



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



In the matter of:)	
)	
)	ISCR Case No. 14-01801
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 20, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 7, 2013. On July 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 18, 2014. He answered the SOR in writing (Answer) that same date, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on September 2, 2014. DOHA issued a notice of hearing on September 4, 2014, and I convened the hearing as scheduled on September 30, 2014. The Government offered Exhibits (GXs) 1 and 2,

which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on October 9, 2014. I granted Applicant's request to keep the record open until October 31, 2014, to submit additional matters. On October 28, 2014, he submitted Exhibit (AppX) A, which was received without objection. The record closed on October 31, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

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

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in of the SOR, with explanations; except for Subparagraph 2.c., which he denied. He also provided additional information to support his request for eligibility for a security clearance.

Guideline C - Foreign Preference

The 56 year-old Applicant was born in Israel. (TR at page 17 line 22 to page 18 line 1.) He immigrated to the United States in 1999, along with his wife and three children. (TR at page 18 line 5 to page 19 line 7.) Prior to coming to the United States, he served as a reservist in the Israeli Defense Force (IDF), and worked for an Israeli defense contractor, but did not have an Israeli security clearance. (TR at page 20 lines 1~20.) His reserve obligation to the IDF ended in 1999. (TR at page 22 line 24 to page 25 line 9.)

1.a. and 1.b. Applicant is a dual national of both Israel and the United States. (TR at page 25 line 9 to page 27 line 7.) For emotional reasons, he has no intention of renouncing his Israeli citizenship, and uses his Israeli passport to travel to and from Israel. (*Id.*) He travels to Israel on an "average of one and a half [times] a year." (TR at page 43 line 4 to page 44 line 2.) Applicant uses his U.S. passport for his other foreign travel. (TR at page 27 line 9 to page 28 line 12.)

Guideline B - Foreign Influence

2.a. Applicant's wife is also a dual national of both Israel and the United States. (TR at page 28 line 13 to page 29 line 10.) For emotional reasons, she too has no intention of renouncing her Israeli citizenship, and she possesses an Israeli passport. (*Id.*)

2.b. Applicant has two daughters who are dual nationals of both Israel and the United States. (TR at page 29 line 19 to page 32 line 2.) His son is not yet a U.S. citizen, as he served two years in the IDF; and as such, “did not spend the full five years here [in the United States],” required in order to apply for U.S. citizenship. (*Id.*)

2.c. and 2.d. Applicant’s mother is deceased, but his 92 year-old father is a citizen of and resides in Israel. (TR at page 32 line 4 to page 33 line 18.) His father would be upset were Applicant to renounce his Israeli citizenship. (*Id.*) Applicant communicates to his father “almost daily” on the phone. (TR at page 33 line 25 to page 35 line 3.) His father lives in a “senior home,” and supports himself with a non-government pension. (TR at page 35 line 4 to page 36 line 15.)

2.e. Applicant’s 59 year-old sister is a citizen of and resides in Israel. (TR at page 33 lines 19~24.) He speaks to her “once every two weeks, but . . . [they also] exchange pictures and digital information.” (TR at page 36 lines 21~25.) She is a retired teacher; and as such, Applicant believes she receives a pension from the Israeli government. (TR at page 37 lines 3~9.)

2.f. Applicant’s mother-in-law and father-in-law are both citizens and residents of Israel. He has a “very” strong relationship with his mother-in-law, less so with his father-in-law who “is a more reserved person.” (TR at page 38 line 7 to page 39 line 22.) He speaks to his mother-in-law “once a week,” and also communicates through their computers. (TR at page 38 line 22 to page 39 line 16.) Both now retired, his mother-in-law was a hospital tech, and his father-in-law was a technician with a private company. (TR at page 39 line 25 to page 40 line 22.) They both live off of their non-government pensions. (*Id.*)

Applicant’s brothers-in-law is are citizens of and resides in Israel. (TR at page 40 line 23 to page 41 line 9.) One works for a biological center that Applicant believes “belongs to the Israeli Government.” (*Id.*)

1.g. Applicant has several friends who are citizens of and resides in Israel. On in particular is a supervisor who works in border security for the government. (TR at page 41 line 10 to page 43 line 3.)

1.h. Applicant served in the Israeli Army, both on active duty and in the reserves, for about 23 years, when his obligation was finished. (TR at page 44 line 9 to page 46 line 20.) His “final rank” was that of a “Major.” (*Id.*)

1.i. In about 11 years in 2025, Applicant will receive a pension from a private Israeli company worth about \$800 a month. (TR at page 46 line 21 to page 47 line 24.)

I also take administrative notice of the following facts. 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. In 2000, Israel was listed as one of the active collectors of proprietary information. Israeli military officers have been

implicated in technology collection in the United States. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted , dual-use technology to Israel. Israel is also a major arms exporter whose customers include China and Russia.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

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.

Subparagraph 10(a)(1) is applicable: “*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.*” Here, the Applicant, a dual national with Israel, possesses a current Israeli passport. He uses his Israeli passport for travel into and out of Israel. I find no countervailing mitigating condition that is applicable here. Subparagraph 11(b) notes that where “*the individual has expressed a willingness to renounce dual citizenship,*” this is mitigating. However, Applicant expressed in no uncertain terms, due to his emotional ties to his Israeli family, his unwillingness to renounce his Israeli citizenship or surrender his Israeli passport.

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” It is clear that Applicant has strong emotional ties with his father, his sister, and with his in-laws in Israel. His son recently served in the IDF, and Applicant has a close friend who is a supervisor and works in border security for the Israeli government. Again, I find no countervailing mitigating condition that is applicable here, as it can not be said that “*the*

nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.” On the contrary, Applicant could easily be placed in that position.

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. 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.

The Administrative Judge should also 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.”

Applicant has the unqualified support of those who know and work with him. (Answer and AppX A.) I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Foreign Preference and Foreign Influence.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge