

DATE: December 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13693

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although applicant has lived in the United States for over forty years, he is unwilling to renounce his Israeli citizenship. This fact, together with his past use of an Israeli passport, and the possibility that he may renew his currently expired Israeli passport, precludes a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On August 15, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 18, 2002. The case was assigned to the undersigned on October 22, 2002. A Notice of Hearing was issued on November 4, 2002, and the hearing was held on November 25, 2002. The transcript was received on December 4, 2002.

FINDINGS OF FACT

Applicant was born in Israel in 1950. Applicant, his mother, and his sister moved to the United States in 1961. His father, who passed away in 2000, remained in Israel. Applicant has lived in the United States since 1961. He became a naturalized United States citizen in 1968. He married a naturalized United States citizen in 1976, and they had ten children. All of the children were born in the United States, and all of them currently reside in the United States. He also has two grandchildren that were born in the United States.

By virtue of his birth in Israel, applicant is considered a citizen of Israel. In 1972, applicant exercised his Israeli citizenship by applying for and receiving an Israeli passport. His primary purpose for doing so at the time was to enable him to visit Israel without encountering trouble from the Israeli government. Applicant subsequently renewed the Israeli passport at least twice, and used it to enter and exit Israel on numerous occasions between 1972 and 2000. The Israeli passport expired approximately two years ago (Exhibit 2), and to date applicant has not attempted to renew it.

Applicant's father is buried in Israel. Applicant would like to visit his father's grave, but since it is located in a part of Israel that is currently off limits to civilians because of the ongoing hostilities in the region, it is unlikely he will be able to do so anytime soon. When and if the area is opened up to civilians, applicant intends to visit his father's grave. If the only way he can enter and exit Israel is with an Israeli passport, he will most likely renew his Israeli passport.

With respect to his Israeli citizenship, applicant testified that he would accept the loss of his Israeli citizenship if it were taken away from him by the Israeli government without any action on his part. However, to take affirmative action to renounce his Israeli citizenship would, in his mind, be tantamount to cutting off relations with the Jewish people, and this is something he does not wish to do (TR 21-22, 37).

In a 1986 signed, sworn statement (Exhibit 4), applicant stated, "I owe an emotional and religious allegiance to Israel, however, I owe a practical allegiance to the US." In an April 2002 signed, sworn statement (Exhibit 2), applicant stated, "I hold allegiance only to the United States of America. I have lived in this country for over 40 years. I am thankful for the opportunities this country has offered me and have no allegiance to any other country." At the hearing, applicant testified as follows: "I don't think there is any question as far as what my allegiance would be to any country, but it's mainly to the United States" (TR at 23).

A letter from applicant's manager at his place of employment was admitted into evidence (Exhibit A). In it, the manager states that he has known applicant since 1995, and that (1) he has "always known (applicant) to be truthful and honest in his dealings with his peers and managers," and (2) although applicant has Israeli citizenship and an Israeli passport, he does "not see anything in his actions that would imply he has less than complete allegiance to the United States of America."

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. E2.A3.1.2.1: The exercise of dual citizenship.
2. E2.A3.1.2.2: Possession and/or use of a foreign passport.

Conditions that could mitigate security concerns:

1. E2.A3.1.3.1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

CONCLUSIONS

Applicant was born in Israel, but since 1961 has lived in the United States. During the forty years that he has lived in the United States, applicant became a naturalized United States citizen, married a naturalized United States citizen, and raised ten children, all of whom reside in the United States.

Although he considers himself a United States citizen, by virtue of his birth in Israel, he is still considered an Israeli citizen by Israel. Even though he has lived in the United States for over forty years, applicant is not willing to renounce his Israeli citizenship. His unwillingness is based upon his belief that such action would be tantamount to cutting off relations with the Jewish people, something he does not want to do. Although applicant's stated reason for his unwillingness to renounce his Israeli citizenship is sincere, it raises obvious security concerns. Individuals granted access to classified information must have a clear, unequivocal preference for the United States. In this case, applicant's unwillingness to renounce his Israeli citizenship, after living in the United States for over forty years, raises doubts about applicant's preferences and allegiances. These doubts are compounded by his 1986 statement claiming an "emotional and religious allegiance to Israel," and his testimony that his allegiance is *mainly* to the United States. Under the "clearly consistent with the national interest" standard set forth in DoD Directive 5220.6, these doubts must be resolved against applicant.

Applicant's past use of an Israeli passport to travel to Israel, and the possibility that he might renew his expired Israeli passport to travel to Israel in the future, is also troubling. ⁽¹⁾ Although I have no doubt that applicant's use of a United States passport to travel to Israel might cause difficulties for him, there is no credible evidence that applicant would have been barred from entering or exiting Israel with a United States passport. By using a foreign passport simply to avoid possible inconveniences, applicant was expressing a preference for Israel over the United States, and in doing so raised doubts about his security-worthiness. Had applicant ruled out the future use of an Israeli passport, his past use of the Israeli passport may have been mitigated. However, the fact that he clearly stated, after being repeatedly advised about the Money Memorandum, that he may renew his Israeli passport, precludes such mitigation.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST 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.

Joseph Testan

Administrative Judge

1. Since applicant does not currently possess a valid Israeli passport, the Money Memorandum does not apply to automatically preclude him from holding a security clearance.