

DATE: October 31, 2001

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0317

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the US who was a citizen of Israel solely by virtue of his birth and has not actively pursued his dual citizenship with Israel since becoming a US citizen, extenuates and mitigates security concerns associated with his active maintenance of a dual citizenship between Israel and the US. Applicant's immediate family members who reside in Israel are not shown to be at any potential risk to pressure or coercion sufficient to pose continuing foreign influence concerns. Clearance is granted.

STATEMENT OF THE CASE

On June 21, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR (undated) and requested a hearing. The case was assigned to this Administrative Judge on August 21, 2001 and was scheduled for hearing. A hearing was convened on September 21, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) of the proceedings was received on October 25, 2001.

PROCEDURAL ISSUES

At the close of the evidence, Department Counsel moved to amend the SOR to conform to the evidence in accordance with E3.1.17 of the Additional Procedural Guidance of the Directive. Specifically, Department Counsel moved to amend sub-paragraph 1.b to read Applicant would be willing to bear arms for Israel. There being no objection to the

amendment, and for good cause shown, the amendment was granted. Applicant, in turn, was asked if the amendment would affect his answer in any way. He replied that he would not want to take up arms for Israel against the US and had no reason to believe that Israel and the US would ever be adversaries. His answer was incorporated by inter-lineation, sans any claimed need by Applicant to provide any additional evidence to clarify or reinforce his answer to the Government's amendment.

Prior to the close of the evidence, Applicant asked for leave to supplement the record with documentation of his being granted a security clearance. No objections forthcoming from the Government, and good cause being shown, Applicant was afforded fifteen (15) days to supplement the record with documentation of his being granted a security clearance. Government, in turn, was granted five (5) days to respond. Within the time permitted, Applicant provided a copy of his grant of an interim clearance in March 1999, which Department Counsel did not object to. The interim clearance documentation is admitted as Applicant's exhibit A.

STATEMENT OF FACTS

Applicant is a 48-year old UPS specialist for a defense contractor who seeks a security clearance at the level of secret. He has held an interim clearance since March 1999, which provides him limited access to classified information (*see ex. A; R.T., at 25-27*).

Summary of Allegations and Responses

Applicant is alleged to (1) consider himself a citizen of Israel, despite the requirement that he renounce his citizenship when naturalized as a US citizen and (2) disclaim any willingness to bear arms for the US against Israel.

Additionally, Applicant is alleged to be at risk to foreign influence by virtue of having (a) his parents, brother, aunts, and uncles reside in Israel as citizens of Israel, (b) another sister who is an Israeli citizen currently residing in the United Kingdom and (c) a son with dual citizenship with the US and Israel.

For his response to the SOR, Applicant admits to (a) to having dual citizenship with Israel by virtue of his birth in Israel, but to being a US citizen first and foremost, which does not conflict with his dual Israeli citizenship, and to (b) his unwillingness to bear arms for the US against Israel (he would be neutral were such a hypothetical conflict to arise). He denies he would ever disclose or share any classified information with his relatives in Israel, regardless of the circumstances.

Relevant and Material Factual Findings

A citizen of Israel by birth, Applicant was raised in Israel by his parents of Israeli birth and citizenship. As an Israeli citizen and resident, military service was mandatory. Applicant served in the Israeli air force before emigrating to the US in 1976. He applied for and became a naturalized US citizen in September 1987. Not required to renounced his Israeli citizenship with his US naturalization, he did not, and still considers himself an Israeli citizen by birth (*see ex. 2; R.T., at 34-35*). The only time he has traveled to Israel since emigrating to the US was in 1984 (before he became a naturalized citizen) to visit his family, which he completed with his Israeli passport (*see R.T., at 41-42*). Having allowed his old Israeli passport to expire some years ago (*see R.T., at 43*), he does not hold an Israeli or any other foreign passport and has no intention of acquiring one. He owns no land holdings in Israel and has no foreign business interests there. To the best of his knowledge, he has no benefit entitlements by virtue of his Israeli citizenship and has no intention of ever returning to Israel.

Applicant assures that while he would not want to take up arms for the US against Israel in a hypothetical conflict (*R.T., at 37*), he cannot conceive of the US and Israel ever being adversaries of each other. He would never take up arms against the US for Israel and would defend US interests whenever he was called upon (*see R.T., at 36-37*). Only if Israel were not in a confrontation or conflict with the US would he be willing to take up arms for Israel (*see R.T., at 37-38, 62*). Applicant's claims appear to be straightforward and sincere and are accepted.

While Applicant has no current intent to renounce his Israeli citizenship and perforce turn his back on his family, he has no intention either of ever acquiring an Israeli passport for travel to Israel (*see R.T., 48-49*). Only if he were required to

obtain an Israeli passport to exit Israel in a hypothetical situation would he consider obtaining one, and in such circumstances, he would immediately mail back to Israel authorities after he returned to the US (*see* R.T., at 57). And he reassures he has no intention of traveling to Israel in any case.

Applicant has maintained irregular contact with his parents and other relatives residing in Israel and the UK, respectively, since becoming a US citizen and does not provide them with any financial assistance (R.T., at 46-47). Nor has he sponsored any other's application to emigrate to the US. He assures he has no reason to believe that any of them is vulnerable to coercion or pressure (*see* R.T., at 53). Applicant's account is accepted. While his father was at one time a high ranking officer in Israel's military, he has been retired for over seventeen years and is in no known position to pressure and coerce or be pressured or coerced by Israeli authorities to elicit classified information from Applicant.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

Mitigating Conditions:

MC 1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or may* be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion

exploitation, or pressure.

Disqualifying Conditions:

DC 1: An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions:

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be

exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense decision. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the

applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation.

CONCLUSIONS

Applicant comes to these proceedings as an emigre from Israel who became a naturalized citizen of the US in 1987 and has never exercised any active indicia of dual citizenship with Israel since his becoming a US citizen. Claiming his principal affections lie with the US, he, nonetheless, disclaims any willingness to take up active arms for the US against Israel, or *vice versa*, should a hypothetical confrontation or conflict erupt in the future.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the US. In a different vein, the continued residence of his parents and immediate family members in Israel and the UK raise potential concerns about their being vulnerable to future pressure or coercion that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate family being placed at risk to pressure or coercion to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in Israel to parents of Israeli descent and citizenship, Applicant was endowed with Israeli citizenship through his parents. This citizenship could not be lost except by express renunciation of the holder. This, Applicant has never done. Since becoming a naturalized US citizen in 1987, Applicant has taken no actions and exercised no Israeli privileges that can be fairly characterized as active indicia of dual citizenship. He has not served in the Israeli military or voted in Israeli elections since emigrating to the US in 1976. He holds no property or financial interests in Israel and has accepted no educational, medical or other benefits from Israel since becoming a US citizen. Nor has he ever perform or attempted to perform duties, or otherwise acted so as to serve the interests of Israel in preference to the interests of the US since becoming a US citizen.

Although Applicant hedges on his willingness to take up arms for the US against his native Israel, this reluctance by itself is not enough to create an indicia of preference for his birth country. Americans are steeped in their ethnic roots with countries other than the US and can be expected to harbor varying degrees of pride for the countries of their parents. Love of ethnic roots is not by itself a disqualifying preference under DC 9 of the Adjudicative Guidelines.

Overall, Applicant persuades that his preference is with the US. He satisfies his burden threshold in several ways:

demonstrated lack of any prior exercise of any privileges associated with his Israeli citizenship and demonstrated firm support of the US and its institutions since becoming a naturalized US citizen. Applicable mitigating conditions entail: MC 1 (dual citizenship based solely on parent's citizenship). Credited with being a dedicated and trustworthy defense contractor, he absolves himself of foreign preference concerns and carries his evidentiary burden on the presented issue of whether his preference lies with his birth country (Israel) or his adopted country (US). Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with Applicant's parents, siblings, aunts and uncles being foreign nationals, residing either in Israel or GB. Because Applicant's parent and brother (immediate family members) continue to be citizens of and reside in Israel, their status raises security concerns covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence. The continued residence status of these immediate family members in Israel pose some potential concerns for Applicant because of the risks of coercion or influence brought to bear on these family members that could compromise classified information under Applicant's possession and/or control. From what is known from Applicant's testimony, none of Applicant's immediate family residing in Israel have a current working relationship with Israel's government: His father, a former Israeli officer, has long since retired and poses no present threat to exploitation by the Israeli government. And none of Applicant's immediate family members are known to Applicant to be vulnerable to any risk of coercion or pressure.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 2 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad: These investigatory requirements of the Regulation as they pertain to hostage situations were never deleted or replaced and retain their applicability according to the dictates of individual cases. *See* 32 C.F.R. Sec. 154.8 (1998) (corresponds to DoD Regulation 5200.2-R, Sec. 2-403).⁽¹⁾ And Section 6.1 of the Directive (under procedures) provides that industrial security clearance applicants be investigated in accordance with the governing DoD regulations.

So, under these investigatory guidelines, while an applicant with immediate family domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate family members residing in a friendly country. Israel is not considered historically to be a hostile country among those that have been the subject of studies of friendly and unfriendly countries practicing industrial espionage in recent years. *Cf.* G. Gilder, *Geniuses from Abroad* (Wall Street J. December 18, 1995); S. Wood & C. Chandler, *Selected Economic Espionage Incidents Against the United States, 1980-1994: An Open-Source Research Project* (Defense PSRC), cited with approval in DoD's Adjudicative Desk reference (ADR). Israel can be classed as a friendly country known to pose reasonably manageable hostage risks.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. And in Applicant's case, the country of his ethnic heritage has a considerable history of stable democratic institutions and no corresponding history of exerting pressure or influence to compromise the security interests of the US. Applicant may, accordingly, rely on the mitigation benefits of MC 1 of the Adjudicative Guidelines (immediate family members in a foreign country neither agents of foreign power or in a position to be exploited).

So, notwithstanding the continued presence of Applicant's immediate family members in Israel their presence there does not present any potential risk of a hostage situation. Their Israeli citizenship and residence constitutes an acceptable one, for which the mitigation benefits of MC 1 (presence of immediate family in host country does not pose an acceptable security risk) of the Adjudicative Guidelines may be availed of by Applicant.

Considering the record as a whole, any potential security concerns attributable to Applicant's having immediate family

members in Israel are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Israel. Favorable conclusions warrant with respect to sub-paragraphs 2.a through 2.c of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

CRITERION C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

CRITERION B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge

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