



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



In the matter of:)
)
) ISCR Case No. 14-00295
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Lyn R. Agre, Esq.

10/15/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. He has mitigated the foreign influence concern raised by his familial contacts with his wife, a U.S. permanent resident who is a citizen of Israel, and his parents-in-law, who are citizens and residents of the same. Clearance is granted.

Statement of the Case

On March 13, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on August 18, 2014, I admitted Government's Exhibits (GE) 1 and 2, over Applicant's objection.² Applicant's Exhibits (AE) A and B were admitted without objection. I received the transcript (Tr.) on August 27, 2014.

Procedural Issues

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Israel. This request was granted over the objection of Applicant's counsel. The written summary, along with its attachments, is appended to the record as Hearing Exhibit (HE) 1.³

Findings of Fact

Applicant, 31, has worked for a federal contractor off and on since 2002. He has worked in his current position as a security supervisor in an international airport since 2010. Since working at the airport, Applicant has been recognized for his security consciousness. In 2006, Applicant encountered a military member attempting to fly with classified information. Applicant worked with the military member to ensure the secured items received proper screening without compromising the contents of the package. He has also received certificates of appreciation from the Transportation Security Administration and his employer. Applicant's supervisors and government client endorse his security clearance application.⁴

Born in Ukraine, Applicant immigrated to the United States as a child with his parents and grandparents in 1994. He became a naturalized U.S. citizen in 2001. Applicant married his wife, an Israeli citizen, in January 2008. Applicant met his wife through a mutual friend in November 2007, while she was in the United States visiting a family member. They married after a brief courtship. Before immigrating, Applicant's wife completed compulsory military service in 2000. She worked as a secretary and her duties did not require access to classified information. After immigrating to the United States, Applicant's wife worked as a teacher for one year before becoming a stay-at-home mother. Currently, Applicant's wife holds permanent resident status and she has applied for U.S. citizenship. Applicant and his wife have three children under five years old, all of whom are U.S. citizens by birth. Although they are entitled to Israeli citizenship through their mother, Applicant and his wife do not have any plans to seek Israeli citizenship for them.⁵

² Applicant objected to GE 2, citing improper foundation and incompleteness. The exhibit contains information regarding the company that employs Applicant's father-in-law. The parties stipulate that Applicant's father-in-law is employed by a defense technology firm.

³ Tr. 18.

⁴ Tr. 27-34; GE 1, AE A –B.

⁵ Tr. 20-22, 38-40, 43, 48-50, 53-56, 60-62, 66-68, 72; GE 1.

Applicant's parents-in-law are residents and citizens of Israel, a parliamentary democracy with strong historic and cultural ties with the United States. Commitment to Israel's security has been a cornerstone of U.S.-Middle East policy since Israel's inception. Both countries have a mutual interest in a peaceful, secure Middle East. On July 27, 2012, President Obama signed the United States-Israel Enhanced Security Cooperation Act. The goal of this legislation is to strengthen the military edge that Israel enjoys over its regional enemies. Despite the favorable relationship between the countries, Israel aggressively targets sensitive U.S. technology. There have been some cases of U.S. government employees who have been prosecuted and convicted of spying against the United States for Israel. There have also been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel.⁶

Applicant's mother-in-law works as a home health aide; his father-in-law is an employee of an Israeli defense technology company. Although the company is a provider of technological solutions to the Israeli Defense Forces, the company operates internationally developing defense solutions for export abroad. Applicant's father works as a technician, but neither Applicant nor his wife know significant details of her father's employment or if he has a security clearance from the Israeli government. Conversely, Applicant's in-laws are aware that Applicant works at an airport, but do not know the specifics of his employment. Applicant testified that he and his father have never discussed their professions. Although not alleged, Applicant's wife also has two siblings who are citizens and residents of Israel. Her brother is a musician and her sister works as a secretary for a private company. Both have completed their compulsory military service. From the record, it does not appear that either Applicant or his wife maintain regular contact with her siblings.⁷

However, Applicant's wife does maintain frequent contact with her parents. They speak on the phone several times a week. Applicant's wife is teaching their children Hebrew so that they can communicate with their grandparents. Applicant and his wife have traveled to Israel together three times to visit her parents. Applicant's last trip occurred in 2009 and he has no immediate plans to return. Applicant's parents-in-law have been to the United States four times. The first visit occurred after Applicant and his wife became engaged. Their last three visits have corresponded to the births of each of their grandchildren. Applicant does not have independent relationships with his in-laws due to the language barrier. Applicant is not fluent in Hebrew, his parents-in-law's native tongue, and his in-laws are not proficient in English. Applicant sends his in-laws occasional emails to share pictures of his children.⁸

Neither Applicant nor his wife has any foreign or financial property interests. They own their home in the United States. Their bank accounts are U.S.-based. Applicant

⁶ HE I.

⁷ Tr. 25-26, 43, 57-60, 62-66, 68-70.

⁸ Tr. 22-25, 40-44, 46, 55-56, 61, 69-70.

does not provide any financial support to any members of his wife's family living in Israel.⁹

Policies

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁹ Tr. 23, 35-37, 47-48, 64-65.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”¹⁰ The record shows that Applicant has familial ties to Israel, an active collector of U.S. defense technologies. Applicant’s foreign contacts, in particular those with his father-in-law, an employee of a large Israeli defense technology company, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.¹¹

Although Applicant’s communication with his in-laws is infrequent, primarily due to the language barrier between them, his ties to them cannot be dismissed as casual. Applicant’s wife remains close to her parents and she is fostering the same closeness with their children. It is possible that Applicant could be induced or coerced through pressure placed on his wife. However, based on the administrative materials provided by the Government, this is an unlikely scenario.

Applicant does not maintain any independent ties, personal or financial, with Israel, nor has he sought to create any. Applicant has not sought Israeli citizenship for his children and has no plans to do so. His wife, a U.S. permanent resident, is in the process of applying for U.S. citizenship. Applicant closest personal ties, his parents, children and wife, as well as all of his financial resources are in the United States. Applicant’s relationship with his in-laws does not create a conflict of interest because his loyalties and relationships are so deeply rooted within the United States that he can be expected to resolve any conflict in favor of U.S. interests.¹²

I have no doubts about Applicant’s ability to protect classified information. I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant has demonstrated that he does not have divided loyalties between the United States and Israel. Furthermore, he has worked in an area directly related to national security since 2002 and has received accolades and awards for handling of security issues. Based on the evidence, I conclude that Applicant has mitigated the foreign influence concern.

¹⁰ AG ¶ 6.

¹¹ See AG ¶ 7(a).

¹² See AG ¶ 8(b).

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

Subparagraphs 1.a - 1.c: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge