

DATE: February 13, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-16440

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's dual citizenship, including possession and use of a valid foreign passport and foreign contacts, have been mitigated. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 12, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 18, 2002. A notice of hearing was issued on December 10, 2002, scheduling the hearing for January 10, 2003. Due to a scheduling conflict, the matter was continued until January 13, 2003. At the hearing the Government presented five exhibits. The Applicant presented four exhibits and he testified on his own behalf. The official transcript (Tr.) was received on January 29, 2003.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See Government Exhibit 4).

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The

Applicant is 54 years of age and holds a Masters Degree in Engineering. He is employed as a Systems Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Israel and the United States. He was born in Cyprus. His parents moved to Israel when he was just ten days old. In 1978, he moved to the United States for better opportunities. He had already attended two years of college in Israel, and completed his bachelor's degree in the United States. He obtained his Masters Degree in Engineering in 1987. In January 1985, he became a naturalized citizen of the United States.

The Applicant obtained an Israeli passport in 1992. Since becoming a United States citizen, the Applicant has traveled to Israel and used his Israeli passport in preference to his United States passport in 1994, 1995, 1996, 1997 and 2000 for the purpose of visiting his wife's parents. He states that he used it only as a necessity to gain entry into Israel. The Applicant's Israeli passport expired in 1997. He renewed it in 1997, and it expired again in June 2002. After receiving the Money Memorandum, the Applicant surrendered his Israeli passport to his employer's security department on January 8, 2003, where it is locked up in a secure safe. (*See*, Applicant's Exhibit A). He also explained that because his Israeli passport is only valid for ten years, it is now invalid. (*See*, Applicant's Exhibit D). The Applicant testified that he will ask his security officer to destroy his Israeli passport and he will never apply for an Israeli passport again. (Tr. p. 51).

On December 4, 2002, the Applicant applied with the Consulate General of Israel in Los Angeles to revoke his Israeli citizenship. He was informed that the process takes approximately six months. He is awaiting verification of his renunciation. (*See*, Applicant's Exhibits B and C).

The Applicant served in the Israeli army on active duty for three years from 1965 until 1968. He then served in the reserves until he was forty eight years old.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's wife is also a dual citizen of Israel and the United States. Her parents are now deceased. The Applicant maintains casual contact with several childhood friends that he e-mails once a month or once every other month. He also gets in touch with them during the holidays. There is no evidence that the Applicant's wife or his childhood friends have any association with the Israeli military or the Israeli government.

The Applicant's sister-in-law is an Israeli citizen and resides there. She has a somewhat strained relationship with the Applicant's wife, and so they do not contact each other very often. The Applicant's wife also has one or two cousins and an aunt in Israel, but she has little or no contact with them.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

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. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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.

Condition that could raise a security concern:

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

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was raised in Israel. In 1978, he moved to the United States, acquired most of his college education here, and made this his home. In 1985, he became a United States citizen. The Applicant plans on remaining in the United States. After becoming a United States citizen, the Applicant used his Israeli passport to enter Israel on frequent occasions. However, since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his expired Israeli passport to his company security department in January 2003, where it remains under secure lock and key. He is also requesting that his security department destroy his expired Israeli passport. The Applicant has also contacted the Consulate General of Israel and is in the process of renouncing his Israeli citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence does not establish that he is vulnerable to foreign influence. The Applicant's contacts with his foreign relatives and friends are infrequent and minimal. He has no close relatives in Israel. He has some casual contact with a few childhood friends and a sister-in-law with whom he is not close at all. There is no evidence in the record that his friends or sister-in-law, who have no connection with the Israeli Government, are in a position to be exploited by Israel in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Based on the foregoing, this does not raise a security concern and Guideline B is found for the

Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge