

DATE: April 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16247

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On September 20, 2001, 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 October 3, 2001, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on January 7, 2002. A notice of hearing was issued on February 12, 2002. The hearing was held on March 12, 2002, at which the Government presented six exhibits. The Applicant presented one exhibit. The Applicant called one witness and testified on her own behalf. The official transcript (Tr.) was received on March 20, 2002.

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 5).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the Government's documents. The Applicant is 44 years of age and married. She is a Manufacturing Support Specialist for a defense contractor. She seeks a security clearance in connection with her 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 she 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 both Israel and the United States. She was born and raised in Israel. She moved to the United States in July 1978, at the age of 21. In June 1978, she applied for and was issued an Israeli passport. She obtained her United States citizenship in April 1983. After having become a United States citizen, she renewed her Israeli passport in August 2000, which is valid until August 2005. (Tr. p. 30). She also possesses a valid United States passport issued in April 1996, which is valid until April 2006.

The Applicant uses both her United States passport and her Israeli passport when she travels to Israel every two years to visit family and friends. (Tr. p. 33). She has traveled to Israel on 15 separate occasions between 1982 and 1994. (*See*, Government Exhibit 2). The reason she possesses both passports are to be able to visit her family and friends in Israel, and to avoid having to pay the Israeli exit tax. (Tr. p. 23). She uses only her United States passport when she enters other countries in Europe. She states that she is willing to renounce her Israeli citizenship, but she does not wish to surrender her Israeli passport because she would not be able to visit her family. (Tr. pp. 35 and 38).

The Applicant was in the Israeli Air Force, as it is a requirement for all persons when they reach the age of 18. She met her husband, who was a field engineer for a defense contractor, when she was in the Israeli Air Force.

The Applicant has two children who were born in the United States. She considers herself an American.

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 has a mother, brother, and two sisters who are citizens of Israel and reside there. The Applicant's mother is retired, and her brother does silk screening and works for a tempered glass company. One of her sisters is going to school for computers and the other is a part time substitute teacher. The Applicant contacts her mother and brother by telephone about once every two months. One sister she contacts by telephone about once every three or four months, the other sister she contacts maybe once every two years. (Tr. pp. 27-29).

Mitigation.

A coworker, who is a close friend of the Applicant, testified that there is nothing she has seen in the Applicant's character that would in any way question her belief in the Applicant's loyalty to the United States. (Tr. p. 43).

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;
3. Military service or a willingness to bear arms for a foreign country.

Conditions that could mitigate security concerns:

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

Conditions 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;

Conditions that could mitigate security concerns:

None.

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 her 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 of record 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 her suitability for access to classified information.

With respect to Guideline C, Applicant's conduct since moving to the United States indicates for the most part, a preference for the United States over Israel. The sole exception is Applicant's possession and use of her Israeli passport to enter Israel since becoming a United States citizen in 1983. Although the explanation that Applicant offered for using the Israeli passport was reasonable and understandable, she does not indicate the willingness to surrender the passport. My interpretation of the Money memorandum is that, in all cases involving an Applicant who has possessed or used a foreign passport, Guideline C requires a denial of the security clearance request unless the Applicant offers credible evidence that she (1) has obtained official approval for its use from the appropriate United States Government agency, or (2) has surrendered the passport. Accordingly, under the circumstances of this case, Applicant's request for a security clearance must be denied.

With respect to Guideline B, the Applicant has foreign contacts, as well as emotional and family ties, in Israel. Her family members, in this case her mother, brother and sisters, are Israeli citizens of long standing. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. She has not done so. Accordingly, I cannot say that she would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met his ultimate burden of persuasion under Guidelines C or 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: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

1.c.: Against the Applicant

1.d.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge