

DATE: April 26, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-19372

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. McKinnon, Esq., Department Counsel

#### **FOR APPLICANT**

Eugene Bengner, Esq.

### **SYNOPSIS**

Applicant is a 41-year-old electrical engineer employed in the high-tech field for a defense contractor. He emigrated to the U.S. in his youth and became a citizen in 1983. He developed two contacts in Israel and two others in Russia and the Ukraine. He has visited them all and one visited him in the U.S. on three occasions staying in Applicant's home. His responses on the Application for Security Clearance (SF 86) omitted certain critical information concerning his travels and his contact's travels to the U.S. as did his responses to three security interviews over a six-year period. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 9, 2002, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated January 13, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 3, 2003. A complete copy of the file of relevant material (FORM), consisting of eight documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did so on October 30, 2003. The case was assigned to, and received by me on February 13, 2004.

### **FINDINGS OF FACT**

Applicant has admitted several of the factual allegations pertaining to foreign influence under Guideline B. Those admissions are incorporated herein as findings of fact. He denied all of the allegations pertaining to Guidelines E and J. Applicant submitted a Security Clearance Application (SF 86) in 1995 (Exh. 4) and was interviewed by security investigators on three occasions in 1996, 1997, and 2001 (Exh. 5, 6, and 7). After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 41-year-old electrical engineer employed in the high-tech field for a defense contractor. He emigrated to the U.S. in his youth and became a citizen in 1983 with sponsorship from a Russian Jewish emigration organization. He developed two contacts in Israel whom he describes as customers and sales representatives. The SOR alleges that one contact works for the Ministry of Defense but Applicant denies this and no proof was offered either by Applicant or the Government.

Applicant also developed contacts with two Russian Jews in an effort to develop some trade in computer equipment as a private venture using a company that he and his wife organized. One of the contacts came to the U.S. three times and stayed at the Applicant's home on all three occasions. Applicant arranged a business visa for his contact and the application contained false statements to which Applicant admitted but says the information was supplied by his employer through which he obtained the visa for his contact.

Applicant went to the Ukraine in 1991 to see one contact and was the guest of and stayed at the Academy of Science, a government entity. He traveled on a business visa arranged for by his contact.

After receiving the FORM, Applicant submitted a number of statements from his fellow employees concerning his travels noting that they were aware of his travels and saw no security problem.

Applicant gave incomplete and inaccurate information on his SF 86 and in the three security investigation interviews that transpired over five years concerning his travels, his passport, his foreign friends, and the reasons for failing to fully state correct information. His reasons for the omissions and misrepresentations ranged from forgetfulness to the expedition of travel arrangements to Russia and the Ukraine.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

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. Directive, ¶ E2.A2.1.1. A condition that could raise a security concern and be potentially disqualifying include failing to report,

where required, associations with foreign nationals. ¶ E2.A.2.1.2.

### **CONCLUSION**

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001). Mitigating factors are not applicable.

Applicant denied that he had an expired passport that would have shown some of the travel about which he was being asked. He advanced family and ancestral reasons for his 1991 visit to the Ukraine but failed to acknowledge the role his Ukrainian contact played in his visit and the fact that he had a potential business arrangement with him for sale of computers.

Much of the information in the SOR comes directly from statements made by Applicant in the three security investigations conducted over the years since his SF 86 was filed in 1995. While some of his foreign contacts may have been benign, the fact that he made so many misstatements about them, the travels he made to Israel, the Ukraine, and Russia, the visits of his foreign friends to the U.S., and the circumstances surrounding the visits raise serious doubts as to truthfulness and his eligibility for a security clearance.

The FORM analyzes in a careful manner the distortions of fact and the rationale for denial of a clearance. His withholding and omissions appear to be knowing, willful, and deliberate. Directive ¶ E2.A5.1.2.3. The extent of falsification of statements to investigators justifies a finding of criminal conduct under Directive ¶ E2.A10.1.2.2.

### **FORMAL FINDINGS**

Formal Findings as required by the Directive, ¶ E3.1.25, are as follows:

#### Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

#### Paragraph 3. Guideline J : AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

**DECISION**

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge