DATE: September 10, 2001

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-01295

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

OVERVIEW

Applicant failed to mitigate security concerns over foreign preference prompted by his dual citizenship as he possesses and repeatedly has used a foreign passport to travel to Israel even after he became a United States (US) citizen in 1988 and had a US passport. He failed to relinquish his foreign passport after being advised in May 2001 of this requirement of US policy; his mere assertion of an exclusive preference for the US is insufficient. However, he has mitigated the allegations of foreign influence. Although his wife, her relatives, and his friends are citizens of foreign countries, there is no evidence that they are agents of a foreign power or would be exploited by a foreign power in a way that would force him to choose between his ties to them and to the US. Clearance is denied.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant,[(1)] so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on ay 3, 2001. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer of May 30, 2001, and admitted allegations 1.a., 1.b. and 1.c., 2.a., 2.b. and 2.c. He did not request a hearing and requested a decision based on the information he supplied.

The case was assigned to Department Counsel who on June 6, 2001, prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. The Personnel Security Specialist (PSS) who sent the FORM to Applicant on June 8, 2001, again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on June 28, 2001; but he did not submit any additional information. On August 6, 2001, the case was assigned to me for a decision based on the written record.

PROCEDURAL ISSUE

Clarification of Department of Defense Policy on Foreign Preference

The Department of Defense issued a policy memorandum on August 16, 2000. It clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required.

On May 3, 2001, when Applicant was sent a copy of the SOR, he was also sent a complete copy of this memorandum as Enclosure 3. (Item 2)

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 54 years old, is a professional with a United States (US) defense contractor (Company #1) in State #1 where he has worked since September 1999. Prior to that he was unemployed for five months after the company (Company #2) where he had worked for two years downsized. From 1995-96 he worked for another US defense contractor, Company #3, in State #1 and from 1992-95 for another US defense contractor, Company #4 in State #1. He was granted a Secret security clearance by the Defense Department in November 1992 which he retained until January 1997. (He was never cited with any security violations during the five years he previously held a US Secret clearance.) From 1988-92 he worked for Company #5 in State #1. From 1977 to 1984 he worked in Israel. (Items 3, 4, 5)

In February 2000 he completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Items 3 & 5)

Foreign Preference

Applicant was born in Czechoslovakia; but when he was two, he and his parents moved to Israel. He is unaware if he has, or is entitled to, citizenship in the Czech Republic or the Slovak Republic. (He returned to visit his birthplace, now in the Slovak Republic, in 1992) He has no relatives or connections to his country of birth. (Items 3, 4, 5)

Applicant automatically was given Israeli citizenship as an emigre to Israel; no application was required. When he turned 18, it was mandatory that he join the military in Israel where he served for three years as a sergeant. When he got out, he automatically became a member of the Israeli Army Reserve which required 40-50 days per year of service. While he claimed he did not perform any Israeli reserve duties since moving to the US in 1984, he reported he had served in Israeli Army Reserve from 1967 to 1990 except for two periods when he was in the US. He has now fulfilled his military responsibilities for Israel; he no longer maintains any contact with Israeli military officers or government officials. (Items 3, 4, 5)

He was married an American citizen in Israel in 1969 (but was widowed in 1994); and that year Applicant came to the US to study in State #1. From 1970-71 he studied in State #2. He graduated from a university in State #3 in 1972 with a B.S. degree. In 1976 he received an M.S. degree and was working toward a Ph.D. degree when his father became ill. Subsequently, Applicant returned to Israel with his wife and sons who were born in the US. (His two sons maintain dual

citizenship with the US and Israel as their citizenship is an inherent automatic right since they were born to an Israeli parent.) (Items 3, 4, 5)

Applicant studied in Israel from 1977-84 and received another college degree there in 1986. After his father and stepmother died in 1984, he returned to the US. He has lived and worked steadily in the US from 1984 until the present. (Items 3, 4, 5)

As a citizen of Israel Applicant has had an Israeli passport since 1967 and has continuously renewed it. It will not expire until 2005. He does not intend to relinquish his Israeli passport because he believes it is a manifestation of his Israeli citizenship; and he sees no reason to relinquish his Israeli passport. Applicant believes he would be breaking Israeli laws if he did not travel with his Israeli passport. He returns to Israel regularly to visit friends. When he visits there he uses his Israeli passport for entry into Israel. He has traveled to Israel in October 1993, March 1994, October 1994, February 1995, June 1995, October to November 1995, February 1996, November 1997, and March to April 1998. He maintained that he has been told that he could not leave Israel without an Israeli passport. For one trip he was told he had to have an Israeli passport for his young son, or he would not be allowed to leave with them. He continues to maintain his Israeli passport to make traveling easier. He has never performed any duties for the Israeli government or for its intelligence agencies, either voluntarily or involuntarily. He believes he cannot renounce his Israeli citizenship and believes that there is no formalized procedure or mechanism to return his Israeli passport. (Items 3, 4, 5)

Applicant does not have any financial interests in Israel and has never sought or held political office in Israel. (Items 3, 4, 5)

Applicant has been a naturalized citizen of the US since June 1988. He holds a US passport issued in March 1998; he uses his US passport when traveling for business and for travel to Brazil to visit his second wife's family. He reported he has traveled to Ireland in 1994 for pleasure, to Germany in January 1996 for business, and to Canada in April 1996 for business. He has traveled to Brazil in 1996,1997, 1998, and 1999 for pleasure. (Items 3, 4, 5)

Applicant maintains his loyalty and allegiance is to the US as his future is here in the US. If he had to chose between the US and Israel, he stated he would "not hesitate to choose the United States." (Items 3, 4, 5)

Foreign Influence

Applicant remarried in 1996 in Israel; his wife is a permanent resident of the US and a dual citizen of Israel and Brazil. His wife's step-father and two children are citizens of and live in Brazil. Applicant's wife will be eligible for US citizenship inn two years. Her two children reside in Brazil; one child lived in State #1 with them from 1999-2000 to attend school. Applicant maintains contact with his relatives in Brazil during visits there and during their visits to the US. His wife co-owns an apartment in Brazil with her children. He also maintains contact with several friends in Israel whom he has known for many years; he visits them in Israel and several of them have visited him in the US. (Items 3, 4, 5)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline C - Foreign Preference[(2)]

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:

(1) the exercise of dual citizenship;

(2) possession and/or use of a foreign passport[(3)];

(3) military service or a willingness to bear arms for a foreign country;

Conditions that could mitigate security concerns include:

None

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) 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.

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

(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

Conditions that could mitigate security concerns include:

(1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States;

(3) contact and correspondence with foreign citizens are casual and infrequent.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

If an individual acts in such a way as to indicate a preference for a foreign country over the United States, this conduct raises a security concern under Guideline C, Foreign Preference, as the individual 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: (1) the exercise of dual citizenship; (2) possession and/or use of a foreign passport; (3) military service or a willingness to bear arms for a foreign country.

Security concerns over Applicant's possible foreign preference arise from his active exercise of dual citizenship as he has maintained his Israeli citizenship even after he became a naturalized US citizen in June 1988. While dual citizenship is not prohibited *per se (*and in that sense is sanctioned by policies of the United States), any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation.

Applicant possessed a foreign passport and used it on many trips to Israel after he became a naturalized citizen of the US in June 1988 and after his US passport was issued to him. Applicant repeatedly used his Israeli passport for entry into Israel in October 1993, March 1994, October 1994, February 1995, June 1995, October to November 1995, February 1996, November 1997, and March to April 1998. While he presented a necessity argument (that he has been told that he could not leave Israel without an Israeli passport), that argument is not a ground to mitigate under the DoD policy memorandum of August 16, 2000. The policy guidance furnished an avenue for individuals to mitigate this concern: an applicant must either surrender the foreign passport or obtain official approval for its use from the appropriate agency of the United States Government. Applicant failed to comply with this guidance even after he was advised of security significance of his conduct in May 2001. Applicant did explore avenues with the Israeli embassy, but his defense that there is no formalized procedure or mechanism to return his Israeli passport is not a basis to extenuate. Significantly, he failed to surrender his foreign passport or to obtain official approval for its use as required by the DoD policy clarification of August 16, 2000: "possession and/or use of a foreign passport" may be a disqualifying[(4)] condition.

While his military service occurred before he became a US citizen, his reserve service to Israel continued to 1990 even after he became a US citizen in June 1988.

Although Applicant is not required to renounce his foreign citizenship as a condition of being granted access, his failure to surrender his foreign passport casts doubt as to whether he can be counted on to make decisions without regard to Israeli or personal interests.

Thus, Applicant failed to demonstrate he meets the mitigating conditions.[(5)] While he maintains that his principal preference is for the US that statement alone does not establish the preference sufficiently under security policy. Further, his earlier access and his handling security requirements professionally in the 1992-97 period is also an insufficient basis. In this case, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has not met the DoD mitigation prerequisite that he surrender his foreign passport in order to indicate his clear preference for the United States. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign preference warrant careful scrutiny. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. through 1.c. against Applicant.

Guideline B - Foreign Influence

The Government expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: his wife who is a permanent resident of the US is a dual citizen of Israel and Brazil; her stepfather and children are citizens of Brazil. Also, Applicant has several friends who are citizens of Israel. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) 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. Conditions that could raise a security concern and may be disqualifying include: (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.

These security concerns are mitigated by the fact that Applicant's relatives have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not subject to duress. Given his history of responsible conduct while he has had access to

classified information from 1992-97, I think it improbable that his family and friends would now create a situation that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. There is no evidence that Brazil or Israel have made any effort to coerce Applicant through his family or friends. Further, his contacts are relatively infrequent. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). While acts indicative of foreign influence warrant careful scrutiny, after considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties do not raise such concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For 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 or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. See also the DoD August 16, 2000, Policy Clarification Memorandum, quoted above.

3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . . ."

4. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.

5. **Conditions that could mitigate security concerns include**:

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

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

3. Activity is sanctioned by the United States;

4. Individual has expressed a willingness to renounce dual citizenship.