

DATE: December 31, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23975

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

#### **FOR APPLICANT**

Daniel C. Schwartz, Esq.

Robert W. Tomilson, Esq.

### **SYNOPSIS**

Applicant is a native-born U.S. citizen who is a beneficiary of a trust with assets that include real estate in Israel, which if sold in parcels over time would net him approximately \$200,000. Due to his lack of any other contacts with Israel and his inability to control the land transactions from which his trust benefits, Applicant is not vulnerable to foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

On 10 July 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated 20 February 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated 2 January 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that 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 determine whether clearance should be denied or revoked.

The Government contends that Applicant's financial interests in a foreign country may be a security risk under Guideline B of the Directive because he "own[s] real estate in Israel valued at approximately \$400,000.00." SOR, ¶ 1.a.

Applicant answered the SOR in writing on 16 August 2002. The case was originally assigned to Administrative Judge John Erck on 22 October 2002 and transferred to Jack Burt Smith on that date. Due to Judge Smith's illness, the case was transferred to me on 16 December 2002. On that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of four exhibits. Applicant testified on his own behalf and submitted 19 exhibits. The transcript (Tr.) of the proceeding was received on 26 December 2002.

## FINDINGS OF FACT

Applicant is a 40-year-old native-born U.S. citizen who has been employed by a defense contractor for approximately two and one-half years. Tr. 19. He is seeking a secret clearance to perform his duties as a senior information systems engineer. Tr. 20, 23-24. Although he does not have routine access to classified material and the systems he works on are not classified, he could have access to classified information if called upon to trouble-shoot problems with systems that become operational. Tr. 24.

Applicant's father, was born in Antwerp, Belgium, in 1929. He immigrated to the U.S. with his family in 1941 at the age of 12, became a U.S. citizen, and served in the U.S. Army during the early 1950s. Applicant's father and uncle (also a U.S. citizen) established an oil business in the U.S. Ex. B. Applicant's mother was a native-born citizen of the U.S. Ex. 1.

In the 1930s, Applicant's paternal grandparents bought real estate, containing orange groves, in what became the State of Israel in 1948. Although they purchased the real estate, they apparently never lived in Israel. In the 1970s, the land was rented out for agricultural purposes. By the 1980s, the land lay fallow. Tr. 32-33. The grandparents willed the land to Applicant's father and uncle. Ex. 1.

Prior to their deaths, Applicant's parents established a revocable trust consisting of the father's half-interest in the real estate in Israel, his interest in the oil company, and other investments. The other 50 percent of the real estate in Israel is owned outright by Applicant's uncle. Applicant's father was the sole trustee of the Trust. Upon the death of Applicant's father, Applicant's uncle became the sole trustee. If the uncle is unable to so act, the uncle's son becomes the sole trustee. Ex. R.

By the terms of the trust, upon the death of the two grantors (Applicant's parents), the trust

"shall be distributed outright and free of Trust," in equal one-half shares to Applicant and his brother. Ex. R. However, after the death of Applicant's parents, Applicant and his brother agreed with their uncle "that it was probably easier for all concerned if he continued to keep the trust open and manage these in conjunction with his interest in the oil business and his interest in the Israeli property" because neither Applicant nor his brother "have the expertise nor inclination to actually do anything with them." Tr. 29. Although Applicant's share of the real estate is valued at between \$375,000 and \$450,000, after expenses and taxes the most he could reasonably expect is between \$187,000 and \$225,000. Ans. 3; Tr. 38-39. The Trust is trying to sell the land piecemeal to maximize the profit. This may take some time because of the sluggish real estate market in Israel. Applicant takes no active role in the management of the Trust. Tr. 30-31.

The assets of the oil company, that are also part of the Trust, are producing oil wells located in the U.S. The company is no longer actively exploring or drilling new wells. Tr. 31-32.

Applicant is married to a native-born U.S. citizen whose parents are also native-born U.S. citizens. Ex. 1. Applicant estimates his and his wife's net worth, including valuation of his share of the land in Israel (\$200,000), at \$1.1 million. Tr. 37-38.

Applicant has a number of cousins in Israel, but has not had contact with any of them since the early 1990s. Tr. 40. He has no intention of living in Israel and he has no sentimental attachment to the land. Tr. 34. Applicant is aware of his security responsibilities and would contact security personnel if any attempts were made to pressure or coerce him into revealing classified or sensitive information. *See* Ans. at 4.

Applicant does not practice any religion. He is no more interested in the Middle East than most other educated people.

## 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. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by substantial 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. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002). *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*6-8 (App. Bd. May 9, 2001). 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* Exec. Order No. 12,968 § 3.1(b).

Under Guideline B of the Directive, a security risk may exist when financial interests in other

countries are such as to render an applicant potentially vulnerable to coercion, exploitation, or pressure. Directive, ¶ E2.A2.1.1. The applicable condition that could raise a security concern in this case is a substantial financial interest in a country that could make the individual vulnerable to foreign influence. The only mitigating condition that might apply is that the "[f]oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities." Directive, ¶ E2.A2.1.3.5.

## CONCLUSIONS

The Government contends the Applicant may be disqualified from obtaining a security clearance because he has a "substantial financial interest" in a foreign country by owning land in Israel. Directive, ¶ E2.A2.1.2.8. Applicant admits that he has a financial interest in Israel, but contests ownership of the land and claims his foreign financial interests are minimal and not sufficient to affect his security responsibilities.

Applicant is technically correct about the ownership of the land. It is the Trust that owns a share of the land, not Applicant. Nevertheless, his interest as a beneficiary in the Trust is sufficient to trigger the provisions of Guideline B of the Directive.

To be a disqualifying factor, the financial interest in the foreign country must be "substantial." Directive, ¶ E2.A2.1.2.8. The fact that a foreign financial interest is minimal could mitigate the security concerns. Directive, ¶ E2.A2.1.3.5. Applicant argues that his financial interest in the Trust's land ownership is "minimal" when compared with his net worth.

"Minimal" means "extremely minute." *Webster's Third New International Dictionary* 1438 (1976). "Substantial" means "considerable in amount, value, or worth." *Id.* at 2280. By the common definition of the term, I doubt its use in the Directive was meant to limit scrutiny of financial interests to a comparison of the value of the foreign financial interest

against an applicant's net worth. Regardless, I conclude that Applicant has a substantial foreign financial interest. A financial interest amounting to \$200,000 and 18 percent of net worth is not insubstantial.

Although Applicant's foreign financial interest is substantial, and Israel is a nation that targets U.S. technology for espionage (Ex. 4), I am convinced it does not make him vulnerable to foreign influence. While Applicant could moot this point by renouncing any proceeds from the land in Israel, I do not believe it is necessary for him to do so. Applicant has been very forthcoming during the whole procedure. He provided the information upon which the SOR was based. He has no contact with the State of Israel, with their citizens, or with the land transactions. His family and his life is in the U.S. After seeing and hearing him testify, I am convinced Applicant's foreign financial interests would not make him vulnerable to foreign influence.

### **FORMAL FINDINGS**

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See* Directive, ¶ E3.1.25), are as follows:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

### **DECISION**

In light of all of 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.

**James A. Young**

**Administrative Judge**