DATE: January 29, 2003

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In Re:

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

Applicant for Security Clearance

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ISCR Case No. 01-22606

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esquire, Department Counsel

**FOR APPLICANT**

Kevin P. Connelly, Esquire

**SYNOPSIS**

The Applicant is a dual U.S. Israeli citizen who was born in the U.S. and lived in Israel between the ages of one and 28. He exercised dual citizenship, used his Israeli passport after having been issued a U.S. passport, and has approximately $200,000.00 worth of inherited property located in Israel. His mother and sisters are dual citizens living in Israel. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the security concerns engendered by the Applicant's exercise of dual citizenship and the foreign citizenship of his mother and sisters. Clearance is denied.

**STATEMENT OF THE CASE**

On April 1, 2002, 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 May 15, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on July 31, 2002. A Notice of Hearing was issued on August 15, 2002, scheduling the hearing for September 4, 2002. An Amended Notice of Hearing was issued on September 3, 2002 rescheduling the hearing which was held on September 17, 2002.

The Government's case consisted of three exhibits (Gov Ex). The Applicant relied on his own testimony, the testimony of two witnesses, and three exhibits (App Ex). The transcript (tr.) of the hearing was received on September 25, 2002.

DC moved to amend the SOR by moving SOR subparagraphs 1.f. and 1.g. from paragraph 1, under Guideline C., to paragraph 2, under Guideline B. The numbering of SOR subparagraph 1.f. to be changed to SOR subparagraph 2.e. and SOR subparagraph 1.g. to be changed to SOR subparagraph 2.f. The motion was granted and the amendment to the SOR made.

**FINDINGS OF FACT**

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

The Applicant is 32-years-old, has worked for a defense contractor since August 1998, and is seeking to obtain a security clearance. The Applicant is hard working, enthusiastic, dedicated, honest, trustworthy, loyal, responsible, reliable, energetic, eager to please, has business focus, and is a "straight shooter" who tells it like it is, good or bad. (tr. 138, App Ex A) The Applicant knows and follows regulations concerning export licenses, custom requirements, and foreign travel. (tr. 122, 128)

In 1970, the Applicant was born in the U.S. At the time of his birth, his father was a citizen of Israel and his mother a citizen of the United Kingdom (UK). By his birth in the U.S. to an Israeli citizen, the Applicant had dual U.S. and Israeli citizenship. Prior his first birthday, the Applicant accompanied his family when they moved to Israel so his father[(2)] could join the family construction business. From November 1988 to November 1991, the Applicant served in the Israeli Air Force. Under Israeli law it is mandatory for Israeli citizens living in Israel, including those with dual citizenship, to serve on active duty in the Israeli Defense Force for three years for males and two years for females. He held a top secret clearance while in the Israeli military. The Applicant was educated in Israel, where he completed law school, passed the bar examination, and could practice law, if he so chose. In July 1998, the Applicant and his wife moved to the U.S. He had lived in Israel 27 years before moving to the U.S.

The Applicant's wife was born and raised in Israel and is an Israeli citizen. She has her green card and intends to apply for U.S. citizenship when she becomes eligible next year. His wife has no real estate or other significant property in Israel. His wife served her mandatory service as a lieutenant in the Israeli military in charge of security clearances. (tr. 90) When in Israel, she worked in a law firm and has a bank account there which contains less than $20.00. His daughter--19 months old--was born in the U.S. and is a dual U.S. Israeli citizen.

In October 1995, the Applicant was living in Israel and obtained an Israeli passport, which he renewed in 2000 after his move to the U.S. (tr. 103) His Israeli passport had an expiration date in October 2005. (App Ex C) When in high school, the Applicant obtained a U.S. passport,[(3)] which he has maintained and uses for all travel,[(4)] except when traveling to Israel. It is his understanding that Israeli law requires a dual citizen of Israel and the U.S. to have a valid Israeli passport in order to enter or exit Israel. (tr. 106) During the past four years, he has used his Israeli passport during four trips to Israel. His Israeli passport was last used in April 2002. In September 2002, four days prior the hearing, the Applicant surrendered his Israeli passport to the Israeli Embassy. (App Ex C) He no longer wishes to have a foreign passport.

The Applicant has retained his Israeli citizenship in order to settle inheritance matters concerning his father's and grandmother's estates. To renounce his foreign citizenship would create problems in settling the estate and would result in the loss of tax benefits. (tr. 55) Once the inheritance issues are resolved, he would be willing to renounce his Israeli citizenship. (tr. 56)

In 1977, his grandfather who owned a construction company died, without a will, and his property went to the Applicant's father, his father's brother, and grandmother. The Applicant's father died in 1989 and his grandmother died in 1994. The inherited property includes real estate which includes three apartments. The Applicant's share of the inherited property is approximately $200,000.00. Together with his two sisters, the total value of the inherited property is $600,000.00. The Applicant and his sisters during the last eight years have employed a number of attorneys in an attempt to resolve various complex legal issues concerning the property so that the property can be registered in their names. The Applicant intends to sell his share of the property as soon as possible. The Applicant estimates it will be two or three years before this property can be sold. (tr. 55) The Applicant had a bank account in Israel containing approximately $25,000.00 held jointly with his sisters. The account was used to maintain the inherited property. His share of this account was slightly more than $8,000.00 before he closed the account when he found out it was a concern.

From January 1992 through January 1997, while living and working in Israel, the Applicant had contact with the Israeli Ministry of Defense in his capacity as manager of military sales for his company. Since moving to the U.S. the only communications he has had with the Israeli Ministry of Defense are those promoting his company's communication system products. In his capacity as manager of international business development he travels to various countries meeting with people who purchase military equipment for their governments. He has sold military products to various foreign militaries, to include Israel. However, most of the sales are to NATO countries. Sales to Israel are only a small part of the company's business. All of his foreign travel has to be pre-approved by the company and upon his return he has submitted trip reports. (tr. 101)

After coming to the U.S., the Applicant paid approximately $100.00 a month to the Israeli Social Security and Health Benefits system to maintain his rights in the system. He stopped making payments when made aware they were of security concern. He had a bank account of approximately $1,000.00 in Israel, which he has closed.

The Applicant's older sister is a dual citizen of Israel and the United States having been born in the U.S. and currently resides in Israel. She is a secretary in the office of the Israeli Ministry of Foreign Affairs. He speaks with her every two or three weeks regarding family matters. Since coming to the U.S., he has seen her during his four trips to Israel and she has visited him twice in the U.S. Her husband is a police officer.

The Applicant's mother and younger sister are dual citizens of the United Kingdom (UK) and Israel and live in Israel. The Applicant's mother was born in the UK and at age 18 moved to the U.S. where she lived for ten years, and where she met and married the Applicant's father. The Applicant talks to his mother once a week and since coming to the U.S. he has seen her during his four trips to Israel. She has visited him twice in the U.S. His mother is a secretary for a music and dance academy. His mother regretted the move to Israel, which was very difficult for her due in part to difficulty with the language. (tr. 60) She is likely to move to the U.S. when she retires in five years.

Since coming to the U.S., the Applicant has seen his younger sister during his four trips to Israel and she has visited him once in the U.S. Seven years ago, his younger sister served as a physical instructor in the Israeli military. He talks to this sister every three weeks or so. She currently works in marketing for a cellular telephone provider. The Applicant has contact with his uncle who is a doctor once every two years. (tr. 92)

The Applicant's mother-in-law and father-in-law are citizens of Israel currently residing in Israel. His mother-in-law works in human resources and his father-in-law sells agricultural equipment. The Applicant has infrequent contact with them, generally short telephone conversations with his mother-in-law once a month and his father-in-law every few months. His mother-in-law has visited him and his wife four times in the U.S. His brother-in-law is a student studying law in Israel. Even on some of his return trips to Israel he has not seen them. (tr. 63) He does not provide them any financial support. His wife talks to her mother every day, her father once a month or every other month, and talks to her brother a few times a week. (tr. 90) None of his relatives or his wife's relatives are agents of a foreign government.

The Applicant would be willing to bear arms for Israel if there were to be some terrible holocaust, but would not bear arms simply if Israel was in a war. He would never take up arms against the U.S. and would take up arms for the U.S. against Israel, if that should ever occur. (tr. 107)

It was always his parent's dream to return to the U.S. The Applicant has no preference for Israel over the U.S. He sees his future as living in the U.S. Since returning to the U.S. he has purchased a house (worth $280,000.00 with a $150,000.00 mortgage), purchased two cars, has approximately $7,000.00 in a savings account, $20,000.00 in his checking account, and $20,000.00 in a 401(k) retirement account, all in the U.S. He is pursuing an MBA degree through a local U.S. university and will graduate in July 2003. He has opened a college investment plan (App Ex B) to fund his daughter's college education in the U.S.

## 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.

3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.

6. Using foreign citizenship to protect financial or business interests in another country. E2.A3.1.2.6.

Conditions that could mitigate security concerns include:

None Apply.

**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. E2.A2.1.1.

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.

2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. E2.A2.1.2.1

3. Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3.

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 his 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 his 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 he 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 U.S. Security concerns over the Applicant's possible foreign preference arise from his exercise of dual citizenship. The Applicant is a dual U.S. and Israeli citizen having been born in the U.S., but raised in Israel from age one to age 28, when he moved to the U.S.

The Applicant chose to exercise his dual citizenship by availing himself of the benefits of citizenship by maintaining his Israeli passport, which he renewed in 2000, after moving to the U.S. Disqualifying Condition (DC) 1[(5)] applies. The Applicant possessed his Israeli passport until four days prior the hearing. He used that passport for entering and exiting Israel and used his U.S. passport for all other travel. This use occurred after he had been issued a U.S. passport. DC 2[(6)] applies. From November 1988 to November 1991, the Applicant served his mandatory service in the Israel Air Force. This service occurred while he was a dual U.S. Israeli citizen. Although no longer willing to bear arms for Israel, DC 3[(7)] applies.

The Applicant has retained his Israeli citizenship in order to settle inheritance matters of his father's and grandmother's estates. To renounce his foreign citizenship would create problems in settling the estate and would result in the loss of tax benefits. He is willing to renounce his Israeli citizenship once the inheritance issues are resolved. DC 6[(8)] applies.

None of the mitigating conditions (MC) under Guideline C apply. MC 1[(9)] does not apply because the dual citizenship is not based solely on where he was born and his parent's citizenship, but also on the length, nature, and significance of the time he lived and worked in Israel, the benefits responsibilities of being an Israeli citizen, and his ties to Israel. He lived in Israel from age one to 28, he was raised there, was educated in Israel, where he completed law school, passed the bar examination, and was employed, and served mandatory service in the Israeli military. These factors are considered in reviewing the Applicant's dual citizenship.

The Applicant's service in the Israeli military was three years of mandatory military service. MC 2[(10)] does not apply because this service occurred while the Applicant was a dual U.S. and Israel citizen. There is no indication that any of this action was sanctioned by the U.S. Therefore, MC 3[(11)] does not apply. Even though the Applicant has expressed a willingness to renounce his Israeli citizenship, it is conditional upon settling inheritance matters in Israeli. These matters have not been settled during the past eight years but the Applicant hopes they will be settled in the next two or three years. A conditional renouncement is insufficient to allow for the application of MC 4.[(12)]

I find against the Applicant as to SOR subparagraph 1.a. for exercising dual citizenship. The Applicant surrendered his Israeli passport four days prior the hearing. Although belated, he no longer possesses a foreign passport and I find for him as to SOR subparagraph 1.b. for, at one time, possessing a foreign passport.

Even thought Applicant possessed a U.S. passport, he entered and exited Israel on his Israeli passport. The fact he is required by Israeli law to do this is not a mitigating factor. I find against him as to SOR subparagraph 1.c. for using his Israeli passport when he traveled to and from Israel.

Eleven years ago, the Applicant completed his mandatory military service in the Israeli Air Force. He has stated only under the most catastrophic of events--more catastrophic than Israel going to war--would he ever bear arms for Israel. Due to the nature of the service, the fact it occurred 11 years ago, and his expressed willingness to bear arms for the U.S. even against Israel if required, I find for the Applicant as to SOR subparagraph 1.d.

The Applicant has inherited approximately $200,000.00 in property in Israel from his father and grandmother. For the past eight years he has tried to complete the necessary procedure to allow him to sell the property and invest the proceeds in the U.S. Even though the value this property is less than the value of his U.S. property, which includes his home, cars, bank accounts, and retirement accounts, it is still a significant amount of property. I find against the Applicant as to SOR subparagraph 1.e.

When living in Israel, the Applicant had a job in which he sold military equipment to the Israeli military. In his current job he sells military equipment to foreign militaries, most NATO countries, but also to Israel. I do not find his position in sales or his contact with foreign governments related to his prior job or his current job to be disqualifying. I find for the Applicant as to SOR subparagraphs 1.f. and 1.g.

After coming to the U.S. he continued to contribute to the Israeli Social Security and Health Benefits system. He is determined not to return to Israel and stopped making his $100.00 per month contributions when he became made aware they were of security concern. He also closed two bank accounts in Israel, when he became aware they too were of security concern. I find for the Applicant as to SOR subparagraphs 1.h., 1.i., and 1.j.

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 and other persons to whom he is bound by affection who are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's mother and younger sister are dual citizens of the UK and Israel, residing in Israel. His older sister is a dual citizen of the U.S. and Israel, residing in Israel. His mother-in-law and father-in-law are Israeli citizens residing in Israel. Thus, DC 1[(13)] applies. The Applicant's spouse is an Israeli citizen living with him in the U.S. His daughter is a dual U.S. and Israeli citizen living with him in the U.S., which makes DC 2[(14)] applicable. The Applicant's sister is a secretary for the Israeli Ministry of Foreign Affairs and her husband is a police officer. Therefore, DC 3[(15)] applies.

The Applicant has a heavy burden of persuasion to demonstrate he is not at risk of being vulnerable due to family ties. He must show close relatives are not in a position to be exploited by a foreign power. Additionally, the Applicant's mother and sisters are immediate family members, with whom the individual has close ties of affection and are citizens of, and reside in a foreign country. His mother is 60 years old and is a secretary for a music and dance academy, his older sister is a secretary working for the government, and his younger sister works in marketing for a cellular telephone provider. I do not find a secretary to be an agent of a foreign government. Neither this sister nor any of his other relatives are agents of a foreign government. He talks with his mother once a week, with his sisters every two or three weeks. He visited all three of them during his trips to Israel after he came to the U.S. and both his mother and his older sister have visited him twice in the U.S. and his younger sister has visited him once in the U.S. The Applicant's contact with his mother and sisters cannot be said to be causal or infrequent. Therefore, MC 3 does not apply to them.

The Applicant has stated he does not provide support to his relatives in Israel nor do they provide him support. He has also stated they do not have an ability to influence or to exploit him. However, because of the length, nature, and significance of the Applicant's ties to Israel and the strength of the Applicant's ties with family members the security concerns engendered by the foreign citizenship of his mother and sisters, who reside in Israel, are not mitigated. I find against the Applicant as to SOR subparagraph 2.a. and 2.b.

Although his mother-in-law and father-in-law are citizens of and currently reside in Israel, he has minimal contact with them. He generally has short telephone conversations with his mother-in-law once a month and his father-in-law every few months. I find MC 3[(16)] applicable and find for the Applicant as to SOR subparagraph 2.c.

The Applicant's wife is an Israeli citizen living with the Applicant in the U.S. Even though the Applicant's wife talks with her mother, father, and brother who live in Israel, she lives in the U.S. and her assets are in the U.S. She owns no property of significance in Israel. She and the Applicant own a house, cars, and bank accounts in the U.S. Appropriate weight has been given to the fact his wife is a registered alien and hopes to become a U.S. citizen in the near future. Although she served her mandatory Israeli military service, she is not an agent of a foreign power or in a position to be exploited by a foreign power. I find MC 1[(17)] applicable as to his wife and find for the Applicant as to SOR subparagraph 2.d.

When in Israel, the Applicant had a job in which he sold military equipment to the Israeli military. In his current job, he sells military equipment to foreign militaries, mostly to NATO countries, but also to Israel. I do not find his position in sales to be a disqualifying factor. I find for the Applicant as to SOR subparagraphs 2.e. and 2.f.

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 1Guideline C (Foreign Preference): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Move to Paragraph 2

Subparagraph 1.g.: Move to Paragraph 2

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

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

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

## DECISION

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

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**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. His father thought his return to Israel was a mistake. (tr. 29)

3. He obtained his current U.S. passport in 1996, which was a renewal of his U.S. passport. (tr. 102)

4. Even when the Applicant lived in Israel, he used his U.S. passport for all travel except for entering and exiting Israel. (tr. 94)

5. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.

6. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

7. DC 3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.

8. DC 6. Using foreign citizenship to protect financial or business interests in another country. E2.A3.1.2.6.

9. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.

10. MC 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.

11. MC 3. Activity is sanctioned by the United States. E2.A3.1.3.3.

12. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

13. 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. E2.A2.1.2.1.

14. DC 2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. E2.A2.1.2.1

15. DC 3. Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3.

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

17. 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.