

DATE: January 31, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00908

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although the foreign influence security concern raised by the Israeli citizenship and residence of Applicant's father and sisters is mitigated by Applicant's more significant ties to the United States, as represented by the longevity of his U.S. residence, his U.S. citizenship, his U.S. education, his 20 years of employment by an American company, his marriage to a U.S. citizen and the U.S. citizenship of his four-year-old daughter, the foreign preference security concern raised by Applicant's retention of his Israeli passport--without having obtained official approval for its use--cannot be mitigated under the guidance provided by the August 16, 2000 memorandum of the Assistant Secretary of Defense (C3I). Clearance is denied.

STATEMENT OF THE CASE

On September 7, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR in writing on October 10, 2001, and stated he wanted his case decided without a hearing. Applicant received the File of Relevant Material (FORM) consisting of six exhibits on October 19, 2001. He submitted a response on December 5, 2001. The case was assigned to me on January 8, 2002.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleges, and Applicant admits: he is a dual citizen of the United States and Israel, he has exercised dual citizenship, and he maintains a valid Israeli passport. The SOR also alleges, and Applicant admits:

his father and two sisters are residents and citizens of Israel. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 49-year-old electrical engineer who has been employed by his current employer, a DoD contractor, since June 1997. He had been granted a secret clearance in 1989 while employed by another DoD contractor.

Applicant was born in Israel in 1952 and served his required time in the Israeli military between 1970 and 1974. He immigrated to the United States after obtaining an Israeli passport in 1976. He retained his Israeli citizenship after becoming a United States citizen and obtaining a U.S. passport in August 1986. He has used his Israeli passport to travel abroad on four occasions since becoming a U.S. citizen. Applicant's father and two sisters are Israeli citizens and reside in Israel. There is no allegation or evidence Applicant's father or sisters are employed by the Israeli Government, and there is no allegation or evidence he has any business or financial interests in Israel.

In November 2000, Applicant renewed his Israeli passport. At the time, he was not aware of the August 16, 2000 memorandum issued by the Assistant Secretary of Defense, Command, Control, and Intelligence (ASD,C3I), which required an applicant for security clearance to surrender his foreign passports or obtain official approval for its use from the appropriate agency of the United States Government." To date, Applicant has not surrendered his Israeli passport, and there is no record of his having obtained official approval for its use.

An interrogatory sent to Applicant in April 2001, requested him to provide information about his Israeli passport. He was asked if he had renewed his Israeli passport, provided with a copy of the August 16, 2000 ASD, C3I memorandum, and asked if he had surrendered his passport in accordance with this memorandum. In response to the interrogatory, Applicant submitted a legal opinion from his attorney on the procedure for surrendering an Israeli passport. According to this legal opinion (Item 6), Applicant cannot surrender his Israeli passport without renouncing his Israeli citizenship--a lengthy process. The author of the legal opinion argues Applicant should be granted a security clearance because his dual citizenship is based solely on his (Applicant's) birth in Israel; he has no intention of using his foreign passport; and he is willing to surrender his passport to his employer in an escrow arrangement where Applicant would have not access to the passport.

While initially indicating a willingness to renounce his Israeli citizenship if required to do so (Item 5), he now has reservations about taking that step. He explains that his wife is an only child; if something were to happen to him and his wife, his sister in Israel could provide the only suitable home for their four-year-old daughter. He believes his daughter would not be allowed to return to Israel if he renounced his citizenship (Item 6).

Applicant's employer has written a letter on Applicant's behalf. He described Applicant as an outstanding employee.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

FOREIGN PREFERENCE

(Guideline C)

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.

Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizen ship;

E2.A3.1.2.2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

None Applicable

FOREIGN INFLUENCE**(Guideline B)**

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizen 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. Contracts with citizens of other countries of financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

E2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

Conditions that could mitigate the security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sister), cohabitant, or associate(s) in question are not agent 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 person(s) involved and the United States.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rational, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines C and B. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2 dealing with Adjudicative Process, both in the Directive.

A security concern is raised by Applicant's exercise of dual citizenship through his possession of an Israeli passport. 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 seeks to mitigate his dual citizenship by arguing he has dual citizenship solely because of his birth in Israel. He is a loyal citizen of the United States; he does not intend to use his Israel passport and is willing to surrender possession of it to his employer.

The August 16, 2000 ASD (C3I) memorandum requires applicants for security clearances to surrender their foreign passports. There are no exceptions for applicants who have proven themselves to be especially trustworthy, or for applicants who have dual citizenship and a foreign passport solely because they happened to have been born in a foreign country. The sole exception to this requirement may be had by an applicant who has obtained official approval to use his foreign passport. There is no claim or argument by this Applicant he has obtained official approval to use his Israeli passport. His offer to turn his passport over to his employer and relinquish access to it, does not satisfy this Administrative Judge's interpretation of the above memorandum's "surrender" requirement. Guideline C is concluded against Applicant.

An additional security concern is raised by the Israeli citizenship and residence of Applicant's father and two sisters. This situation 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.

The potential for foreign influence raised by the citizenship and residence of Applicant's father and sisters is mitigated by evidence of his stronger ties to the United States. Applicant does not own real estate in Israel, nor does he have a bank account or other business interests in that country. In addition to professing loyalty to the United States, Applicant has lived in the United States for more than 25 years; he has received his professional education in the United States; he has worked for an American company for more than 20 years; he has been married to a United States citizen for more than five years, and his four-year-old daughter is an American citizen. There is no evidence Applicant's father or sisters are agents or employees of the Israeli government or are in positions to be exploited by the Israeli government in a way that could force Applicant to choose between loyalty to his family and loyalty to the United States. Guideline B is concluded for Applicant.

FORMAL FINDINGS

Formal findings as required by Section 3, paragraph 7, of enclosure 1 of the Directive, are hereby rendered as follows:

Paragraph 1 (Guideline C) AGAINST THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. Against the Applicant

Paragraph 2 (Guideline B) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's security clearance.

John R. Erck

Administrative Judge