

DATE: May 14, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17496

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was a dual US Israeli citizen. She has surrendered her foreign passport and her foreign citizenship has been revoked. The Applicant's sister and mother-in-law are citizens of and living in foreign countries and her husband and children are dual Israeli-US citizens. However, her husband has surrendered his foreign passport and has initiated action to renounce his foreign citizenship. None of her relatives are agents of a foreign power or in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On December 13, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 20, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 28, 2002. A Notice of Hearing was issued on February 8, 2002, scheduling the hearing which was held on February 27, 2002.

The Government's case consisted of five exhibits (Gov Ex). The Applicant relied on her own testimony. Following the hearing, four additional documents were received, provisions having been made at the time of the hearing for their submission following the hearing. Department counsel having no objection to their admission, the submissions were admitted as applicant's exhibits (App Ex). A translation of the final exhibit was received on April 24, 2001. The transcript (tr.) of the hearing was received on March 5, 2002.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant denies the allegations.

The Applicant is 48 years old, has worked for a federal contractor since July 1996, and is seeking a security clearance. She was born in Uzbekistan, at age five moved to Poland, and at age 13 moved to Israel where she became an Israeli citizen. She lived in Israel from 1966 until 1984. The Applicant served two years of compulsory service--between the ages of 18 and 20--with the Israeli army serving as a secretary. Following her military service she attended college paid for by her father. While in school, she worked at the student union answering telephones. She has worked in Israel for a laboratory company testing soil samples and for a road construction company designing roads and conducting surveys.

From 1984 until 1987, she lived in the US with her husband who was obtaining his Ph.D. Upon his graduation, they returned to Israel. From 1987 until 1989, the Applicant lived in Israel working for a drafting company. In May 1989, she and her husband returned to the US with their two children all of whom are dual US-Israeli citizens. Her children are currently exempted from serving in the Israeli military. In February 1999, she and her husband became naturalized US citizens.

While living in Israel, the Applicant owned an apartment, which she has since sold. She also sold her mother's apartment following her mother's death. The Applicant owns no real estate in Israel, has no bank accounts or other financial assets there. She is not entitled to a retirement, pension, educational benefits, or social welfare benefits from Israel, and has no expectation of inheritance there. She sends no money to any foreign relative. The Applicant and her husband own a home in the US worth approximately \$400,000.00. They have bank accounts in the US of approximately \$40,000.00 and 401(k) retirement accounts of \$100,000.00. The Applicant has not voted in any US election or foreign election since becoming a US citizen.

Since coming to the US, the Applicant has worked for a real estate company and for a defense contractor. The Applicant choice is to live in the US and her loyalties are with the US, (Gov Ex 3) which is why she chose to become a US citizen. (tr. 28) When asked how she would react if her family members were ever to be threatened, she stated she did not know what she would do. Not knowing does not mean she would choose to go against the US. (tr. 23) Her uncertainty is not unique to relatives living abroad for she see the threat can occur to anyone living anywhere. (tr. 54)

In 1976, the Applicant obtained an Israeli passport, which she has since renewed several times. The passport was most recent extension was November 2001 to expired on January 21, 2006. In February 1999, the Applicant obtained a US passport which she has used for all travel except when visiting Israel. In January 2002, on her most recent visit to Israel, the Applicant present both her US and Israeli passports upon arrival and was told she must use her Israeli passport to enter and leave Israel.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. When the Applicant became aware of the memo she took immediate steps to surrender her foreign passport to the foreign embassy. (App Ex A) On 1 March 2002, the Applicant surrendered her Israeli passport to the Israeli embassy (App Ex A) and was informed to surrender her passport she had to renounce her Israeli citizenship. On April 9, 2002, her Israeli citizenship was renounced. Her husband also surrendered his passport and has taken action to renounce his Israeli citizenship.

The Applicant's sister is an Israeli citizen living in Israel. Her sister and brother-in-law are pharmacists who have two children, one is a student and the other is a graphic artist who is an art school teacher. (tr. 49-50) The Applicant talks with her sister by telephone weekly talking approximately 40 minutes per call. (tr. 57) The Applicant sends no presents or cards to her sister or nephews. The Applicant's mother-in-law -- age 83-- is also an Israeli citizen living in Israel and is a retired cashier. The Applicant talks with her mother-in-law approximately 15 minutes once or twice a week by telephone. The Applicant sends no presents or cards to her mother-in-law.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the

relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

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

Foreign Preference (Guideline C) 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.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.
4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

Foreign Influence (Guideline B) 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.

Conditions that could raise a security concern and may be disqualifying include:

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.A2.1.2.1.

Conditions that could mitigate security concerns include:

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 loyalty to the person(s) involved and the United States. E2.A2.1.3.1.
3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

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 that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and

establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her 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 she 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the US. Security concerns over the Applicant's possible foreign preference arise from her exercise of dual citizenship. Although the Applicant was born in Uzbekistan, she became an Israeli citizen and lived in Israel from 1966 until 1984. The Applicant has completed two years of compulsory service with the Israeli army, which occurred before she became a naturalized US citizen. Disqualifying Condition (DC) 1 ⁽²⁾ applies.

After become a US citizen she presented both her US and Israeli passport when she visited Israel and was told she had to use her Israeli passport to enter the country. Since becoming a US citizen in February 1999, her only use of the Israeli passport was to visit Israel. Because she possessed and used a foreign passport, DC 2 ⁽³⁾ applies.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. When the Applicant became aware of the ASDC3I memo she immediately surrendered her foreign passport to the foreign embassy and started the procedure to renounce her foreign citizenship. On April 2, 2002, her foreign citizenship was revoked. Actually revoking her foreign citizenship is stronger than MC 4 ⁽⁴⁾ which only requires a willingness to do so. MC 4 applies. I find for the Applicant as to Foreign Preference (Guideline C) SOR subparagraphs 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members or a person to whom the individual has close ties of affection are citizens of and/or residing in a foreign country. A security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress.

The Applicant's mother-in-law and sister are Israeli citizens living there. The Applicant has weekly telephone communication with each of them, but sends them no cards or presents. Her mother-in-law is a retired cashier. Her sister and her husband are pharmacists. The Applicant's mother-in-law and sister are not agents of a foreign power nor are they in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States. MC 1 ⁽⁵⁾ and MC 3 ⁽⁶⁾ apply. I find for the Applicant as to SOR subparagraphs 2.a. and 2.c.

The Applicant's husband, son, and daughter are dual Israeli-US citizens. Her husband has surrendered his Israeli passport and has started the procedure to renounce his foreign citizenship. None of them work for a foreign government. All of them live in the US. MC1 applies. I find for the Applicant as to SOR subparagraph 2.b.

The Applicant is uncertain as to how she would react if her relatives were to be threatened which is not limited simply to those living abroad. Her uncertainty does not mean she would act against the US, it merely means she is uncertain what she would do. She has honestly answered she cannot predict her reaction to a future event, but would not go

against the US. The Applicant's uncertainty about a possible event will not be held against her. MC 1 applies. I find for the Applicant as to SOR subparagraph 2.d.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

DECISION

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

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
3. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2
4. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
5. MC 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 loyalty to the person(s) involved and the United States. E2.A2.1.3.1.

6. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.