DATE: May 15, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-02452

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Josiah M. Black, Esq.

SYNOPSIS

Applicant, a citizen of the United States from birth and Israel from age five, was raised with the rights and obligations of his Israeli citizenship. As a young adult, he served as an officer in the Israeli military while failing to register with the United States Selective Service. He renewed his Israeli passport after moving to the United States in August 1994 to pursue a doctorate degree, and used it in preference to his United States passport to travel to Israel to visit close family members. While he recently renounced his foreign citizenship and surrendered his foreign passport, his actions were motivated by DoD requirements rather than a preference for the United States. Doubts persist as to whether Applicant can be counted on to make decisions free of concerns for Israel, and the Israeli residency and citizenship of several close family members presents an unacceptable risk of foreign influence.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated July 9, 2001, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) foreign influence (guideline B) due to the foreign citizenship and/or residency of close family members, including his spouse, children, parents and sisters; 2) foreign preference (guideline C) related to the exercise of dual citizenship, possession and use of a foreign passport, and foreign military service with instruction on intelligence gathering and collection methods; and 3) criminal conduct (guideline J) because of Applicant's failure to register with the Selective Service System in the United States.

On July 27, 2001, Applicant responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on January 29, 2002,[(1)] and pursuant to formal notice dated

February 22, 2002, a hearing was scheduled for March 14, 2002. At the hearing, which was held as scheduled, one joint exhibit, three Government exhibits, and five Applicant exhibits were entered into the record. Applicant, his supervisor, and a Hebrew language translator testified on Applicant's behalf. With receipt on March 22, 2002, of the transcript of the hearing, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 35-year-old electrical engineer, who has been employed by a defense contractor as a member of the technical staff since December 1998. Applicant seeks a Secret clearance for his duties.

Applicant was born in the United States in October 1966 to Israeli citizens. Applicant's parents, both Israeli citizens from birth, had come to the United States in the late 1950s/early 1960s where his father pursued a doctorate degree in electrical engineering. After earning his Ph.D., Applicant's father went to work as a tenured professor at the technological university in the United States. Applicant and his two siblings, sisters born in 1963 and 1967, respectively, acquired United States citizenship by virtue of their births in this country. Applicant obtained a United States passport as a child, which he has maintained almost continuously since, renewing it as necessary through the United States Embassy when residing in Israel.

When Applicant was five years of age, his parents moved the family to Israel. Applicant and his two siblings became dual citizens of the United States and Israel as children, as the foreign citizenship was automatically conferred on their move. Raised and educated in Israel,[(2)] Applicant by at least January 1989 had acquired an Israeli passport, as Israel requires its citizens to enter and exit Israel on an Israeli passport. Applicant maintained his foreign passport, renewing it as necessary, until 2002.

A resident of Israel when he turned eighteen years of age, Applicant did not register with the Selective Service System in the United States. He was unaware at that time that United States male citizens born on or after January 1, 1963, are required to register "on the day they attain the 18th anniversary of their birth or on any day within the period of 60 days beginning 30 days before such date. . . ."[(3)] He made no effort to determine whether he had any military obligation to the United States.

Required on completion of his secondary schooling to perform compulsory military service for Israel, Applicant enlisted at age eighteen in the Israeli military. He was granted an academic deferral, which allowed him to pursue his bachelor's degree at an Israeli technological institute before entering on active duty. Under the academic reserve program, Applicant's active duty obligation was extended to five years, two more than the compulsory conscription term. Prior to commencing his undergraduate studies, Applicant completed two months of basic training. During the academic year at the university, Applicant did not receive any military or intelligence related training, although during the summer of 1987, he completed the officer's basic training course.

On earning his bachelor's degree in electrical engineering, Applicant in January 1989 began his mandatory active duty service. Until August 1993, Applicant served as an officer, working in an electronics research and development unit of the Israeli military defense forces in the areas of antennas and propagation. Since his work involved electromagnetic antenna design, Applicant had regular access to Israeli defense information classified to the level of Top Secret. In conjunction with his military duties, Applicant was given an overview of intelligence gathering and collection methods as it related to the capabilities of adversaries in the region.

While he was serving on active duty, Applicant began dating a female officer who was serving as an electronics technician in the same military complex. In June 1990, Applicant and this native born Israeli citizen wed in Israel. Applicant voted in an Israeli election held in 1990.

In 1993, budget conditions opened up for Applicant the possibility of early release from his active duty obligation. At his request, Applicant was discharged from active duty at the rank of captain in August 1993. Provided he remained a resident citizen of Israel, Applicant had a military reserve commitment thereafter until he reached forty years of age.

Applicant has not had any known contact with Israeli military members since his discharge.

Applicant vacationed for the two months following his discharge. In November 1993, he commenced employment as a software engineer in Israel for a United States company. In December 1993, Applicant and his spouse had a daughter. In July 1994, Applicant accompanied some friends on a scuba-diving trip to another country in the region Applicant presented his United States passport to enter this foreign country as it was easier and potentially safer than traveling on his Israeli passport.

Applicant decided to pursue a doctorate degree, and was accepted in a program at a university in the United States. Circa August 1994, Applicant, accompanied by his spouse and daughter, came to the United States. Applicant exited Israel on his Israeli passport and entered the United States on his United States passport.

From September 1994 to December 1998, Applicant attended the university full-time. Applicant and his spouse had their second child during this time, a daughter born in the United States in December 1993. Applicant's spouse, who has a bachelor's degree in criminology and political science from an Israeli university, stayed at home to care for their two daughters while Applicant pursued his doctorate.

In May 1997, Applicant traveled to Israel with his spouse and two children to attend his younger sister's wedding, entering that country on a valid Israeli passport issued on renewal. He presented his United States passport on his re-entry into the United States. In October 1998, Applicant again went to Israel to see family members on the birth of his sister's first child. As he had on his trip the year prior, he used his Israeli passport to enter and exit Israel.

In December 1998, Applicant earned his doctorate degree in electrical and computer engineering with a concentration in nonlinear signal processing. Applicant elected to pursue his career in the United States, and in January 1999, he went to work for his current employer (company A).

In conjunction with his work in digital signal processing in the sensors and systems department, Applicant on or before January 15, 1999, completed a security clearance application (SF 86). Applicant disclosed his dual citizenship (United States and Israel), his past service in the Israeli military, his current possession of both Israel and United States passports, and his travels to Israel in 1997 and 1998. With regard to family members, Applicant noted the Israeli citizenship of his spouse and oldest daughter, the dual citizenship (Israel and United States) of his other daughter, the Israeli citizenship and residency of his parents and in-laws, the dual citizenship (Israel and United States) and Israeli residency of his two sisters. In response to question 18 thereon regarding his selective service record, Applicant admitted he had not registered, and remarked "N/A UNKNOWN."

As of March 2000, Applicant's spouse had applied for United States naturalization and completed the testing requirements. No action had been taken by Applicant to secure United States citizenship for their daughter born in Israel.

On March 9, 2000, Applicant was interviewed by a Defense Security Service (DSS) special agent about issues related to his dual citizenship, including his retention of an Israeli passport. Applicant provided some information regarding his compulsory military service in Israel, but he claimed to lack recall of the name of the Israeli military installation.[(4)] Applicant admitted using his Israeli passport to travel to Israel twice since coming to the United States in August 1994, which he maintained he was required to do as an Israeli citizen. He expressed his intent to utilize his United States passport on all foreign travel, excepting trips to Israel. Applicant indicated he was not willing to renounce his Israeli citizenship or relinquish his foreign passport, stating as follows:

At this time, I would prefer not to renounce my Israeli citizenship or relinquish my Israeli passport for ease of travel to and from that country to visit family members. If faced with the choice of renouncing my citizenship or relinquishing my passport in order to obtain a security clearance, I would have to seriously reconsider my position at [company A].

Applicant indicated he would not use a position of trust with the United States government to influence decisions in order to serve the interests of a foreign government. Acknowledging his close ties to family members in Israel, Applicant maintained his loyalty was "primarily" to the United States. He indicated he would be "offended" if the Israeli government attempted to exploit his position.

Two months later, Applicant was reinterviewed by the DSS agent about his foreign citizenship, military service, and Israeli citizenship and residency of close family members. Applicant stated he was "100% loyal" to the United States, although he expressed concern for his close family members in Israel:

As stated during my previous interview, should the U.S. find itself taking action against the State of Israel, I would be very concerned for the welfare of my family. I would pursue whatever legal means through my congressman in an effort to persuade the U.S. government to discontinue actions that might be harmful to my family. Otherwise, I would never act against the best interests of U.S. national security. I fully intend to comply with all U.S. laws as well as protect DoD interests. As stated previously, I do not intend to relinquish my Israeli passport as a condition of access to U.S. sensitive or classified information. I intend to travel back to Israel to visit with my family. It is necessary that I maintain my Israeli passport for travel to that country, since as an Israeli citizen, I am required to travel into that country on my Israeli passport.

Regarding his military reserve obligation in Israel, Applicant indicated that as long as he resided in the United States, he would not be subject to recall by the Israeli defense forces. He denied recollection of the address of the military complex in Israel where he had served his active duty, and admitted that his work with the Israeli military had been classified. He expressed his intent to abide by sworn confidentiality agreements, indicating he was not in a position to reveal details of the military installation to which he had been assigned. Applicant detailed his close contacts with relatives who remain resident citizens of Israel, including his father, mother, two sisters and in-laws. He denied any contacts with representatives of a non-United States intelligence/security service and maintained he would report to his employer and the United States Government any undue influence expressed in him or his position. Applicant expressed a willingness to undergo a polygraph examination to attest to the truthfulness of his statements.[(5)]

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence [ASD(C^3I)] issued a memorandum clarifying the foreign preference adjudicative guideline with respect to the use and/or possession of a foreign passport to the effect that clearance is to be denied or revoked unless an applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

In October 2000, Applicant's spouse became a United States naturalized citizen. Applicant did not notify DSS that his spouse had acquired United States citizenship.

Circa Spring 2001, Applicant learned from his employer that his dual citizenship and possession of a foreign passport may well present a security issue with regard to him obtaining the Secret security clearance requested. On July 12, 2001, Applicant went to the local Israeli consulate and applied to revoke his Israeli citizenship and foreign passport issued on renewal in May 1997 for a term of five years, as he learned he could not surrender his foreign passport without renouncing his Israeli citizenship. On the application for renunciation, Applicant was asked if he has a spouse who is also an Israeli citizen who does not request to renounce her Israeli citizenship. Applicant responded, "she intends to return to Israel."[(6)]

On July 19, 2001, Applicant received the SOR from DOHA, notifying him the Government was recommending that his case be submitted to an Administrative Judge for a determination to deny him a security clearance because of foreign influence, foreign preference and criminal conduct concerns--the last related to Applicant's failure to register with the Selective Service.

In response to the SOR, Applicant in late July 2001 indicated he had relinquished his Israeli citizenship and he submitted a copy of his application for renunciation.[(7)] With regard to his foreign passport, Applicant stated:

As a consequence of and as intended by my relinquishing Israeli citizenship, my Israeli passport is to be collected and invalidated by the Israeli consulate general upon their finalizing the process of revoking my Israeli citizenship. In the Interim, the invalidated passport is being held by the security office of [company A].

As for the foreign citizenship of his spouse and children, Applicant indicated his spouse became a United States naturalized citizen in October 2000, and that his older daughter was in the process of being registered as a United States

citizen. Regarding his failure to have registered with the Selective Service, Applicant indicated his noncompliance was neither knowing nor willful, as he was unaware of the requirement to register until he received the SOR and he was not now allowed to register because of his age. Applicant regrets his failure to register.

Sometime on or before November 6, 2001, Applicant's oldest daughter, an Israeli citizen by virtue of her birth in Israel, became a United States citizen. She possesses a United States passport issued on November 6, 2001. Applicant has taken no steps to have his youngest daughter, who was born in the United States, registered as an Israeli citizen. This daughter possesses a United States passport issued on October 2, 2001.

On October 22, 2001, Applicant turned in his Israeli passport to company A's security office pending acceptance of his application to renounce his Israeli citizenship by the Israeli government. Applicant traveled to Israel in February 2002 with his spouse and daughters to visit family. While in Israel, they saw Applicant's parents, his sisters and their families, as well as his spouse's parents, her brother and his family, and several of her aunts and uncles. Applicant and his family stayed primarily with his in-laws, although they also were hosted by his parents for two days. Applicant entered Israel on his United States passport as his Israeli passport was being held in the security department of company A.[(8)]

Applicant's renunciation of Israeli citizenship was effective as of February 13, 2002. After receiving notice from the Israeli consulate that his declaration of renunciation of Israeli citizenship had been confirmed, Applicant retrieved his foreign passport from company A security officials on February 28, 2002. The following day, Applicant went to the local Israeli consulate and surrendered his Israeli passport as well as his Israeli identification card.

Applicant's father is a professor of electrical engineering at an Israeli technological university. As of March 2002, he was on a three-month sabbatical in the Orient, teaching at a university there. Applicant's mother worked as an art teacher at a museum in Israel until she went to the Orient with her spouse. Applicant's parents served their compulsory military service in Israel in the 1950s, his mother as a basic training instructor. Applicant contacts his parents by telephone on an every other week to monthly basis and he exchanges email correspondence with his father. His parents visit Applicant and his family in the United States once every two or three years. Applicant visited with his parents on each of his trips back to Israel.

Applicant's older sister maintains dual citizenship with the United States and Israel. A resident citizen of Israel since she was a child, she is a librarian at a local high school. His sister is married to a shoe salesman, and they have two children, ages 10 and 17. Applicant contacts his sister by telephone every other week to monthly and sees her and her family on his trips to Israel.

Applicant's younger sister also maintains dual citizenship with the United States and Israel. After serving her compulsory service in the Israeli military as a secretary, she pursued her education in the United States, and in 1995 was awarded a master's degree in architecture. She was employed as an architect by a firm in Israel until she had her second son. She has two young children under the age of five and is married to a mechanical engineer who works in a private firm in Israel. Applicant has regular contact with this sister by telephone and visits with her and her family when he is in Israel.

Applicant's maternal grandfather is a resident citizen of Israel. Applicant does not have regular contact with this elderly relative, but he visited with him on his trips to Israel.

Applicant's spouse has once weekly contact with her parents, who are resident citizens of Israel, and she travels to Israel at least once per year to see them. Applicant's father-in-law took early retirement from his job as an administrator in a government underwritten health maintenance organization in Israel. Semi-retired, he has recently been involved in real estate. More than ten years ago, he was involved in a neighborhood level organization affiliated with an Israeli political party. Applicant's mother-in-law, also a native-born Israeli citizen, is a homemaker who at one time had provided in-home child care for others. In February 2000, Applicant's father-in-law visited Applicant and his family in the United States. Applicant has occasional contact with his in-laws.

Applicant's spouse has frequent contact with her brother and his family (wife and three children) who reside in Israel. This brother and his spouse work as bank clerks. Applicant's spouse also has two maternal grandparents in Israel whom

she sees on her visits to that country.

Neither Applicant nor his spouse has any financial assets outside of the United States, with the exception of publicly traded stocks in foreign companies. His assets in the United States include his personal residence, in which he has an equity interest of about $150,000.00, a 401K account worth $27,000.00, $11,000 in bank funds, and two brokerage accounts where he has about $5,000.00 invested. Applicant may inherit from his parents, who are financially secure. Applicant's parents own their home in Israel and have financial assets in a bank account in a European country.

Company A supports Applicant's application for a Secret security clearance. Described by his supervisor as "top notch" technically, Applicant has a level of expertise not shared by others at company A. Applicant is regarded as reliable and trustworthy for the honesty he has exhibited regarding the problems and benefits of his work and his compliance with company A policies and procedures, including handling of competition sensitive information.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

E2.A2.1.1. 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 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

Foreign Preference

E2.A3.1.1. 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A3.1.2.1. The exercise of dual citizenship

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

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country

E2.A3.1.2.8. Voting in foreign elections

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

Criminal Conduct

E2.A10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

Not pertinent.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated

upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that 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 that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines C, B, and J:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States.(9) A citizen of the United States from birth, and of Israel from about 1971 to February 2002, Applicant was raised and educated in Israel by Israeli native-born citizens. The benefits enjoyed by Applicant, and the cultural influences to which he was exposed during his formative years, were for the most part consistent with his Israeli citizenship. In contrast, Applicant's exercise of his United States citizenship was limited to renewal of his United States passport. The preference to his Israeli citizenship continued after he reached the age of majority (eighteen). As required by Israeli law, Applicant enlisted in the Israeli military under an academic program which allowed him to defer his active duty service. After earning his bachelor's degree in electrical engineering from an Israeli technological institute, Applicant performed his compulsory military service for Israel as an officer in an electronics unit from January 1989 to August 1993. He did not register with the Selective Service in the United States.(10) As a male citizen required to register who was not in the United States at the time he turned eighteen, Applicant had a variety of options available to him to register, including the Internet, via a Government approved form, or even in person at a United States embassy or consulate.(11) While Applicant's failure to register was not knowing or willful, his failure to make any effort to determine whether he had a military obligation to the United States confirms his primary orientation to Israel and his obligations to that nation. Applicant voted in at least one election in Israel in 1990, while there is no evidence he voted in any election in the United States. He continued to maintain his United States passport and used it to enter another country in the region in July 1994 because it was easier and potentially safer than traveling on his Israeli passport.

In August 1994, Applicant came to the United States to pursue his doctorate degree. While he has maintained a lifestyle largely consistent with his United States citizenship since, Applicant sought renewal of his Israeli passport in 1997, and he used it to enter and exit Israel in May 1997 and October 1998. More than a year after he commenced his employ with a United States defense contractor, Applicant was not willing to relinquish his Israeli passport, notwithstanding he had not used it for travel since 1998.(12) As set forth by theASD^{3}I, possession and/or use of a foreign 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. Applicant's exercise of dual citizenship (E2.A3.1.2.1.), possession and use of a foreign passport (E2.A3.1.2.2.), military service for a foreign country (E2.A3.1.2.3.), and voting in at least one election in Israel (E2.A3.1.2.8.) engender foreign preference concerns.

Foreign preference concerns may be mitigated under the Directive where the dual citizenship is based solely on parents' citizenship or birth in a foreign country (E2.A3.1.3.1.). Applicant acquired Israeli citizenship primarily because of his parents' actions rather than a deliberate decision on his part. Hence, there is a basis to apply E2.A3.1.3.1. in his favor. However, that mitigating factor does not adequately address the concerns raised by Applicant's active exercise of his foreign citizenship as an adult. Applicant's service as an officer in the Israeli defense forces, and his exercise of the voting franchise on at least one occasion in Israel, while he was a United States citizen, cannot be mitigated under E2.A3.1.3.2. (indicators of possible preference occurred before obtaining United States citizenship). Yet, his military service and voting in the foreign election occurred when he was only nominally a United States citizen--and there is no evidence Applicant has had any contact with Israeli military officials since August 1993 or voted in a foreign election since he came to the United States in August 1994. Were there no further indications of foreign preference, his military service for Israel and limited exercise of the voting franchise would raise little current concern. However, when considered with Applicant's renewal and retention of his Israeli passport after he had decided to make the United States his permanent home, doubts persist as to whether Applicant can be counted on to make decisions free of concerns for

Israel, notwithstanding his recent renunciation of his foreign citizenship and surrender of his foreign passport.

As of May 2000, Applicant had no intent to relinquish his Israeli citizenship or passport, even if renunciation was a condition of access. Indeed, as of the Spring 2000, Applicant indicated he would have to seriously reconsider his defense-related employment if surrender of his Israeli passport was required. Circa April 2001, Applicant was informed by his employer that his continued possession of the Israeli passport presented security issues. With another year of experience on the job impacting his decision, Applicant elected to surrender his foreign passport. Informed that renunciation of his Israeli citizenship was required for him to surrender a passport, Applicant on July 12, 2001, applied to renounce his Israeli citizenship for stated reason, "Looking for job which does not allow a holding of non-American passport." Nine months later, Israeli consular officials confirmed the renunciation. On receiving notice that his renunciation of Israeli citizenship had been confirmed by Israeli authorities, Applicant retrieved his passport from company A security officials and surrendered it, along with his Israeli identity card, to the local Israeli consular officials. With the renunciation of foreign citizenship and surrender of the foreign passport, Applicant is no longer subject to the laws of another jurisdiction, whose interests may not always be consistent with those of the United States, and he no longer poses the risk of unverifiable travel.

The surrender of foreign citizenship is potentially mitigating of foreign preference concerns (*see* E2.A3.1.3.4.), but it does not necessarily mandate a favorable outcome. Clearly, Applicant's preference would have been to retain dual citizenship as well as dual passports. While Applicant elected in the end to comply with Department of Defense requirements, I am not persuaded Applicant has experienced any significant change in attitude toward Israel from Spring 2000, when notwithstanding a claimed preference for the United States, he expressed to the Government an unequivocal intent to retain both his Israeli citizenship and foreign passport. Indeed, there is evidence that Applicant may have delayed turning hin his passport to the security office at company A, after he had become aware of the Government's concern regarding possession of a foreign passport. When Applicant answered the SOR on July 27, 2001, he indicated his "invalidated passport is held by the security office of [company A]." Company A's security officer reports the passport was turned in October 22, 2001, almost three months after Applicant claimed he no longer had possession of the passport. Given Applicant's intelligence and his past experience with the Israeli military as an officer, it can reasonably be assumed that he understands the importance of demonstrating trustworthiness in his statements as well as his actions. With his credibility already negatively impacted by his false claim to the DSS agent in March 2000 that he could not recall the name of foreign military installation where he had served, the discrepancy as to when he turned his passport over compounds the concerns as to whether he can be counted on to act without regard to his personal interest or that of Israel. Applicant's contributions to company A have been considerable, but lingering concerns as to foreign preference warrant adverse findings with respect to guideline C. Subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e., and 2.f., are resolved against him.[(13)]

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. The mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying under guideline B. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. Applicant's parents are native-born Israeli citizens who have resided abroad on occasion in connection with academic opportunities, but Israel is their permanent home. Applicant's two sisters are dual citizens of the United States and Israel, who have elected to live as Israeli citizens in Israel. Their spouses and children are resident citizens of Israel. Applicant has close ties with his parents and siblings, contacting them once every other week to once monthly, and visiting them on trips back to Israel in May 1997, October 1998 and February 2002. The bond is sufficiently strong that Applicant would contemplate lobbying against the policies of the United States government if he felt U.S. actions posed a risk of harm to these family members in Israel. Disqualifying condition E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, applies in evaluation of Applicant's security worthiness.

Furthermore, Applicant's spouse and his older daughter are citizens of Israel from birth and of the United States since October 2000 and November 2001, respectively.[(14)] When she became a United States naturalized citizen, Applicant's spouse took an oath to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which she was before a subject or citizen. There is no evidence Applicant's

spouse ever applied to renounce her Israeli citizenship. To the contrary, as reflected in Applicant's application for renunciation, his spouse intends to retain her foreign citizenship. Applicant's spouse shares close bonds with her parents and brother, traveling to Israel to visit them at least once per year and contacting them on a weekly basis by telephone. Although no longer actively involved, her father had about ten years ago political connections and active commitment on the neighborhood level with a major political party in Israel. Disqualifying condition E2.A2.1.2.2. (sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists) must therefore also be considered.

The security concern engendered by the foreign citizenship of close family members may be mitigated where it can be determined that the immediate family members (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 (*see* E2.A2.1.3.1.). The burden is on the Applicant to demonstrate that these foreign nationals are not in a position to be exploited by a foreign power. As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317 decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (I) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

Concerning his parents, siblings and their families, as well as his in-laws, Applicant and his spouse and children visited with them when they traveled to Israel in May 1997, October 1998, and February 2002. During their very recent travel to Israel, Applicant and his spouse and children stayed with both sets of parents. There is no evidence Applicant encountered any difficulties with customs or other Israeli officials, even on this trip in February 2002 when Applicant entered Israel on his United States passport. However, the risk of undue influence because of Applicant's foreign relatives cannot be completely discounted.

Although presently in the Orient on sabbatical, Applicant's father is a professor of electrical engineering at a technological university in Israel. It is not clear in the record whether the academic institution is state-sponsored or private. Whether or not he is paid by the state, Applicant's father has an academic position which raises the risk of governmental scrutiny. With Applicant's father having taught at academic institutions outside of Israel over the years, including in the United States,[(15)] it is reasonable to infer that his sabbaticals have required approval, if not by an Israeli government official, than by the technological institution. oreover, since his father is a native-born Israeli citizen who does not possess any other citizenship, it is assumed his travels have been on an Israeli passport with his trips subject to possible monitoring by Israeli authorities. Applicant's mother is an active artist who also instructed at a museum until recently when she accompanied Applicant's father to the Orient. While the professions of Applicant's siblings (librarian and architect staying at home after the birth of her second son, respectively) or their husbands (shoe salesman and mechanical engineer for a private firm, respectively) are not likely to bring any undue attention from foreign governmental or military authorities, the nature of their social contacts and/or activities is not of record. The United States citizenship and residency of Applicant's spouse and daughter reduce significantly the risk of any undue foreign influence being placed on them, although it cannot be completely eliminated inasmuch as they remain subject to Israeli laws. Moreover, Applicant's spouse is very close to her parents and brother, so there is also a risk of indirect influence through his spouse. Applicant's father-in-law, retired from his position with a health maintenance organization, was politically active in the past. Based on this record, I am unable to conclude with a reasonable degree of certainty that his substantial foreign ties present an acceptable security risk. Adverse findings are warranted with respect to subparagraphs 1.a. and 1.b. of the SOR.

With respect to guideline J, criminal conduct, Applicant does not dispute that he failed to comply with the requirement to register under the Military Selective Service Act. Under section 462 of the Military Selective Service Act, the knowing failure or neglect or refusal to perform any duty required under the Act is punishable by imprisonment for not more than five years or a fine of not more than $10,000, or both. Applicant submits that the provisions of the law were never brought to his attention, so he was unaware of the requirement. While his father is a professor who had spent a significant amount of time in the United States in the late 1960's/early 1970's and again sometime around 1978/79,[(16)]

the current procedures for registration were established in 1980, after his father had returned to Israel. Applicant having continued to maintain a benefit of his United States citizenship (U.S. passport) while he was a resident citizen of Israel, he would have been required to renew his passport at the embassy. Yet, there is no evidence to indicate that Applicant was ever informed by United States officials of the requirement. His lifestyle and orientation when he turned eighteen were largely consistent with his Israeli citizenship. Applying a reasonable person standard, I am unable to conclude that Applicant knew or should have known that he had to register under the Selective Service Act in the United States. Hence, he did not knowingly violate the law.

Section 462(g) of the Military Selective Service Act set forth in the Appendix to Title 50 of the United States Code, provides as follows:

(g) A person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and submit to registration under section 3 [section 453 of this Appendix] if--

(1) the requirement for the person to so register has terminated or become inapplicable to this person; and

(2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

When Applicant came to the United States to pursue his doctoral studies, he was twenty-seven years of age, and therefore no longer required to register under the statute. Since his failure to register was neither knowing nor willful, the provisions of Section 462(g) apply and no action can be taken to deny him a security clearance based on his failure to register. Accordingly, guideline J is resolved in his favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2. Guideline C: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Paragraph 3. Guideline J: FOR THE APPLICANT

Subparagraph 3.a.: 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 or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. There is no explanation in the record for the delay in assigning the case to an Administrative Judge.

2. When Applicant was in the seventh grade, he spent the entire year in the United States as his father was on sabbatical.

3. *See* Section 1-101 of the Selective Service Act, Appendix Title 50, United States Code.

4. It stretches credulity Applicant could not recall the name of the military installation where he had served for some four and a half years. (Ex. 2). During a subsequent subject interview conducted in May 2000, Applicant indicated he could not recall the address of the military installation. Yet, in discussing his pledge to Israel not to reveal details of his past military duties, Applicant stated he was "not in a position to reveal other specific details of the military installation to which [he] had been assigned." (Ex. 3). The reasonable inference is that Applicant knows the name and location of the installation, but he is not at liberty to reveal the name or address. While his fabrication could be viewed as evidence of willingness and ability to protect classified defense information, the fact that he was willing to lie to a representative of the United States government raises questions of foreign preference. Recognizing Israel's right to protect its classified information, nothing prevented Applicant from candidly telling the agent at the outset that he was not at liberty to divulge the address or name of the foreign military installation.

5. There is nothing of record to indicate a polygraph was administered to Applicant.

6. Asked at the hearing whether his spouse had an intent to return to Israel as of July 2001, Applicant responded: "No, but since she is not the one applying for clearance, and I don't think she ever will, I was asked that one line statement for a reason, and that is what I gave." (Transcript p. 91). Applicant's spouse may well have intended at that time to reside permanently in the United States, but it is also clear that she has strong ties to Israel and intends to remain a dual citizen.

7. Although Applicant had taken steps to renounce his foreign citizenship at that time, he was still a citizen of Israel at that time as the Israeli authorities had not yet acted on his application.

8. It is not clear whether this trip predated the Israeli government action on his renunciation application. Applicant did not testify to having any difficulty entering Israel on his United States passport.

9. As the DOHA Appeal Board articulated in October 2000 (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.

10. Pursuant to Appendix Section 453 of Title 50 of the United States Code, "it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration. . . ."

11. Places and Times for Registration under the Selective Service Act are as follows:

1-201. Persons who are required to be registered and who are in the United States shall register at the places and by the means designated by the Director of the Selective Service. These places and means may include but are not limited to any classified United States Post Office, the Selective Service Internet website, telephonic registration, registration on approved Government forms, registration through high school and college registrars, and the Selective Service reminder mailback card.

1-202. Citizens of the United States who are required to be registered and who are not in the United States, shall register via any of the places and methods authorized by the Director of Selective Service pursuant to paragraph 1-201or present themselves at a United States Embassy or Consulate for registration before a diplomatic or consular officer of the

United States or before a registrar duly appointed by a diplomatic or consular officer of the United States.

12. There is no evidence Applicant traveled to Israel between October 1998 and March 2000. Had he done so, it is likely he would have used his Israeli passport.

13. Applicant's continued possession of the foreign passport (an active exercise of his foreign citizenship) after he had been told of the security issues, engenders foreign preference concerns and warrants a finding against him as to subparagraphs 1.a. and 1.b., even though as of March 2002 he no longer holds that passport.

14. Although Applicant assumes his youngest daughter may be considered by Israel to be a citizen of Israel by virtue of her birth to Israeli citizens. Yet, this daughter has never resided in Israel and Applicant has made no efforts to have her registered as a citizen of Israel. It is not sufficiently established that she possesses Israeli citizenship.

15. Applicant testified without corroboration that his father held a security clearance issued by the DoD back in the 1960s/early 1970s. (Transcript p. 32). Assuming he was in fact granted the level of clearance claimed, it is entitled to little weight in determining whether Applicant's father's present circumstances pose a risk of foreign influence.

16. The latter time frame is based on Applicant's testimony that he spent his seventh grade year in the United States. *See* Transcript p. 87.