

DATE: February 13, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22693

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer Campbell, Department Counsel

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's exercise of dual citizenship, including possession of a foreign passport and his foreign contacts, have not been mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 29, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 13, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 18, 2002, and a notice of hearing was issued on November 1, 2002, setting the hearing for November 22, 2002. At the hearing the Government presented five exhibits. The Applicant presented eight exhibits and called three witnesses. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on December 10, 2002.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (*See*, Government Exhibit 1).

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and testimony presented at the hearing. The Applicant is 55 years of age and has a Masters in Engineering. He is employed as a Radar Systems Analyst for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of both Israel and the United States. The Applicant acquired his Israeli Citizenship through his parents when they immigrated to Israel in 1948. The Applicant was two years old at the time. Due to extreme economic hardships in Israel, the Applicant's parents decided to immigrate to the United States. In 1960, the Applicant came with his mother under her Israeli passport to the United States. The Applicant became a naturalized citizen of the United States in September 1969.

In 1981, the Applicant took a one year sabbatical from his employment in the United States and moved his family to Israel to live and work. At that time he had applied for and obtained an Israeli passport that he used to enter and exit Israel. For about ten months, the Applicant worked for the Israeli Ministry of Defense. He returned to the United States in August 1982.

In 1996, the Applicant states that he applied for and obtained another Israeli passport out of administrative necessity. He explained that in order to escort his daughter to Israel where she attended school, to avoid harassment and potential danger, upon entering and exiting Israel, he presented both his American and Israeli passports. The Applicant states that he presently does not know where his Israeli passport is, but he knows that it is current Israeli passport is valid until September 2003.

The Applicant most recently traveled to Israel in 2000 and again in 2001 to visit his family there. He plans to continue to travel to Israel to visit his family in the future.

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The Applicant has never voted in Israeli elections, or exercised any other rights, privileges or benefits provided exclusively for Israeli citizens. He states that he is not employed as an agent or an official representative of any foreign government. He states that he has no foreign property, business connections or financial interests.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's brother, brother-in-law and sister-in-law, are citizens of Israel and reside in Israel. His son and his daughter-in-law are dual citizens and reside in Israel. The Applicant also has 15 nieces and nephews and two grandchildren in Israel. He considers himself very close to his family in Israel. He and his wife talk to his son in Israel almost every week. He attends weddings, birthdays and other family celebrations in Israel.

The Applicant's wife had two uncles who were also citizens of Israel. One is now deceased, the other lives in and is a naturalized United States citizen.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust

the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

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.

#### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

#### Condition that could mitigate security concerns:

None.

### Foreign Influence

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: (1) not citizens of the United States or (2) 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.

#### Condition that could raise a security concern:

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

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

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 be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Israel and the United States. After becoming a citizen of the United States in 1969, he moved from the United States to Israel to work for their defense department in 1981. He has exercised dual citizenship by applying for and obtaining an Israeli passport in 1981 and again in 1996, after having become an American citizen. The Applicant has failed to comply with the provisions of the Money Memorandum that requires dual citizens to surrender their foreign passports to be eligible for access to classified information. Presently, the Applicant has not surrendered his Israeli passport. Simply because he does not know where it is today does not mean he cannot find it tomorrow. Thus, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has many foreign contacts, as well as emotional and family ties, in Israel. His family members, in this case his brother, brother-in-law, sister-in-law, his son and his wife and 15 nieces and nephew and two grand children with whom he maintains regular contact. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C or B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

### **DECISION**

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

Darlene Lokey Anderson

Administrative Judge