and translators during the stay.²⁸ At that time, Applicant's relationship with the individual was merely professional. However, the two wives developed a closer relationship. Later that same year, the individual's wife visited Applicant and his wife for five days over the Thanksgiving holiday. The individual did not accompany her to the United States.²⁹ The two wives bonded over shopping and sightseeing. There was little interaction over the next two years.

In 2006, Applicant and his wife flew to Greece on vacation and joined the individual and his wife at their home for a few days before heading out to an island for a week, where they learned about Greek culture and enjoyed Greek food. Applicant and his wife returned to Athens for a couple of days before returning home.³⁰ In 2008, Applicant was tasked with representing his employer at a three-day worldwide conference in Greece. He and his wife returned to Greece and they stayed with the individual and his wife. They remained some extra days simply laying by the beach and enjoying each other's company.³¹ The last time Applicant and the individual saw each

²² GE 3, *supra* note 21.

²³ GE 3, *supra* note 21; Tr. at 32.

²⁴ GE 3, *supra* note 21.

²⁵ GE 3, *supra* note 21.

²⁶ GE 3, *supra* note 21.

²⁷ GE 2 (Personal Subject Interview), *supra* note 15, at 3.

²⁸ Tr. at 31-32.

²⁹ Tr. at 32.

³⁰ Tr. at 33-34.

³¹ Tr. at 34-35.

other face-to-face occurred during that trip in 2008, approximately six years ago.³² Since 2004, the families have exchanged intermittent e-mails, and have occasionally used Skype. Applicant estimated the number of “contacts” during the entire period to be more than 75 times.³³ They generally discuss family issues, politics, and the economies in the United States and Greece.³⁴ They rarely have telephone contact.³⁵ The contacts between the families have tapered off over time, and eventually, because of the security concerns alleged by the DOD CAF, Applicant’s contacts with the individual essentially ceased, and they have had no contact, except for the exchange of Christmas gifts, or a New Year’s Skype, since about August 2013.³⁶

In September 2012, Applicant described his relationship with the individual as “close friends.”³⁷ In his Answer to the SOR, Applicant described the relationship as “merely friends with no business ties.”³⁸ During the hearing, Applicant explained that his wife’s relationship with the individual’s wife was the stimulus behind his continuing relationship with the individual. As a result, the four of them developed a closer relationship over the years.³⁹ That relationship is characterized more as a family relationship or personal relationship rather than a close personal relationship.⁴⁰ Since they have not met face-to-face in such a long period, that friendship has “waned a little bit,” but Applicant still considers the individual to be “just a friend.”⁴¹ Although Applicant once loaned the individual \$200, which was never repaid, neither Applicant nor his wife has any investment interests in the individual’s business.⁴²

The business activities of Applicant and the individual are in different spheres. Applicant’s former company, the one for which he worked when he met the individual, was into the manufacture of chemical and biological warfare decontaminants which were spun off into commercial products for mold and for the decontamination of clandestine methamphetamine laboratories.⁴³ His present employer is into software design and support for modeling and simulation of specific missile defense systems.⁴⁴

³² Tr. at 35.

³³ GE 2, *supra* note 2, at 6-7.

³⁴ Tr. at 35-36; Applicant’s Answer to the SOR, at 1.

³⁵ GE 2 (Personal Subject Interview), *supra* note 15, at 3.

³⁶ Tr. at 46-47.

³⁷ GE 1, *supra* note 1, at 28.

³⁸ Applicant’s Answer to the SOR, at 1.

³⁹ Tr. at 44-45.

⁴⁰ Tr. at 54-55.

⁴¹ Tr. at 58-59.

⁴² Tr. at 37, 51-52.

⁴³ Tr. at 41-42.

⁴⁴ Tr. at 56-57.

The individual's company specializes in developing and installing surveillance systems.⁴⁵

Applicant denied any preference, sympathy, or allegiance with foreign interests or governments,⁴⁶ and stated that his foreign relationships have never, nor will they ever, be used to pressure, blackmail, or coerce him in any way.⁴⁷ He does not believe there should be one iota of a security concern regarding any "divided loyalties" on his part.⁴⁸

Character References

The president of Applicant's employer, Applicant's senior manager/direct supervisor, friends, and past and present co-workers are effusive in their praise for him. Applicant has been characterized as very discrete, trustworthy, loyal, dedicated, completely honest, patriotic, eager, friendly, dependable, well-liked, deliberate, enthusiastic, committed to excellence, and extremely professional. He possesses excellent moral character and judgment.⁴⁹ When several congressional office buildings were contaminated with anthrax, Applicant served as the lead technician for two weeks while decontaminating the area at the risk of his own life, using his employer's decontaminant foam and equipment.⁵⁰

Israel

In his motion for administrative notice, Department Counsel highlighted nine factors regarding Israel derived from the identified publications that he felt were significant. Included in those factors were the following: "The Government of Israel 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[.]" and "U.S. citizens visiting Israel have been subjected to prolonged questioning and thorough searches by Israeli authorities upon entry or departure. In some cases, Israeli authorities have denied U.S. citizens access to U.S. consular officers during the temporary immigration detention." Both factors are essentially irrelevant and immaterial, as Applicant has never been a citizen of any country but the United States, and he has never attempted to enter Israel.

⁴⁵ GE 3, *supra* note 21; Tr. at 50.

⁴⁶ GE 2 (Personal Subject Interview), *supra* note 15, at 3.

⁴⁷ GE 2, *supra* note 2, at 15.

⁴⁸ Tr. at 38.

⁴⁹ AE III (Character reference, dated February 21, 2004); AE JJJ (Character reference, dated February 22, 2004); AE KKK (Character reference, dated February 16, 2004); Tr. at 64-102.

⁵⁰ Tr. at 68.

In addition, Department Counsel emphasized five factors related to individuals and companies selling classified documents to Israel, disclosing classified information to Israeli diplomats and lobbyists, violating export controls, illegally exporting restricted technology to Israel, and illegal technology transfers to Israel. Such information is considered anecdotal evidence of criminal wrongdoing of other U.S. citizens or foreign citizens or companies. As such, as noted above, it is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family, was ever involved in any aspect of the cited cases or ever targeted by any Israeli intelligence official. The two remaining factors cited by Department Counsel are: Israel is one of the active collectors of proprietary information, and Israel is a major global arms exporter.

Israel is a parliamentary democracy of nearly 7.7 million people, drawn from more than 100 countries. As such, Israeli society is rich in cultural diversity and artistic creativity. Following a proposed United Nations (UN) partition plan under which Palestine would be divided into separate Jewish and Arab states, and a British withdrawal from the area, in May 1948, Israel proclaimed its independence. It was immediately invaded by armies from neighboring Arab states which rejected the UN partition plan. The initial conflict was concluded by armistice agreements in 1949. The United States was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence.

Following the armistice, Israel and its Arab neighbors have, over the ensuing decades, engaged in periodic hostilities involving national military forces attacking each other. In addition, because of Arab support of several terrorist organizations, including Hamas, Al-Fatah, and Hezbollah, there have been an increasing number of terrorist incidents, including rocket attacks, kidnappings, and suicide bombings in Israeli cities, and retaliatory Israeli actions across Israel's borders. Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests. U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. Due to the volatile security environment in those areas, the United States continues to warn against any travel to them. Hamas, a U.S. State Department-designated foreign terrorist organization - violently assumed control over Gaza in 2007. No official travel is permitted inside the Gaza Strip and official travel to the West Bank is restricted to mission-essential business or mission-approved purposes.

In 1967, the UN Security Council adopted Resolution 242, the "land for peace" formula, which called for the establishment of a just and lasting peace based on Israeli withdrawal from all territories occupied in 1967 in return for the end of all states of belligerency, respect for the sovereignty of all states in the area, and the right to live in peace within secure recognized boundaries. In 1979, Israel and Egypt signed a peace treaty, and in 1994, Israel and Jordan signed a peace treaty. In 1995, Israel and the Palestine Liberation Organization (PLO) signed an interim agreement. Nevertheless, Israel's right to exist has been threatened and terrorist incidents occur with increasing frequency.

Most Israelis enjoy a middle class standard of living, and per capita income is on a par with some European Union member states. Israel generally respects the human rights of its citizens, although there have been some issues pertaining to the treatment of Palestinian detainees and discrimination against Arab citizens. Despite the instability and armed conflict that have marked Israel's relations within the region since 1948, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, metal products, processed foods, chemicals, and transport equipment. Israel is a world leader in software development.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests, and the United States is Israel's largest single trading partner. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. As of 2011, \$22.1 billion in Israel's exports went to the United States while \$14.3 billion in imports came from the United States. The U.S. Trade Representative (USTR) is required by law to identify countries which deny adequate and effective protection of intellectual property rights. In 2005, the USTR placed Israel on its Priority Watch List. In 2012, Israel was one of 13 such countries including, Argentina, Canada, and Chile.

Israel and the United States do not have a mutual defense agreement. Nevertheless, on several occasions, former President George W. Bush declared that the United States would defend Israel militarily in the event of an attack. The United States has pledged to ensure that Israel maintains a "qualitative military edge" over its neighbors, and has been a major source of Israeli military funding. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use part of its foreign military assistance grant for procurement spending from Israeli defense companies. Israel was one of the first countries designated "a major non-NATO ally," affording it preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. Israel and the United States are partners in the strategic defense initiative "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. The two countries participate in joint military exercises and collaborate on military research and weapons development. Arms agreements between Israel and the United States limit the use of U.S. military equipment to defensive purposes. 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 has voiced concerns about Israeli settlements, Israel's military sales to China, Israel's inadequate protection of U.S. intellectual property, and espionage-related cases implicating Israeli officials. Israel was listed as one of the seven nations, along with China, Japan, France, Korea, Taiwan, and India, that aggressively targeted U.S. economic properties in 2000. Israel was not specifically so identified in 2005, unlike China and Russia, both of which were specifically identified as aggressive collectors of sensitive and protected U.S. technologies. As noted above, some Israeli military members, as well as a variety of individuals and companies from

the United States have been implicated in the improper export to Israel of protected U.S. technology and intellectual property.

Greece

Greece, an important partner of the United States, is a member of the North Atlantic Treaty Organization (NATO), and occupies a strategic location in the Eastern Mediterranean on the southern flank of NATO. It contributes to NATO operations in Afghanistan, did so in Kosovo, and is active in counterterrorism and counter-piracy maritime efforts.⁵¹

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁵² As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵³

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁴ The Government initially has the burden of producing evidence to establish

⁵¹ AE HHH (U.S. Department of State, Bureau of European and Eurasian Affairs, Fact Sheet: *U.S. Relations With Greece*, dated September 10, 2013).

⁵² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁴ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4,

a potentially disqualifying condition under the Directive, and it has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁵

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁵⁶

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁵⁷ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁶ *Egan*, 484 U.S. at 531

⁵⁷ See Exec. Or. 10865 § 7.

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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁵⁸ Applicant's relationship with his friend, who is a dual citizen of Israel and Greece, and who resides in Greece, is the current security concern for the Government.

The guideline notes several conditions that could raise security concerns, but only one such condition might apply here. Under AG ¶ 7(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* is potentially disqualifying. I find AG ¶ 7(a) applies in this case. However, the security significance of this condition requires further examination of Applicant's relationship with his friend to determine the degree of "heightened risk" or potential conflict of interest.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁵⁹

Nevertheless, the relationship between a foreign government and the United States is relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in

⁵⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

⁵⁹ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

that foreign country. As noted above, Israel and the United States have a close friendship, with the United States committed to Israel's security. The United States' efforts on behalf of Israel are to see that Israel maintains a "qualitative military edge" in the region. Israel receives preferential treatment in bidding for U.S. defense contracts and substantial economic aid. Nevertheless, the interests of the United States and Israel are not always completely aligned, for each country has its own self-interests, especially in the areas of national security and economics.

Israel has been listed as an aggressive collector of sensitive and protected U.S. technologies. 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 friend or relative. While Applicant's friend may maintain his Israeli citizenship, he is also a citizen and full-time resident of Greece. There may be speculation as to "some risk," but that speculation, in the abstract, does not, without more, establish sufficient evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

There is no evidence that Applicant's friend is, or has been, a political activist, challenging the policies of the Israeli government; has ever had any affiliation with the Israeli government, intelligence service, or any political party (other than his service with the IDF); that terrorists have approached or threatened him for any reason; or that the Israeli government has approached Applicant. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Israeli government, which may seek to quiet those who speak out against it.

Throughout the world, and especially in Israel, terrorist attacks are a continuing threat. 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 in the abstract because Applicant has no association with anyone within Israel (since his friend resides in Greece), 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 or those who reside in, or visit, Greece, 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 or his friend for any reason.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where *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.* Similarly, AG ¶ 8(b) may apply where the evidence shows

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. In addition, AG ¶ 8(c) may apply where 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.

Applicant's relationship with his friend is such that it is highly unlikely that Applicant will be placed in a position of having to choose between the interests of that friend or Israel, and the interests of the U.S. The friend's sole connections with Israel are that he is a citizen of Israel, with grown children in Israel. But, he has not resided in Israel since 1997. Except for periodic business activities throughout the world, including Israel, his business is not based in Israel. He is a Romanian-born citizen of Greece, and has resided in Greece with his Greek wife for a period of 17 years. There may have been terrorist attacks by Hamas, Al-Fatah, and Hezbollah, in Israel, the West Bank, and Gaza. Many of those terrorist incidents, including rocket attacks, kidnappings, and suicide bombings, may have been directed at American interests, including U.S. tourists, students, residents, and U.S. mission personnel. However, neither Applicant nor his friend is located in Israel, and those actions have little significance on the situation here.

Applicant is an honorably retired U.S. Army sergeant first class who was granted a secret clearance in 1977, and a top secret clearance in 1983. His interim secret security clearance was revoked for unspecified reasons in February 2013. His entire family, including parents, wife, and children, are native-born U.S. citizens. They still reside in the United States. Like many individuals, Applicant and his wife enjoy periodic visits to Greece. There is no conflict of interest, because Applicant's sense of loyalty or obligation to his friend is so minimal, and Applicant has such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any potential conflict of interest in favor of the U.S. interest.

Applicant's relationship with his friend has evolved over time. They have socialized face-to-face in 2004, 2006, and 2008. Applicant and his wife stayed with his friend during the visits in 2006 and 2008. They initially maintained contact or communication with the friend and the friend's wife with more frequency, but as the years passed, the relationship has waned. The present relationship, primarily through e-mail and Skype, is relatively casual and infrequent. There is little likelihood that Applicant's relationship with his friend could create a risk for foreign influence or exploitation. AG ¶¶ 8(a), 8(b), and 8(c) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and his family - his wife, children, and stepchildren, as well as his surviving parent - are native-born U.S. citizens residing in the United States. His Romanian-born friend is a dual citizen of Israel and Greece, residing and working in Greece. Applicant's relationship with his friend has evolved into a more casual and distant relationship. Applicant is not vulnerable to direct coercion or exploitation through his friend, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to his friend is low.

Decisions concerning Israel must take into consideration the geopolitical situation in that country, as well as the potential dangers existing there. Israel, like the United States, is a democracy. Both countries have been victims of Islamic terrorists. Because both nations share a common vision for the future, it is in Israel's interests to maintain friendship with the United States to counterbalance international terrorism. It is very unlikely Israel would forcefully attempt to coerce Applicant through his relationship with his friend who does not even reside in Israel. Furthermore, while there is evidence that Israel is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations, there is no evidence that Applicant has been targeted.

As noted above, Applicant is well respected by his friends and colleagues for his honesty, integrity, and truthfulness. That he and his friend keep in periodic contact should not be considered a negative factor. (See AG ¶¶ 2(a)(1) through 2(a)(9).)

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

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

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge