DATE: November 12, 2003

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-17669

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The residence of Applicant's daughter, son-in-law, and five grandchildren in Israel raise security concerns under the foreign influence guideline. However, these concerns are mitigated by a determination the family members are not foreign agents. Second, although the family members are resident citizens of Israel, and in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member(s) and the United States (US), Applicant's 31-year record without security infractions or violations, and his deep ties to the US justify complete confidence he will resist any coercive or non-coercive effort to force him to choose between the person(s) involved and the US. Clearance is granted.

STATEMENT OF CASE

On February 21, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On arch 13, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was transferred to this Administrative Judge on June 30, 2003. On July 16, 2003, this case was set for hearing on August 7, 2003. The Government submitted two exhibits and Applicant submitted eight exhibits. Testimony was taken from Applicant. The transcript was received on August 15, 2003.

RULINGS ON PROCEDURE

On August 25, 2003, Applicant submitted proposed corrections to the transcript. Those corrections are hereby **accepted**. Government exhibits shall be referred to as (GE) while Applicant's exhibits shall be marked as (AE). References to the

transcript shall be referred to as (Tr.) followed by the page number.

In my review of the evidence in this case, I have taken official notice of the Israeli Consular Information Sheet (January 3, 2002), and also the Annual Report to Congress on Foreign Collection and Industrial Espionage, for the year 2000.

FINDINGS OF FACT

The SOR alleges foreign influence. Applicant's admissions to the factual allegations shall be incorporated in to the following findings of fact:

Applicant, a 69-year-old engineer, has worked for the same defense contractor since 1972, and is currently vice president of the company. In conjunction with his employment, Applicant completed a security-clearance application (SCA) on June 22, 2000, disclosing (1) he was born in the US (New York city) March 3, 1934, and he and his wife have been married and lived at the same US address for the last 21 years, (2) he served the US Navy on active duty from June 1956 to August 1959, and on inactive duty from August 1959 to January 1964, (3) he was educated in the US, and, (4) he has held a security clearance since October 3, 1972.

Applicant's daughter was born in the US on May 5, 1959. She moved with her husband to Israel in 1981 and they currently have five children. She is a developmental psychologist, and Applicant believes she is employed by a military hospital operated by the government. (Tr.31)

Applicant's four youngest grandchildren (who were born in Israel) by his daughter are dual citizens of US and Israel, and currently attend private school in Israel. (Tr. 31) Appellant's first grandchild (born in the US) is performing his required military duty of four years in the Israeli Navy submarine corps (Tr. 53), but Applicant does not believe the grandson intends to stay in the Navy. The grandson is not an officer, and his training is not in the same area that Applicant works in. (Tr. 53)

Applicant's son-in-law, who was born in the US in April 1952, married Applicant's daughter in 1981, and they moved to Israel in 1982. (Tr. 33; AE F) After arriving in Israel, the son-in-law passed the bar and began working as a public defender for a period. (Tr. 64) With his appointment as judge in the city magistrate's court in 1988, the son-in-law relinquished his US citizenship as required by Israeli law. In 1993, Applicant's son-in-law was appointed to the city district court. The son-in-law described the Israeli judicial system as independent, and any attempt to influence a judge is a serious criminal offense. (AE F) An Israeli judge, according to Applicant's son-in-law, is required to refrain from public comment on political issues. (AE F)

Applicant and his wife travel to Israel approximately every two years to visit his daughter, son-in-law, and five grandchildren. The trips represent opportunities to engage in social and religious celebrations as a family. While a visit was planned in June 2003, the trip was canceled due to medical reasons. (Tr. 37) Applicant telephones his family about every two months and sent his first electronic mail to them recently. (Tr. 50) As indicated in his sworn statement in July 1986 (GE 2), Applicant's emotional and religious ties are to the land but not to the Israeli government.

In October 2002, Applicant admitted his daughter's presence in Israel was a concern and a threat to his daughter would make him grieve. In addition, Applicant testified:

[A]ny threat to my family, no matter where they live, would be a source of concern. They are my family. I am close to them and any parent would respond in such a way but this has not in any way affected my loyalty to the United States over the past 20 years they (family) have lived in Israel nor would it affect my loyalty in the future. (Tr. 35)

Applicant testified credibly about always being vigilant about compliance with security regulations and fulfillment of his security responsibilities, specifically in reporting peculiar electronic mail from strange foreign sources. As verified by a colleague (Tr. 39; AE C), Applicant has always contacted the local Defense Security Service (DSS) office whenever there was a question about security. Furthermore, Applicant has read government publications discussing technology collection trends in US industry, and as assistant facility officer, he is responsible for providing ongoing security education regarding industrial espionage. (Tr. 44)

Applicant has no financial ties or financial interests in Israel. He owns no property in Israel, and unlike many people who elect to be buried in Israel, Applicant will be buried in the US. Applicant provides no financial support to his children or grandchildren. Occasionally he sends money to them on a holiday or birthday. (Tr. 41)

Applicant provided six character references from friends and family members. Reference A has known Applicant for 50 years and considers him honest. Reference B has also known Applicant for 50 years. Reference B attended college with Applicant and also served in the military with him. Reference B does not believe Applicant would fall prey to influence.

Reference C, who has been Applicant's coworker for 30 years, believes Applicant is trustworthy. Reference D (the same statement appears in AE G), president of the company, hired Applicant 30 years ago; he considers Applicant security conscientious, honest, and a devoted family man.

References E and F are the affidavits of Applicant's daughter and son-in-law. Both references provide a brief history of each individual after moving to Israel.

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Foreign Influence

Disqualifying Conditions:

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

3. Relatives, cohabitants, or associates who are connected with any foreign government.

Mitigating Conditions:

1. A determination that the 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 US.

3. Contact and correspondence with foreign citizens are casual and infrequent;

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense

decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a 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.

The Government must establish a *prima facie* case under foreign influence (Guideline B), which establishes doubt about a person's judgment, reliability and trustworthiness. 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 repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the US or may be subject to duress. Applicant's daughter, son-in-law, and five grandchildren currently are resident citizens of Israel. Applicant maintains close contact by telephoning them monthly, and has contacted them by electronic mail for the first time. He travels to Israel every two years to visit them. The government has established a *prima facie* case under DC 1 of Guideline B because Applicant has close relationships with family members who are citizens of Israel. In addition, because Applicant's son-in-law is a judge in a city court system and his oldest grandson is in the Israeli Navy, DC 3 also applies.

In mitigation, having weighed and balanced all the circumstances surrounding each family member at issue under MC 1 of the foreign influence guideline, I determine the daughter, the son-in-law, and four of the five grandchildren are not agents of a foreign power. However, they are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the immediate family member(s) involved and the US. First, since four of the five grandchildren are attending private school, I do not find them to be agents of a foreign power or in a position to be exploited by a foreign power. Though Applicant's daughter (mother of Applicant's five grandchildren) is a developmental psychologist at an Israeli military hospital, there is no evidence to suggest she is an agent of a foreign power. However, she is (and has been since 1982) in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his daughter and the US.

The same conclusions must be reached regarding the son-in-law, and first grandchild. The son-in-law, who has been in Israel since 1982, has held judicial responsibilities since 1988. Though the evidence does not indicate or suggest he is an agent of a foreign power, his connection to the government has placed him in a position to be exploited by a foreign power in a way that could force Applicant to choose between his son-in-law and the US. Finally, the first grandson is in the same position of exploitation as Applicant's son-in-law and his daughter.

Even though it has been determined Applicant's daughter, son-in-law, and his first grandson are family members in a position to be exploited by a foreign power, the record has to be carefully examined for any other adverse evidence since 1981 (when his daughter and son-in-law emigrated to Israel), to determine with greater accuracy and predictability whether Applicant could be forced into a choice between his family members and the US. The only evidence comes from a sworn statement Applicant made in October 2002, and became allegation 1.f. of the SOR. The allegation uses the words "concern" and "grieve" that Applicant readily admitted in his answer and confirmed at the hearing. In addition, he testified credibly of the steps he would take in reporting such matters to security. Having weighed and balanced the entire record, other than the two words uttered by Applicant in October 2002, there is nothing in the record to show Applicant is any more susceptible to foreign influence by his family members today than he was in 1981 when his family members moved to Israel or when they began working in their respective employment positions. Therefore, Applicant receives limited mitigation under the first prong of MC 1, even though the family members are in positions of exploitation.[(1)]

Considering all the evidence as a whole, including the general factors of the whole person concept, Guideline B is found

for Applicant. Since there is no adverse evidence (which would usually be present under other guidelines, e.g., drugs, alcohol) to weigh under the first five factors except for Applicant's age and outstanding security record, the discussion of the whole person concept moves to the sixth factor. Applicant's ongoing efforts to keep abreast of security matters, i.e., industrial espionage, and to educate his staff on those issues represents strong evidence under the sixth factor of the whole person concept.

The evidence under the eighth factor is the same as that appearing under the foreign influence guideline, because the potential for exploitation exists even though the status of Applicant and his family has remained the same since 1981 (and more recently when Applicant's family members became employed). While the family members (and ultimately Applicant's remaining grandchildren) are or could be placed in a position of exploitation by a foreign power in away that could force Applicant to choose between loyalty to the family member and the US, the likelihood of Applicant having to make the choice is not reasonable given Applicant's security history. The record paints a picture of a 69-year-old native born US citizen who received his education in the US, served in the US military, and presently has a security clearance he received in 1972 from the Department of Defense. The record shows Applicant has never had a security violation while earning a favorable reputation of processing all security matters in the proper manner. Applicant has repeatedly stated he has close family ties to keep strong family bonds. In sum, despite the foreign influence risks created by Applicant's family members that cannot be ruled out, commonsense and my predictive judgement directs me to conclude Applicant will execute his security responsibilities in the future as he has since 1972 by reporting any coercive or non-coercive foreign influence. Accordingly, Applicant's daughter, son-in-law, and five grandchildren do not present an unacceptable security risk under the foreign influence guideline.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign influence): FOR THE APPLICANT.

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. 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 Applicant.

Paul J. Mason

Administrative Judge

1. MC 3of the foreign influence guideline does not apply to these facts because of the closeness of the family members.