DATE: July 1, 2004

In Re:

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

Applicant for Security Clearance

CR Case No. 01-10349

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esquire, Department Counsel

Francisco J. Mendez, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant renounced his Israeli citizenship and surrendered his Israeli passport in compliance with the Money Memorandum, his demonstrated foreign preference was not mitigated where Applicant used his Israeli passport to travel to Israel after acquiring U.S. citizenship knowing that Israel considered him an Israeli citizen and required him to use his Israeli passport. Applicant intended to retain his Israeli citizenship and passport to travel to Israel to visit his mother until faced with the inalterable requirement of the Money Memo. Applicant was also subject to foreign influence where his mother was a citizen and resident of Israel and Applicant had consented to regular contact by Israeli intelligence officers in the U.S. for over a decade to ensure that she was not subjected to any adverse consequences. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 23 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR)[(1)] recommending denial or revocation of Applicant's clearance because of Foreign Preference, Foreign Influence, and Personal Conduct. He answered the SOR on 29 April 2004 and requested a hearing. The case was assigned to me 13 November 2004 and subsequently set for and heard 15 December 2003.

At the hearing, the Government offered 17 exhibits.[(2)] I admitted five without objection, one over Applicant's objection. I excluded five as inadmissible under the Directive. I excluded another six because they were more appropriately given official notice. The Government called three witnesses. Applicant presented seven exhibits--admitted without objection--and the testimony of three witnesses, including himself. DOHA received the transcript 29 December 2003.

PROCEDURAL ISSUES

At the hearing, Applicant requested and was given leave to call his two witnesses out of order because of scheduling

conflicts they had later in the day. The Government requested, and I agreed, that I take official notice of six documents outlining the current state of Israel-U.S. relations (including dual citizenship issues) and Israeli intelligence operations against the U.S. I am also taking official notice of the State Department website's discussion of the U.S. policy on dual citizenship.

At the hearing, I excluded G.E. 4 (the transcript of the 2002 clearance hearing concerning Applicant's wife, in which he both testified and served as her personal representative), as well as G.E. 14-17 and the testimony required for their proper foundation (relating to allegations that Applicant misrepresented his citizenship in 1997) because these exhibits and testimony constituted statements adverse to Applicant on contested issues by individuals not available to testify. The practical effect of these rulings was to preclude the Government from establishing its case on subparagraphs 3.a. and 3.b. (Tr. 103-113, 127-137). Accordingly, I resolve those subparagraphs for Applicant.[(3)]

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 2.e., 2.f., and all the subparagraphs under paragraph 3;[(4)] accordingly. I incorporate those admissions as findings of fact.

Applicant--a 50-year old owner of a company seeking to do classified work for the U.S. Government--seeks the clearance required for his facility to be approved to do classified work. He has not previously held a clearance. The contract at issue is worth more than $700,000.00 to his company.

Applicant was born in 1952 in Israel. He grew up and was educated in Israel. He served his mandatory 3-years military duty from 1971 to1974 as a criminal investigator, attaining the equivalent rank of master sergeant. He continued to serve 30 days a year reserve duty while living in Israel.

Applicant obtained his undergraduate degree in aerospace engineering in 1977 and went to work in a defense laboratory run by the Israeli Ministry of Defense. He had the equivalent of a top secret clearance. He obtained his master's degree in aerospace engineering while employed by the defense laboratory. When traveling outside Israel to meetings, seminars, and conferences, Applicant was expected to collect information and technology to bring back to the laboratory. Applicant was provided and used a "cover story" for his background when traveling outside Israel. He presented himself as university official. Applicant asserts that the cover story was solely to protect laboratory employees from terrorist threats, an explanation that ignores the obvious additional benefit of facilitating the required gathering of technical information.

The defense laboratory encouraged Applicant pursue his doctoral degree in aerospace engineering in the U.S., which he did 1984-1987 by combining sabbatical leave with a leave of absence from the laboratory. He returned to Israel in 1987, went back to work for the laboratory, and was polygraphed by security personnel to ensure that he had not disclosed any of his classified work to unauthorized personnel in the U.S. He was also interviewed for a new job, one he declined when he concluded he was being recruited by an Israeli intelligence organization.

Applicant states that he fell in love with the U.S. while getting his doctorate and decided to return permanently. However, when he left Israel in 1989 to return to the U.S., he did so on a visiting professor visa to teach at a U.S. university. He then went to work for a private company, obtaining the necessary employment visa. Only later did he become a legal permanent resident (LPR) of the U.S. He became a naturalized U.S. citizen in February 1999, and obtained his U.S. passport the next day. However, later that month he returned to Israel on business and used his Israeli passport to enter the country. He retained his Israeli passport until April 2002, when he returned it to the Israeli embassy as part of processing his expedited renunciation of his Israeli citizenship, undertaken as part of his U.S. clearance application process and his spouse's clearance process. Previously, he had intended to maintain his passport and dual citizenship to ensure his ability to return to Israel to visit his mother. However, Israel requires Applicant to attach the renunciation letter to his U.S. passport if he travels to the U.S.

Applicant's mother is a citizen and resident of Israel, as is his sister-in-law. Applicant's spouse regularly attends cultural functions at the Israeli embassy, and Applicant attended a concert with her there once in 1998. Applicant has no financial interests in Israel except for his mother's apartment for which he is the sole heir. He intends to visit his mother

in Israel in the future and to travel there to bury her when she dies.

Since coming to the U.S. in 1989, Applicant has been regularly contacted by members of an Israeli counterintelligence agency serving at the Israeli embassy or the Israeli mission to the U.N. They are seeking information from Applicant about any contacts seeking to obtain information from him about his work for the defense laboratory in Israel. These contacts continued until at least June 2001, well after Applicant acquired U.S. citizenship. Applicant cooperated with these visits because he did not want anything happening to his mother in Israel, although he now states that he does not believe she is in any position to be coerced. Applicant states that he has now told these intelligence agency employees that he will no longer permit those contacts, but cannot provide any corroboration of this claim because the government of Israel declined his requests to provide corroboration. Applicant also permitted the contacts because he considers himself contractually and morally bound to not disclose any classified information he obtained when he worked for the defense laboratory. He was able to determine which intelligence agency these individuals worked for by contacting a friend in Israel who had retired from one of the Israeli intelligence agencies. He has never disclosed to U.S. government officials the nature of his classified work for Israel. In 1997, he was the subject of a counter-intelligence investigation which did not result in any apparent formal action by the U.S. Government against Applicant, but did not result in his being given a clean bill of health.

When Applicant applied for his security clearance in 1999, he disclosed most of his foreign connections and his dual citizenship. He failed to disclose his military service in Israel because he did not understand the question to include foreign military service and admits he missed the specific language in the question that included foreign military service. This is the only piece of information he omitted about his foreign contacts in Israel before he became a U.S. citizen. However, he did not disclose his regular contact with Israeli intelligence officers in the U.S. both before and after acquiring U.S. citizenship on his clearance application.[(5)]

The U.S. State Department recognizes that dual citizenship raises potential problems for U.S. citizens:

The concept of dual nationality means that a person is a citizen of two countries at the same time. Each country has its own citizenship laws based on its own policy.Persons may have dual nationality by automatic operation of different laws rather than by choice. For example, a child born in a foreign country to U.S. citizen parents may be both a U.S. citizen and a citizen of the country of birth.

A U.S. citizen may acquire foreign citizenship by marriage, **or a person naturalized as a U.S. citizen may not lose the citizenship of the country of birth.** U.S. law does not mention dual nationality or require a person to choose one citizenship or another. Also, a person who is automatically granted another citizenship does not risk losing U.S. citizenship. However, a person who acquires a foreign citizenship by applying for it may lose U.S. citizenship. In order to lose U.S. citizenship, the law requires that the person must apply for the foreign citizenship voluntarily, by free choice, and with the intention to give up U.S. citizenship. Intent can be shown by the person's statements or conduct. **The U.S. Government recognizes that dual nationality exists but does not encourage it as a matter of policy because of the problems it may cause. Claims of other countries on dual national U.S. citizens may conflict with U.S. law, and dual nationality may limit U.S. Government efforts to assist citizens abroad. The country where a dual national is located generally has a stronger claim to that person's allegiance. However, dual nationals owe allegiance to both the United States and the foreign country. They are required to obey the laws of both countries. Either country has the right to enforce its laws, particularly if the person later travels there.** Most U.S. citizens, including dual nationals, must use a U.S. passport to enter and leave the United States. **Dual nationals may also be required by the foreign country to use its passport to enter and leave that country.** Use of the foreign passport does not endanger U.S. citizenship. Most countries permit a person to renounce or otherwise lose citizenship. Information on losing foreign citizenship can be obtained from the foreign country's embassy and consulates in the United States. Americans can renounce U.S. citizenship in the proper form at U.S. embassies and consulates abroad. (Emphasis added). www.state.gov/dualnationality

The government of Israel, although a strategic partner with the U.S., frequently pursues foreign policy objectives contrary to U.S. interests. It has multiple, active, and effective intelligence services that target U.S. intelligence and economic information, and operates against its citizens in the U.S. Israel recognizes dual citizenship of its citizens who become naturalized U.S. citizens. Israel frequently imposes Israeli citizenship on native-born U.S. citizens who travel to

Israel if Israel considers them to be Israeli citizens under Israeli law.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

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 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.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

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

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship.

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

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C^3I) issued a memorandum[(6)] to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C^3I memorandum **"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 States Government."** (Emphasis added).

FOREIGN INFLUENCE (CRITERION B)

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 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 in, a foreign country;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;

E2.A2.1.2.4. Failing to report, where required, associations with foreign nationals;

E2.A2.1.2.5. Unauthorized association with a suspected or known . . . employee of a foreign intelligence service;

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

None.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . .;

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

None.

Burden of Proof

Initially, the government must prove controverted facts alleged in the Statement of Reasons. If the government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

Although Applicant was a dual citizen of Israel and the United States between his naturalization in 1999 and his renunciation of Israeli citizenship in 2002, his foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For his conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for Israel over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the government has established its case under Guideline C.

Although Applicant claims to prefer his U.S. citizenship to his foreign citizenship, and his renunciation of Israeli citizenship in 2002 might be viewed as confirmation of that, his conduct belies that assertion. Although Applicant is clearly proud of his U.S. citizenship, he has maintained significant aspects of his Israeli citizenship after acquiring U.S. citizenship. While his oath of allegiance to the U.S. and his rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, the citizenship oath did not automatically operate to terminate his citizenship in Israel. Indeed, under Israeli law, Applicant remained a citizen of Israel, and was required to use his Israeli passport to travel to Israel. Applicant acknowledged that fact when he used his Israeli passport to return to Israel the same month he became a U.S. citizen, thereby reasserting his Israeli citizenship and his preference for Israeli citizenship. Indeed, until confronted with the absolute requirements of the Money Memorandum, Applicant intended to retain his Israeli passport and citizenship to ensure his ability to travel to Israel on business and to see his mother.

A citizen of any country, including the U.S., who travels to another country, submits to the sovereignty of that country, including application of its laws regarding visits by foreign citizens. However, a citizen of the U.S. who travels abroad only as a U.S. citizen, travels with the knowledge the U.S. Government is available to provide diplomatic assistance if the traveler encounters difficulty. A dual citizen of the U.S. and a foreign state who travels to that foreign state faces potential difficulty in obtaining U.S. diplomatic assistance, because the foreign state may insist on treating the traveler as its own citizen. In this case, Applicant used his Israeli passport in preference to his U.S. passport knowing that Israel required him to do so. While foregoing travel to his native country is a difficult choice to make, it does not make the choice to travel there as a citizen of that country any less voluntary.

Regarding possession and use of his foreign passport, Applicant initially met none of the mitigating conditions (MC) for foreign preference.[(7)] His dual citizenship was not based merely on his birth in Israel but on his active assertion of his citizenship. Applicant's voluntary assertion of his Israeli citizenship occurred after he became a naturalized U.S. citizen. Although his conduct was lawful, there is no evidence that the conduct was formally sanctioned by the United States.[(8)] Later, Applicant renounced his Israeli citizenship and surrendered his passport. However, this can be given little weight under the circumstances of this case. Israel requires Applicant to attach the renunciation of citizenship form to his U.S. passport when he returns to Israel. Applicant intends to return to Israel to visit his mother or to bury her when she dies. There is no reason to believe Israel will refrain from reimposing the passport and other restrictions applicable to dual U.S.-Israel citizens when Applicant returns to Israel. Further, the obvious monetary incentive for Applicant to obtain the classified contracts he seeks undermines his assertion that his preference for his U.S. citizenship. I conclude Guideline C against Applicant.

Similarly, the government established its case under Guideline B. Applicant is clearly subject to foreign influence because of his mother's presence in Israel. For more than a decade--both as an LPR and citizen of the U.S.--he cooperated with contacts by Israeli intelligence officers because of concern for her. Although he claims to have told these officers that he will no longer cooperate, and I do not expect him to have been able to produce corroboration of that claim, there is simply no reason to believe that he would refuse to cooperate in the future. The implied pressure these officials brought to bear for over a decade is a normal tactic for any intelligence service, and is used by Israeli intelligence services. It is also likely that Applicant would experience similar pressure anytime he returns to Israel as he is clearly known to Israeli intelligence services.

Although I think it unlikely that Applicant's mother is an agent of a foreign government, she is clearly in a position to be exploited. Beyond that, Applicant's regular contact with Israeli intelligence officers, his unwillingness to disclose the nature of his classified work for Israel, and indeed, his ability to obtain an expedited renunciation of his Israeli citizenship does not satisfy me that Applicant himself is not an Israeli intelligence officer. At a minimum, it seems unlikely that Israeli intelligence officers will leave Applicant alone in the future given their decade-old concern that he may divulge Israeli secrets to the U.S. I conclude Guideline B against Applicant.

The government also established its case under Guideline E, however I find the alleged falsification mitigated. His explanation about omitting his Israeli military service from his clearance application is reasonable and undermines any intent to mislead the Government. In addition, as he disclosed the most significant aspects of his life in Israel and other aspects of his Israeli citizenship it is unlikely he would have expected to alter the background investigation in any way, particularly as compulsory military service is a well-known consequence of Israeli citizenship. I conclude Guideline E

for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Paragraph 3. Guideline E: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).

2. The Government also had marked as exhibits three documents used to cross-examine a witness, but they were never offered into evidence, and were returned to the Government.

3. Applicant's witnesses taken out of order both testified that Applicant had never to their knowledge, claimed to be a U.S. citizen when he was not.

4. Although he denied the conclusory allegation of paragraphs 1., 2., and 3.

5. This was not alleged in the SOR as a falsification, and I have not considered it as such. However, I have evaluated it under the foreign influence guidelines as a disqualifying factor, as Applicant knew these individuals were Israeli intelligence officers.

6. The so-called "Money Memo" because it was signed by Arthur L. Money.

7. His military service, employment, and acceptance of other benefits and obligations of Israeli citizenship before becoming a U.S. citizen are potentially mitigated as occurring before his naturalization.

8. State Department material regarding dual citizenship acknowledges the existence of dual citizenship but does not encourage it as a matter of policy because of the problems it may cause.