DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04735
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2016

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of his native Israel and the United States, who renewed his Israeli passport in April 2012 despite his longtime U.S. residency and citizenship. The security concerns raised by his renewal and use of his Israeli passport are mitigated by his surrender of that passport in August 2013. Applicant maintains close ties to his children, sister, and some friends in Israel. The foreign influence concerns are not fully mitigated. Clearance is denied.

Statement of the Case

On February 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence, and explaining why it was unable to grant or continue a security clearance to Applicant. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant filed a *pro se* response to the SOR allegations on February 20, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 23, 2015, I scheduled a hearing for August 18, 2015.

At the hearing, two Government exhibits (GEs 1-2) and two Applicant exhibits (AEs A-B) were admitted without objection. Applicant testified, as reflected in a transcript (Tr.) received on August 26, 2015. Based on Applicant's testimony, I amended the SOR at the request of the Government to conform to the evidence presented, as set forth below. Additionally, the Government requested that I take administrative notice of several facts pertinent to Israel and its relationships with other countries, including the United States.[1] I agreed to take administrative notice, but held the record open after the hearing for Applicant to submit a response.

On September 7, 2015, Applicant submitted a letter from his employer, which was marked as AE C, and five recent articles intended as his rebuttal to the Government's Administrative Notice request. On September 14, 2015, Department Counsel responded that the documents were not appropriate for administrative notice, but that the Government did not object to their admission as evidence. On September 16, 2015, I admitted AE C and asked Applicant to confirm whether he intended to submit the other documents in evidence or as facts for administrative notice. On September 19, 2015, Applicant proffered the documents in evidence. Accordingly, I accepted the documents collectively as AE D.

Procedural and Evidentiary Rulings

SOR Amendment

Based on Applicant's testimony, the Government moved to amend the SOR under ¶ E3.1.17 of the Directive to add the following allegation under ¶ 2, Guideline B:

> 2.d. Your son is a dual citizen of Israel and the United States and he resides in Israel.

I granted the motion on good cause shown. The information was not known to the Government before the hearing but was known to Applicant, who filed no objection.[2]

[1]The Government provided a copy of its Administrative Notice request to Applicant only days before the hearing. Applicant nonetheless indicated that he had an adequate opportunity to review the request, and he objected to its relevance to his case. I agreed to take administrative notice, but held the record open to give Applicant more time to review the source documents, which the Government indicated could be obtained via the Internet at the web addresses provided in its request; to comment on the facts submitted by the Government for administrative notice; and to propose facts for administrative notice.

[2] The Government initially moved to amend the SOR to add an allegation 2.e that Applicant's son-in-law is a citizen of Israel. After it was shown that the information was of record and known to the Government

Administrative Notice

At the hearing, the Government requested administrative notice of several facts pertinent to Israel, as set forth in an Administrative Notice request dated August 12, 2015. The Government's request was based on several government publications referenced in the document.[3] At Applicant's hearing, Department Counsel acknowledged that despite an assertion to the contrary in the Administrative Notice request, Applicant had not been provided copies of the source documents. Copies of the documents were not provided for the record or to Applicant at the hearing.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (*see* ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant was given time after the hearing to access the source documents via the Internet addresses provided by the Government, and he submitted his response on September 7, 2015. On September 14, 2015, Department Counsel indicated that he did not object to the admission of Applicant's documents in evidence, but they were not appropriate for administrative notice. AE C, a letter from Applicant's employer, was admitted into evidence. On September 19, 2015, Applicant indicated that he wanted the documents regarding the relationship between Israel and the United States submitted as evidence in his case. The documents were accepted into the record collectively as AE D.

With the decision on Applicant's security eligibility still pending, the DOHA Appeal Board remanded ADP Case No. 14-01655 on November 3, 2015, for the administrative judge to incorporate in the record the "official notice documents" relied on by the Government but identified only by URL in the case record. Citing ISCR Case No. 02-24875 (App. Bd. Mar. 29, 2006), the Appeal Board stated in part: "[b]ecause of the dynamic nature of the Internet, a reference to a document's URL in the case record would not necessarily be sufficient to preserve the matter for meaningful appellate review."

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before the SOR was issued, Department Counsel withdrew that allegation.

[3] The Government's request for administrative notice was based on the U.S. State Department's *Country Specific Information: Israel, the West Bank and Gaza*, dated September 11, 2014; the State Department's *Travel Warning–Israel*, dated February 18, 2015; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2000* and its *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2005*; a news release from the U.S. Department of Commerce's Bureau of Industry and Security reporting an order related to an export violation issued May 5, 2010; the U.S. Department of Justice's *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases, January 2008 to January 23, 2015*; the U.S. State Department's Country Reports on Human Rights Practices for 2014-Israel, dated August 2015; and the Congressional Research Service's *CRS Issue Brief for Congress,* Israel*: Background and Relations with the U.S.*, updated October 26, 2005.

Administrative notice is not taken of the source documents in their entirety, but of specific facts properly noticed and relevant and material to the issues. Accordingly, to preserve the record for appeal and to ensure that the parties are fully apprised of the source information from which facts would be administratively noticed, I reopened the record on January 26, 2016, for Department Counsel to submit into the record, with a copy to Applicant, of the documents identified as I through VIII in his August 12, 2015 Administrative Notice request. Department Counsel was given a deadline of February 18, 2016, to comply. The pages of the source documents specifically relied on by the Government were submitted on February 17, 2016, and with the August 12, 2015 Administrative Notice request, were incorporated into the record as Hearing Exhibit 1.

On February 26, 2016, Applicant requested an opportunity to respond to the source information submitted by the Government for my review. Applicant filed a response by the March 7, 2016 deadline. His response, dated March 5, 2016, was not admitted in evidence but was incorporated in the record as Hearing Exhibit 2. The Government filed no rebuttal by the March 14, 2016 deadline for comment.

Concerning the facts submitted for administrative notice, Department Counsel requested that I notice cases involving espionage by some U.S. government employees and illegal export cases implicating Israeli officials and companies. While that information is relevant to the issue of whether Israel actively pursues collection of U.S. intelligence and economic and proprietary information, none of the cases involved Applicant personally or involved espionage through any family relationships. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, given there is no evidence that Applicant or any member of his family was involved in any aspect of the cited cases. Additionally, as correctly noted by Applicant in his March 5, 2016 response, some of the information relied on by the Government is more than ten years old and must be evaluated in light of its age. Some of the reports relied on by the Government have been updated.[4] With these caveats, the facts administratively noticed are set forth below.

Summary of SOR Allegations

The amended SOR alleges Guideline C, foreign preference, security concerns because Applicant obtained an Israeli passport in April 2012 (SOR ¶ 1.a) and used his Israeli passport to travel to Israel in April 2012 (SOR ¶ 1.b). Guideline B, foreign influence, security concerns are alleged because Applicant's daughter is an Israeli resident (SOR ¶ 2.a); Applicant's sister, brother-in-law, and cousin are Israeli resident citizens (SOR ¶ 2.b; Applicant maintains friendships with Israeli resident citizens,

[4] For example, the CRS Issue Brief for Congress regarding Israel and its Background and Relations with the United States, has been updated several times since the October 26, 2005 report relied on by the Government. The CRS issued publications on July 6, 2007, February 26, 2008, September 8, 2008, February 14, 2011, November 7, 2012, June 12, 2013, July 22, 2014, and July 31, 2014. The State Department Travel Warning that was in effect as of Applicant's hearing was recently replaced by a travel warning issued on December 16, 2015. The Government submitted the updated travel warning for my review.

including two very close friends with whom he has contact (SOR ¶ 2.c); and Applicant's son is a dual citizen of Israel and the United States, who resides in Israel (SOR ¶ 2.d).

When he answered the SOR, Applicant admitted that he had renewed and used his Israeli passport as alleged. Israel requires its citizens, even those who hold dual citizenship, to enter Israel on an Israeli passport. However, he did not know when he renewed his Israeli passport that it could impact his future eligibility for a security clearance. On commencing his employment with a U.S. defense contractor, he relinquished his Israeli passport to the Israeli Consulate. Applicant also admitted the Guideline B allegations, but he denied that he had divided loyalties or foreign financial interests. A longtime resident of the United States and citizen since 1985, Applicant indicated that he had no control over the decision of his adult daughter to move to Israel ten years ago. As for his contact with family and friends in Israel, "[t]hey are simply the result of having immigrated to the United States and making the effort to stay in touch with family and friends."

Findings of Fact

Applicant's admissions to his renewal and use of his Israeli passport in April 2012, to the Israeli residency of his daughter and son, and to the Israeli citizenship and residency of other family members and friends, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 64-year-old electrical engineer with an M.B.A degree. He has worked for several defense contractors over the years. (AE B.) There is no evidence that he has ever held a DOD security clearance, but he was vetted and apparently approved to work on some sensitive equipment in his previous job. (Tr. 100.) Applicant began working for his current employer in June 2013. He requires a DOD security clearance for his present job. (GEs 1, 2; AE C.)

Applicant was born in Israel. His parents and his sister immigrated to Israel from their native Romania in 1946. Applicant's father, who owned a business, died in 1971. Applicant was around 20 years old and performing compulsory military service in Israel at the time of his father's death. Applicant's mother passed away in 2008 in Israel. Applicant's sister, now age 82, is a longtime resident citizen of Israel, who worked as a secretary for an Israeli company until she retired around 1994. (GEs 1, 2.)

In May 1969, Applicant graduated from a technical high school in Israel. He served as a private in the infantry for the Israeli Defense Force between January 1970 and January 1973. From September 1974 to May 1976, he earned the equivalent of an associate degree in electrical engineering. (GEs 1, 2; Tr. 36-38.) He then worked as an electrical technician in Israel for a commercial company in Israel. (Tr. 39.)

In November 1976, Applicant married a native citizen of Israel. (GE 1; Tr. 41-42.) Applicant and his spouse came to the United States in June 1978 with the support of

her sister, who was a citizen and resident of the United States. Applicant voted in Israeli government elections when he was residing in Israel. He has not voted in any Israeli election since moving to the United States in 1978. (GE 1.)

From September 1979 to June 1982, Applicant pursued his bachelor's degree in electrical engineering at a public university in the United States. He and his spouse had their first child, a daughter, in November 1979. Shortly after the birth in March 1982 of another daughter, Applicant and his spouse bought their current residence in the United States. In April 1988, they had a son. Their three children are dual citizens of the United States and Israel. They acquired Israeli citizenship derivatively from their mother's Israeli citizenship. (GEs 1, 2; Tr. 67.)

In October 1984, Applicant and his spouse became naturalized U.S. citizens. They took no action to renounce their Israeli citizenship, and they held both U.S. and Israeli passports, renewing them when they expired. Applicant used his U.S. passport for foreign travel except on trips to Israel, when he entered the country on his Israeli passport as required of Israeli citizens under Israeli law. Applicant traveled to Israel to visit his mother every year or two until her death in 2008. (GEs 1, 2; Tr. 42.)

In July 2005, Applicant's elder daughter married an Israeli citizen, who had moved to the United States in 2003. He has U.S. permanent residency and works as an assistant store manager for a supermarket in the United States. They have two sons. In 2006, Applicant's younger daughter moved to Israel. As of August 2013, she was employed by a nonprofit organization in Israel. (GEs 1, 2.)

Applicant traveled on business to Turkey for his previous employer from December 2006 to January 2007. He spent approximately one week in Israel during that trip to visit his mother. Applicant went to Israel on business in January 2008 and again in March 2008, as a technical representative for his employer to the Israeli Air Force. Applicant spent another week in Israel in May 2008 when his mother died. Applicant returned to Israel for two to three weeks in June 2010 and in April 2012 to visit family members (his younger daughter, his sister, and his wife's brother). Applicant also visited an Israeli couple with whom he and his spouse have had a close friendship for almost 40 years. In April 2012, Applicant renewed his Israeli passport for another ten years, to comply with Israeli law that requires Israeli citizens to enter the country on an Israeli passport, and he used his Israeli passport to enter and exit Israel. Applicant and his spouse vacationed with their three children in Italy before going on to Israel, and he used his U.S. passport in Italy. (GEs 1, 2.)

In January 2013, Applicant separated from his employment of almost 14 years, reportedly due to a conflict with his manager over the direction of their work. Applicant was unemployed until he began working for his current employer in early June 2013. On July 23, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP) incorporated within an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance needed for his position. Applicant disclosed his and his spouse's dual citizenship with Israel and the United

States; his possession of a U.S. passport valid to October 2015 and of an Israeli passport to April 2022; his former military service for Israeli; his voting in Israeli elections until 1978; and his foreign travel. Applicant reported only the U.S. citizenship status for his three children, but he disclosed that his younger daughter was living in Israel. Applicant disclosed the Israeli citizenship and residency of his sister, with whom he had occasional correspondence by email and telephone, and added that she had worked for an Israeli company until her retirement in 1994. (GE 1.)

Applicant responded affirmatively on his QNSP to whether he had any close and/or continuing contact with a foreign national within the last seven years with whom he or his spouse are bound by affection, influence, common interests, or obligation. He explained that he has telephone, email, and in-person contact in the United States and Israel with his wife's brother and with an Israeli couple, whom he has known since 1975. Applicant became acquainted with the couple through his wife and developed a close friendship with the husband over the years.[5] The husband had owned a business in Israel before he retired while the wife still works as a nurse at an Israeli hospital. Applicant added that he has several other friends in Israel with whom he is in contact once every couple of years, but he did not name them. Applicant also answered "Yes" to an inquiry concerning any foreign financial interests. He disclosed that he was in the process of settling his mother's estate, which he valued at $0 reportedly on the advice of his employer's facility security officer. Applicant was unable to assign a value to the property because it could take several years to settle his mother's estate due to a conflict between rabbinical and civil law in Israel. His mother died without a will. Judaic rabbinical law, which would pass the property to him, conflicts with Israeli civil law, in which his sister has inheritance rights. The issue would have to be settled in court. Applicant listed in response to foreign travel inquiries his multiple trips to Israel within the last seven years. (GE 1.)

During the security clearance application process, Applicant's employer advised him that he may have to relinquish his Israeli passport. (Tr. 101-102.) Applicant contacted the Israeli consulate, and was told that he could surrender his Israeli passport without relinquishing his Israeli citizenship. (Tr. 102.) On August 5, 2013, Applicant's employer verified for the Israeli consulate that Applicant had been employed by the defense contractor since June 3, 2013; that he requires a DOD industrial security clearance for his work as an advanced engineer; and that DOD adjudicative guidelines require that Applicant provide proof of his surrender of his non-U.S. passport. (AE C.) On August 6, 2013, Applicant relinquished his Israeli passport to the Israeli consulate for the stated purpose of receiving a U.S. DOD industrial security clearance. The consulate issued a letter to the effect that Applicant's Israel passport had been cancelled for the purpose of receiving a DOD clearance. (AE A.) Applicant was advised that a copy of the letter would be provided to the Israeli government. (Tr. 50.) According to Applicant, the Israeli consulate would not have cancelled the passport of an Israeli citizen for any purpose other than the expressed need for a DOD clearance. (Tr. 49.) Applicant took no steps to renounce his Israeli citizenship because he was told by the Israeli consulate that he did not need to do so to surrender his Israeli passport. (Tr. 45.)

[5] Applicant explained at his hearing that their spouses attended nursing school together in Israel. (Tr. 71.)

On August 28, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He acknowledged that he has family and friends who reside in Israel and that he returns to Israel to visit them. He indicated that he maintained his dual citizenship with Israel because it allowed him to hold an Israeli passport affording easier entry into Israel. However, in consideration of his employment with a DOD contractor, Applicant had surrendered his passport to the Israeli consulate. He provided the letter from the Israeli consulate confirming the surrender. Applicant expressed willingness to renounce his Israeli citizenship if the needs of his clearance demanded it. Applicant professed allegiance to the United States while acknowledging a cultural affinity to Israel because of his birth there and because he has family and friends who reside there. Applicant provided details about the employments of these foreign citizens and the extent of his contacts with them. Applicant described his contact with his sister, who is married to a retired bus driver, as monthly via Skype or telephone. Applicant explained that his children are considered to be Israeli citizens by virtue of his and his spouse's heritage. His older daughter works as a psychologist in the United States while his younger daughter moved to Israel in 2006 and works in an administrative capacity for a non-profit organization. Applicant reported bi-weekly contact by telephone or Skype with his daughter in Israel. Applicant explained that his son was employed as a mechanical engineer with a chemical company in the United States. (GE 2.) His son has a bachelor's degree in chemical engineering and a master's degree in "green energy" from universities in the United States. (Tr. 61-62.)

Applicant's indicated that he had weekly telephone contact with his spouse's brother, who retired from a managerial position with an Israeli telephone company. Applicant had monthly contact with his close friend in Israel, who had a scrap metal salvaging business before he retired. As for any other foreign friends, Applicant explained that he was in contact by email or telephone once a year or less with two old friends from high school. One friend works as a bank clerk while the other friend is a retired mechanic. Applicant volunteered that he visits a female cousin and her husband in Israel every couple of years. His cousin works as a physical education instructor and her spouse is a zoologist at a university. Applicant denied any vulnerability to foreign influence because of his foreign family members and friends. None had any connection with the Israeli government or had more than a general knowledge of Applicant's current employment with a defense contractor. (GE 2.)

As for his listed foreign financial interest, Applicant explained that his mother had no assets but her apartment, and neither he nor his sister holds clear title to the property. Applicant's younger daughter resides in the property pending a legal resolution of ownership. (Tr. 55.) Applicant speculated that the property will eventually be sold and the proceeds split between him and his sister. He did not anticipate the matter being settled before he retires. Concerning his business travel to Israel in January 2008 and March 2008 for his previous employer, Applicant elaborated that he went to several military bases in Israel in support of a contract his employer had with the Israeli Air Force. He was unable to provide any specifics regarding the Israeli personnel with whom he dealt. He had no contact with them after he completed his work. (GE 2.)

Applicant's son moved to Israel in late 2014 and is currently performing his compulsory military service for Israel. (Tr. 60, 69.) In July 2015, Applicant and his spouse vacationed in Europe with their three children, including their son, before traveling on with their older daughter and her family to Israel to visit other family and friends. They visited Applicant's sister, Applicant's spouse's brother, and the married couple with whom they have shared a close friendship for some 40 years. (Tr. 69, 72.) Applicant understood from the Israeli consulate that he would have to present the letter noting his surrender of his Israeli passport at the Israeli border. (Tr. 43-44, 48.) Applicant was informed at the border that the surrender of his passport for a DOD clearance was already documented in Israel's computer records. (Tr. 48-50.)

As an executive secretary for a nonprofit in Israel, Applicant's younger daughter helps individuals find employment. (Tr. 63, 93.) She rented her own apartment before she moved into her grandmother's apartment after her grandmother died. (Tr. 65.) She pays the property taxes on the apartment. (Tr. 55, 57.) As of August 2015, neither Applicant nor his sister had started pursuing a legal resolution to ownership of the property. (Tr. 58.) Applicant has had weekly or bi-weekly contact with his son since his son moved to Israel. (Tr. 62.) Applicant's son did not explain to Applicant why he decided to move to Israel or how long he plans to stay. (Tr. 85.)

Applicant's sister and her husband receive a benefit comparable to U.S. social security from the Israeli government. (Tr. 51.) Applicant's sister has three adult children. Applicant did not see his sister's son or two daughters during his trip to Israel in July 2015. (Tr. 53.) Applicant's relatives in Israel know the name of his employer and that he works with systems, but he had not discussed the specifics of his work with them. (Tr. 93-94, 107.)

Applicant's older daughter spent six months at a university in Israel on an exchange program when she was in college. Her spouse has yet to acquire his U.S. citizenship. (Tr. 66.) The couple's two sons are considered Israeli citizens by Israel. (Tr. 67.)

Applicant's spouse is a self-employed rental property manager for properties owned by her sister. (GE 2; Tr. 106.) Applicant estimates that they net $5,000 in monthly income. Applicant and his spouse own their home outright. (GE 2.)

After reviewing the documents submitted by the Government for administrative notice, AE D, and Hearing Exhibit 2, I note the following facts with respect to Israel:

Israel is a vibrant parliamentary democracy with a modern economy. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a robust, diversified, and technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment. Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem as a result of the 1967 war. In 1994, the Palestinian Authority was established in the Gaza Strip and West Bank, although the

Islamic Resistance Movement (HAMAS), a U.S. designated foreign terrorist organization (FTO), took control of the Gaza Strip in June 2007. The U.S. State Department advises U.S. citizens to take due precautions when traveling to Israel and the West Bank, and strongly warns against travel to the Gaza Strip. While there is no indication that U.S. citizens, including tourists, students, residents, and U.S. government personnel, have been specifically targeted based on their nationality, more than 12 U.S. citizens were among those killed and injured in multiple attacks in 2014 and 2015. Since October 2015, attacks on individuals and groups have increased in frequency in various places in Israel, including Jerusalem, the West Bank, and Tel Aviv.

All persons applying for entry to Israel, the West Bank, or Gaza are subject to security and police record checks by the Israeli government and may be denied entry or exit without explanation. The Israeli government considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. Children born in the United States to Israeli parents usually acquire both U.S. and Israeli nationality at birth. According to the U.S. State Department, Israeli citizens, including dual nationals, must enter and depart Israel on their Israeli passport. U.S. citizen visitors have been subjected to questioning and thorough searches by Israeli authorities on entry or departure. Israeli authorities have denied access of some U.S. citizens to U.S. consular officers, lawyers, and family members during temporary detention. Some travelers have had their laptop computers and other electronic equipment searched at the airport, with some equipment retained for lengthy periods and reportedly damaged, lost, destroyed, or never returned. On occasion, Israeli security officials have requested access to travelers' personal email accounts or other social media accounts as a condition of entry.

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

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being, predicated on Israel maintaining a "qualitative military edge" over other countries in its region. Strong U.S. congressional support for Israel resulted in the country being designated as a "major non-NATO ally" in 1989 and receiving preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. With the phase out of economic aid to Israel in 2007, U.S. bilateral aid to Israel is the form of foreign military financing, currently at $3.1 billion a year until fiscal year 2018. In December 2014, Congress passed the United States Israel Strategic Partnership Act of 2013, which provides additional support for defense and energy, and expands cooperation in business and academics. Several large American corporations already have major research and development centers in Israel. Israel and the United States

have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the United States have established joint groups to further military cooperation. The two countries participate in joint military exercises, collaborate on military research and weapons development, and share intelligence. The United States has committed to deliver the first F-35 Joint Strike Fighter to Israel in 2016.

Yet, the interests of the two countries are not always aligned. 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. Israeli-U.S. relations have been strained during Israeli Prime Minister Netanyahu's second administration and the Obama administration, particularly over Israeli settlements in the West Bank. The United States is the principal international proponent of the Arab-Israeli peace process and views the growth of Israeli settlements as an impediment to the success of peace negotiations. Negotiations to end the Israeli-Palestinian conflict are presently at an impasse. Israel perceives threats from Iran; Iranian-sponsored non-state actors, such as the Lebanese Shiite group Hezbollah; and violent jihadist terrorist groups in the region, such as the Islamic State. Israel's concerns about a nuclear-weapons-capable Iran as an imminent threat to its security have led Israel to criticize the international agreement that lifted the sanctions on Iran. Demographic trends in Israel have led to the emergence of nationalistic and conservative elements, more hawkish on foreign policy and security.

The United States has also expressed concern about Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. U.S. government employees (e.g., Jonathan Pollard in 1985, who acted as an agent for Israel) and U.S. government contractors have been implicated in providing classified and sensitive information to Israel. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence in 2000. Israel was not named specifically in the National Counterintelligence Executive's (NCIX) *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage—2005.* In October 2005, a DOD analyst pleaded guilty to two counts of conspiracy related to his transfer of classified national defense information concerning Iran to an Israeli diplomat. In 2009, a scientist who once held U.S. government security clearances up to Top Secret pleaded guilty to attempted espionage for providing classified information to a person he believed to be an Israeli intelligence officer. In May 2010, a U.S. company was assessed a $76,000 civil penalty, in part for exporting an oscilloscope controlled for nuclear non-proliferation reasons to Israel through Canada without a license. The transfer by sale of U.S. defense articles or services to Israel and all other foreign countries is subject to the Arms Export Control Act and implementing regulations as well as the 1952 Mutual Defense Assistance Agreement between the United States and Israel. The Government presented no information of recent activities implicating Israel in industrial or economic espionage.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C—Foreign Preference

The security concern relating to the guideline for foreign preference is articulated in AG ¶ 9:

> 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.

Applicant is a citizen of his native Israel from birth and of the United States by choice. Retention of foreign citizenship acquired from birth out of respect for one's ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. *See* AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country." However, after Applicant became a naturalized U.S. citizen in October 1984, he retained his Israeli passport and used it to travel to Israel every year or two to visit family and friends. In recent years, he went to Israel in early 2007 to see his mother; in January 2008 and March 2008 on business for his then employer; in May 2008 on his mother's death; and in June 2010, April 2012, and July 2015 to visit family members and close friends. Before his trip in April 2012, he renewed his Israeli passport for another 10 years to comply with Israeli law requiring its citizens enter the country on an Israeli passport. He used his Israeli passport to enter and exit Israel on that trip. While Applicant used his U.S. passport for his foreign travel to other countries, his renewal, use, and possession of an active Israeli passport after his naturalization in the United States raises significant issues of foreign preference under AG ¶ 10(a):

> (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.

AG ¶ 10(b),"action to acquire or obtain recognition of a foreign citizenship by an American citizen," is implicated only in that Applicant's renewal of his Israeli passport at the Israeli consulate in April 2012 was an action obtaining official recognition of his Israeli citizenship.

The United States does not encourage dual nationality because of the competing obligations that could arise, but he is not required to renounce his foreign citizenship for security clearance eligibility. During his August 28, 2013 interview with the OPM investigator, Applicant indicated that he maintained his dual citizenship with Israel because it allowed him to hold an Israeli passport affording easier entry into Israel. At his hearing, he explained that it was required by foreign law and not simply a matter of convenience. Either way, AG ¶ 11(a) does not mitigate an intentional exercise of foreign citizenship or the risk of unverifiable travel raised by his renewal and use of his Israeli

passport. Applicant's renewals of his Israeli passport over the years show his willingness to comply with a requirement of his Israeli citizenship.

During his subject interview, Applicant expressed his intent to renounce his Israeli citizenship if necessary for a security clearance. AG ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," is not applicable to a conditional willingness to renounce, especially when he has taken no steps to give up his Israeli citizenship.

However, in consideration of his employment with a DOD contractor, Applicant had surrendered his passport to the Israeli consulate. During the security clearance application process, Applicant was informed by his employer that he may have to relinquish his Israeli passport. On verification from Applicant's employer of his need for a DOD industrial security clearance for his work as an advanced engineer, the Israeli consulate cancelled Applicant's Israeli passport on August 6, 2013. AG ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," applies. Applicant's timely compliance with the DOD requirement to relinquish his Israeli passport is mitigating of the foreign preference concerns.

Guideline B—Foreign Influence

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

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant and his spouse are dual citizens of their native Israel and the United States, where they were naturalized in October 1984. Their children were born in the United States but are also considered Israeli citizens by the Israeli government. The younger of their daughters and their son are both currently living in Israel. Applicant's sister and her husband, Applicant's cousin, Applicant's spouse's brother, and a married couple with whom Applicant and his spouse have shared a close friendship for some 40 years, are resident citizens of Israel. Applicant also maintains some contact, albeit infrequent, with two friends from high school, who are both Israeli resident citizens. AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence:

> (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Applicant's contention that there is no connection between human rights violations during wartime by Israel and his request for security clearance is not persuasive. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Israel and the United States have long had a close friendship. The United States is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in its region. Israel receives preferential treatment in bidding for U.S. contracts and substantial military aid from the United States. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." *See* ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Israel was among the most aggressive collectors of U.S. economic intelligence as of 2000. There is no recent report showing direct involvement by the Israeli government targeting the United States. However, U.S. government employees and U.S. government contractors have been implicated in economic espionage activity in the United States to benefit Israel, including as recently as 2011. The United States remains concerned about Israeli settlements, Israel's military sales to other countries such as China, and Israel's inadequate protection of U.S. intellectual property.

There is no evidence that Applicant's and his spouse's family members or close friends in Israel have been targeted or pressured. Considering the nature of the Israeli government and society, it is unlikely that the Israeli government would attempt coercive means to obtain sensitive information. There is no evidence that Israel has used coercive methods. However, it does not eliminate the *possibility* that Israel would employ some non-coercive measures in an attempt to exploit a relative. Israel faces threats by jihadist groups, other terrorist organizations, and states in the region that are avowedly anti-Israel. Within Israel, many of those attacks are directed at, not only Jewish or Israeli interests, but American interests as well. However, a distinction must

be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to combat and minimize the risk presented by terrorism. Also, there is no evidence that terrorists have approached or threatened Applicant's and his spouse's family members or their friends in Israel.

Yet, there are several factors, which collectively if not also on their own, create the heightened risk addressed in AG ¶ 7(a). Applicant, his spouse, and the elder of their two daughters enjoy the protections of U.S. citizenship and residency. This daughter's husband is an Israeli citizen with U.S. permanent residency. Although Applicant's younger daughter and son have dual citizenship, they are actively exercising their Israeli citizenship over their U.S. citizenship. Applicant's daughter has been a resident of Israel since 2006. She works for a nonprofit helping others find employment. She lives in, and pays the property taxes for, an apartment in which Applicant and his sister have an unsettled inheritance interest. Applicant's son moved to Israel in 2014. His current military service for Israel heightens the risk of undue influence. Little is known about his son's duties or his future plans.

Applicant's sister and her husband are retirees who receive a benefit akin to U.S. social security from the Israeli government. There is nothing about their previous occupations as a secretary and as a bus driver that heighten the security risk. Similarly, there is no indication that Applicant's cousin's present occupation as a physical education teacher or his brother-in-law's previous occupation as a manager in a telephone company brought any undue attention from the Israeli government, intelligence services, or military. Likewise, Applicant's close friend owned a scrap salvage business before he retired. His friend's wife is a nurse. One of Applicant's high school friends works for a bank. The other is a retired mechanic. To the extent that any risk of undue foreign influence remains from these family members and friends, it is because they reside in a country where there is a risk of them being random victims of a terrorist act.

AG ¶ 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," and AG ¶ 7(d), "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion," largely apply because of the close bonds that Applicant and his spouse share to their children in Israel. Applicant and his spouse understandably have regular contact with their adult children. They also have ongoing correspondence with his sister, her brother, and their close friends. They visit these family members and friends when they are in Israel, including as recently as July 2015.

The Government has not alleged that Applicant has any substantial financial asset in Israel. He testified, with no evidence to the contrary, that he has an inheritance

interest in his mother's apartment in Israel, which currently serves as his daughter's residence. He provided no value for the interest because the conflict between rabbinical law and civil law needs a legal resolution. Certainly, when compared with his U.S. assets, which include his employment income and home ownership, the property is unlikely to be a source of manipulation or inducement, even with his daughter living in the apartment. His daughter rented an apartment in Israel between 2006 and 2008, and there is no reason to indicate she would be unwilling to rent in the future if need be. AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation," is not a consideration in this case.

Concerning AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country," there is no indication that Applicant has engaged in any untoward conduct during any of his trips to Israel. Yet, his previous business trips to Israel in 2008 took him to several Israeli air bases, and Israel is well aware that he needs a DOD security clearance for his current work as an advanced engineer for a defense contractor. The Government did not move to amend the SOR to note the apparent exception which allowed him to surrender his Israeli passport as an Israeli citizen, so it cannot provide a separate basis for disqualification. Even so, it cannot be ignored in assessing the risk of undue foreign influence in light of his strong bonds with Israeli resident citizens and the likelihood of future travel to Israel to visit them.[6]

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

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

AG ¶ 8(a) is difficult to satisfy because of the closeness of Applicant's foreign ties, especially to his daughter and son in Israel; his son's current military service for Israel; Israel's history of economic espionage directed at the United States; and the risk of terrorist activity in Israel that has led the U.S. State Department to caution travelers to the country.

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

Applicant has had limited contact with his two high school friends who are Israel resident citizens. However, AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," cannot reasonably mitigate the risk of undue foreign influence because of the close parental, sibling, and friendship relations that exist to other Israeli residents with Israeli or dual Israeli-U.S. citizenship. The family bonds that Applicant has to his children, sister, brother-in-law, and, to a lesser extent his cousin, cannot be considered casual. The longevity of his and his spouse's friendship with the Israeli couple belies any claim that their relationship is so casual as to be covered under AG ¶ 8(c).

Applicant asserts allegiance to the United States, where he has lived since 1978, pursued his career, and raised his children. He described his affinity to Israel as cultural, although his dual citizenship and his compliance with Israeli law regarding passport use by Israeli citizens take his case beyond that of an immigrant who is merely trying to stay in touch with family and friends. His active exercise of Israeli citizenship for so many years makes it difficult to conclude that he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict in the United States interest, particularly in the case of any undue influence or pressure against his children in Israel. Applicant may have no control over the decisions of his adult son and daughter, who as of now have chosen to live as Israeli citizens. For Applicant's son, it means fulfilling his military duty to Israel. Mitigating condition AG ¶ 8(b) does not fully apply:

> (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.

Applicant's surrender of his foreign passport is consistent with his U.S. citizenship and DOD requirements. At the same time, concerns arise about what he would do if placed in the untenable position of having to choose between his family and friends in Israel and his security responsibilities. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at

AG ¶ 2(a).[7] Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

> Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. *See* ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

There is no indication that any of Applicant's family members or friends have acted for Israel to the detriment of the United States. That does not end the inquiry, however. Due to persistent Guideline B concerns, I am unable find it is clearly consistent with the national interest to grant a security clearance for Applicant.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a(1):	For Applicant
Subparagraph 1.a(2):	For 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

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

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

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.

Elizabeth M. Matchinski
Administrative Judge