

DATE: August 19, 2002

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 01-17630

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Department Counsel

FOR APPLICANT

Richard D. Murray, Esq.

SYNOPSIS

Applicant, a naturalized citizen of the US who was a citizen of Israel solely by virtue of his birth and has not actively pursued his dual citizenship with Israel since becoming a US citizen, extenuates and mitigates security concerns associated with his dual citizenship between Israel and the US by renouncing his Israel citizenship and surrendering his Israel passport. Applicant's immediate and extended family members who reside in Israel and the Netherlands, respectively, are not shown to be at any potential risk to pressure or coercion sufficient to pose foreign influence concerns. ADP Clearance is granted.

On December 18, 2001, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 approve Applicant's eligibility to occupy a sensitive position requiring ADP clearance.

Applicant responded to the SOR on March 9, 2002 and requested a hearing. The case was assigned to this Administrative Judge on April 14, 2002, and was scheduled for hearing on April 14, 2002. A hearing was convened on May 10, 2002, in accordance with the schedule, for the purpose of considering whether it is clearly consistent with the national interest to grant or approve Applicant's eligibility to occupy a sensitive position requiring ADP clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on three witnesses (including himself) and five exhibits. The transcript (R.T.) of the proceedings was received on May 20, 2002.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant asked for leave to supplement the record with documentation of his surrender of his Israeli passport to the Israeli Embassy. Within the time permitted, Applicant furnished documentation of his surrender of his Israeli passport. There being no objection from the Government, and good cause being demonstrated,

Applicant's submission is accepted as Exhibit F.

STATEMENT OF FACTS

Applicant is a 36-year old owner/president of a data systems contractor who seeks the approval of eligibility to a sensitive position that requires ADP clearance.

Summary of Allegations and Responses

Applicant is alleged to have (1) exercised dual citizenship with Israel and the US, (2) possessed a valid Israeli passport, which he renewed every five years and told DSS in a May 4, 2001 interview he was required to maintain to be able enter and exit Israel, and (3) used his Israeli passport, rather than his US passport, whenever he traveled to Israel.

Additionally, Applicant is alleged to have (a) a mother, sisters and uncle residing in Israel, with whom he maintains regular contact, (b) a father-in-law, a mother-in-law, brothers-in-law, a sister-in-law and a niece who are Dutch citizens residing in the Netherlands, with whom he maintains regular contact, (c) four childhood friends who are Israeli citizens currently residing in Israel, with whom he maintains contact two to three times a month, and (d) a spouse who is a Dutch citizen.

For his response to the SOR, Applicant admitted each of the allegations while adding explanations over the circumstances of his emigrating to the US in 1981 to pursue advanced education, work and raise two children in the US who are American citizens. Applicant explains that since leaving Israel, he has not participated in Israeli civic life, except to visit his family in Israel, using an Israeli passport as required by Israeli law.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Born in Israel to Israeli parents, Applicant emigrated to the US in 1981 to pursue his post-graduate education. He entered the US using his Israeli passport. After obtaining his Masters degree in late 1983, he obtained a green card and went to work for a US company.

Applicant applied for US citizenship in 1990 and became a naturalized US citizen in December 1991 (*see* R.T., at 24). In the same year, he was issued a US passport. Before obtaining his US passport, he used his Israeli passport on several occasions for foreign travel. However, since obtaining his US passport, he has used his US passport for all foreign travel, except for his travels to Israel to see his family. In these instances, he used his Israeli passport: a legal requirement of Israel for persons holding Israeli citizenship.

Before emigrating to the US, Applicant fulfilled his mandatory military requirements in Israel. He owns no property in Israel and has not voted in any Israel election or held any political office in Israel.

Applicant founded his data systems company in 1987 and currently has a contract with a major DoD prime contractor that requires an ADP certification. Since learning of these certification requirements, he has taken active procedural steps to renounce his Israeli citizenship. He anticipates the process will take two to three months to complete and was advised by the Israeli Embassy that once the renouncement process is completed, he will be asked to come to Israel and turn in his Israeli passport. Applicant is not aware of any legal bar that would prevent him from stopping the renouncement process, but had no intention of taking any actions "to stop the process" (*see* R.T., at 30).

Before the close of the record, Applicant documented his surrender of his Israeli passport to the Israeli Embassy (*see* ex. F).

Applicant's mother, sisters and uncle are Israeli citizens who currently reside in Israel. Applicant maintains regular contact with them. None of his immediate or extended family members have any relationship with the Israeli Government, and he knows of no reason why any of these family members could ever be coerced or pressured into

disclosing or inducing Applicant to disclose classified information.

Applicant is married to a Dutch citizen (Ms. A), whom he married in October 1982. She has two children by Applicant who are US citizens and educated in the US. Ms. A is employed as a financial officer for Applicant's company. Only this year did she apply for US citizenship : in March 2002. Until this year, Dutch law did not permit its citizens to obtain dual citizenship (according to Ms. A). With the changes in the law, Ms. A took advantage of the new opportunities to apply for US citizenship.

Ms. A's parents continue to reside in the Netherlands. So do her siblings and niece. None of them work, though, for any agency or department of the Dutch Government. Ms. A maintains regular contact with her parents and siblings, about twice a year on average. No member of the Dutch Government has ever tried to coerce or influence her or her family members, and she knows of no reason why her family members might be vulnerable to pressure or coercion by the Dutch Government. While her brother once served in the Dutch military, he never had any connection with any of the intelligence branches.

Ms. A owns no property or investments in the Netherlands and has no inheritance prospects there. She voted once in the Netherlands, but not since she married Applicant and emigrated to the US.

Applicant is vouchsafed for his reliability and trustworthiness by another contractor who has been Applicant's supervisor on a couple of projects and in a position to observe Applicant's treatment of sensitive information (*see ex. E; R.T., at 63-64*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship.

DC 2: Possession and/or use of a foreign passport.

Mitigating Conditions:

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

MC 4: Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other

persons to whom he or she may be bound by affection, influence, or are 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members 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 persons involved and the United States.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense decision, appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the

applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation.

CONCLUSIONS

An Israeli citizen by birth, Applicant emigrated to the US to pursue his post-graduate studies. He was naturalized as a US citizen in 1991. Claiming his principal affections lie with the US, he has since taken active administrative steps to renounce his Israeli citizenship and surrender his Israeli passport.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a possible preference for the interests of the foreign country over those of the US. In a different vein, the continued residence of his mother, sisters and uncle in Israel, and numerous in-laws and niece in the Netherlands, raise potential concerns about their being vulnerable to future pressure or coercion that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for immediate and extended family members being placed at risk to pressure or coercion to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in Israel to Israeli parents, Applicant is an Israeli citizen by birth. This citizenship could not be lost except by express renunciation. This, Applicant has done. Since becoming a naturalized US citizen in 1991, Applicant has taken no actions and exercised no Israeli privileges, except for the few occasions he used his Israeli passport to enter and exit Israel to meet Israeli legal requirements. He has no Israeli military obligations, has neither voted in Israeli elections nor held Israeli office since emigrating to the US in 1981, and has not benefitted from any Israeli privileges by reason of his dual Israeli citizenship. Applicant holds no property or financial interests in Israel and has accepted no educational, medical or other benefits from Israel since becoming a US citizen. Nor has he ever acted so as to serve the interests of Israel in preference to the interests of the US since becoming a US citizen.

Because Applicant continued to possess his Israeli passport after accepting US citizenship in 1991, he became subject to disqualifying condition (DC) 2 (possession of a foreign passport) of the Adjudicative Guidelines for foreign preference. By surrendering his Israeli passport after the hearing, he satisfied the surrender requirements of the ASDc3i memorandum of August 16, 2000 ("the Money memo", *see ex. 3*) and mitigates any security risks associated with possessing a foreign passport.

More importantly, by renouncing his Israeli citizenship and surrendering his Israeli passport to the Israeli Embassy in the US, Applicant unstintingly demonstrates his sole preference for the US over his Israeli homeland. Applicant may take the full benefit of two of the mitigating conditions (MC) in the Adjudicative Guidelines: MC 1 (dual citizenship based solely on parents' citizenship or birth in a foreign country) and MC 4 (willingness to renounce dual citizenship).

Overall, Applicant persuades his preference is with the US. He satisfies his burden threshold in several ways: renouncement of his Israeli citizenship, surrender of his unexpired Israeli passport, absence of any prior exercise of any privileges associated with his Israeli citizenship, and demonstrated firm support of the US and its institutions since becoming a naturalized US citizen in 1991. Credited with being a dedicated and trustworthy defense contractor, he absolves himself of foreign preference concerns and carries his evidentiary burden on the core security issue of whether his preference lies with his birth country (Israel) or his adopted country (US). Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.c of Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with Applicant's mother, sisters and uncle being foreign nationals, residing in Israel. Because both Applicant's immediate/extended family members and his spouse's parents, brothers-in-law, sister-in-law and niece (non-immediate family members) continue to be resident citizens of Israel and the Netherlands, respectively, their status raises security concerns covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence (*viz.*, immediate family member, or a person with close ties of affection or obligation, being a citizen or resident of a foreign country). The continued residence of these immediate and extended family members in Israel and the Netherlands, respectively, pose some potential concerns for Applicant because of the risks of coercion or influence brought to bear on these family members that could compromise classified information under Applicant's possession and/or control. From what is known from Applicant's testimony, none of Applicant's family members residing in Israel, or spouse's family members residing in the Netherlands, have a current relationship with either the Israeli or Dutch Government, or are known to Applicant to be vulnerable to any risk of coercion or pressure.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, the geopolitical aims and policies of the particular foreign regime involved should not be ignored. And in Applicant's case, the country of his ethnic heritage is a country with considerable history of respect for democratic institutions and the rule of law. Neither Israel nor the Netherlands (the country of his spouse's ethnic roots) are countries that currently present any unmanageable risk of exerting pressure or influence to compromise the security interests of the US.

So, notwithstanding the continued presence of some of Applicant's family members in Israel, and family members of his spouse in the Netherlands, their presence there does not present any potential risk of a hostage situation. Neither their Israeli nor Dutch citizenship and residence constitute unacceptable risks, for which the mitigation benefits of MC 1 (presence of extended family members in a foreign country neither agents of foreign power nor in a position to be

exploited) of the Adjudicative Guidelines may not be availed of by Applicant.

Considering the record as a whole, any potential security concerns attributable to Applicant's having immediate family members in Israel, and extended family members in the Netherlands, are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Israel and the Netherlands, respectively. Favorable conclusions warrant with respect to sub-paragraphs 2.a and 2.d of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR 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 approve Applicant's eligibility to occupy a sensitive position requiring an ADP clearance.

Roger C. Wesley

Administrative Judge