

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant's dual citizenship, including acceptance of foreign educational benefits, military service, voting, and substantial foreign contacts, including family ties and significant financial interests have not been mitigated. Clearance is denied.

CASENO: 02-00305.h1

DATE: 08/08/2002

DATE: August 8, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00305

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship, acceptance of educational benefits, military service, voting, and substantial foreign contacts, including family ties and significant financial interests have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On February 4, 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 February 26, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 11, 2002. A notice of hearing was issued on June 20, 2002. The hearing was held on July 28, 2002, at which the Government presented three exhibits. The Applicant presented six exhibits. The Applicant called two witnesses and testified on his own behalf. The official transcript (Tr.) was received on July 26, 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 2).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, his testimony and the documents. The Applicant is 38 years of age and married. He is an Electrical Engineer 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. He was born in the United States in 1964. Both of his parents are Israeli citizens. In 1966, at the age of two, his family moved to Israel. The Applicant was raised in Israel and obtained his education there, except for two years in 1974 and 1975 during his father's sabbatical in the United States. The Applicant attended high school in Israel from 1976 until 1982, and then attended a prestigious University in Israel from 1987 until September 1989 where he received a Bachelor of Science Degree in Electrical Engineering. Since the Applicant's father was a professor at the University, the Applicant received a scholarship and a substantial discount to attend the University. From October 1989 until July 1991, the Applicant attended another University in Israel where he studied towards a Masters Degree in Marine Archeology. From June 1991 until June 1992, he was employed as a Research Assistant at that University in Israel.

While living in Israel, and still a United States citizen, the Applicant voted in Israeli general elections, the last being in 1990. He also served in the Israeli Air Force as an Aircrew Member, achieving the rank of sergeant from January 1983 to January 1987, and held a secret security clearance issued by the Israeli Government.

In 1991, the Applicant married an Israeli citizen. In 1992, they moved to the United States to live. Three years later, in 1995, the Applicant moved to Japan, where he lived and worked until 1999. (Tr. p. 45).

The Applicant and his wife own an apartment in Israel worth approximately \$170,000.00. The apartment was given to them by both of their parents as a wedding gift. The Applicant and his wife rent out the apartment and the rents are placed in a bank account in Israel. The Applicant also has \$2,000.00 in a bank account in Japan. The Applicant does not

own a home in the United States. In comparing his assets in Israel to his assets in the United States, they are about equal.

The Applicant's current Israeli passport was issued on May 31, 1992. It was initially extended until June 7, 1999 and extended again until May 30, 2002. The Applicant indicated in a sworn statement dated December 5, 2001, that he understood the DoD requirement that he surrender his passport. (*See*, Government Exhibit 1). The record shows that he finally surrendered his passport on July 15, 2002, just two weeks before the hearing. (*See*, Applicant's Exhibits D and E). He now considers himself to be only a United States citizen. The Applicant possesses a United States passport that he initially obtained in September 1991. It expired on November 5, 2001. On November 30, 2001, the Applicant sent in his United States passport to have it renewed.

The Applicant used his Israeli passport to enter and exit Israel during his travels in 1992, 1997, 1998 and 2000. The purpose of these trips were to show off his newly born children and to visit his parents. (Tr. p. 52). He has used his United States passport for all other travel.

The Applicant's wife is currently in the process of becoming a naturalized United States citizen. (*See*, Applicant's Exhibits A and B). They have three children, two of whom were born in the United States.

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 has a father, mother, two brothers, a father-in-law and a mother-in-law, who are all citizens of Israel and reside in Israel. He maintains a close relationship with his parents and his brothers. His parents come to the United States to visit every year or every time a child is born. The Applicant believes it is very important for his children to have his parents' influence and presence in their lives. He is in contact with them weekly to bi-weekly by telephone. He is not close to his mother-in-law, however, his wife speaks with her on a bi-weekly basis.

The Applicant has a brother who resides in the United States, and is a dual citizen of Israel and the United States. He also has other distant relatives who live in the United States.

At the time the Applicant completed the electronic Personnel Security Questionnaire, (PSQ), in April 1999, the Applicant lived in Japan and one of his children was born there.

Mitigation.

Two witnesses testified favorably on behalf of the Applicant. A colleague, who has worked with the Applicant for the past year and a half stated that the Applicant is diligent, dedicated, committed and very knowledgeable in the work place. The Applicant's technical leader for the past three years who sits in the same office area as the Applicant, and has daily contact with him, testified that the Applicant has done a great job, and the software that he has been producing is a very valuable tool in the "integration" area.

A letter from the Applicant's manager indicates that the Applicant has the highest ethics and sets his standards well beyond most others regarding the safeguarding of our National Security. The Applicant has done a tremendous job and in her opinion is one of the most talented individuals on her staff. (*See*, Applicant's Exhibit C).

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;
3. Military service or a willingness to bear arms for a foreign country.

Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship.
4. Individual has expressed a willingness to renounce dual citizenship.

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.

Conditions 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 her 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.

With respect to Guideline C, although the Applicant was born in the United States, he was raised in Israel. He attended Israeli schools and Universities and accepted a significant educational benefit from Israel by virtue of his father being a professor at the University there. He served for four years in the Israeli Air Force, achieving the rank of sergeant, and held a security clearance from the Israeli Government. In 1992, he moved to the United States, but three years later moved to Japan. He did not return to the United States until 1999. The Applicant has lived in the United States for less than ten years out of the 38 years of his life. To remove concerns for his allegiance to the United States, he has recently chosen to surrender his Israeli passport as required by the Money Memorandum and DoD policy. In this case, by itself, the mere fact that the Applicant surrendered his Israeli passport two weeks before the hearing is insufficient to show that he has overcome his ambivalence regarding his unequivocal preference for the United States over Israel. Accordingly, the Applicant's request for a security clearance under Guideline C, Foreign Preference must be denied.

With respect to Guideline B, the Applicant has many foreign contacts, strong emotional and family ties, as well as financial interests in Israel. His family members, in this case his father, mother, two brothers, father-in-law and mother-in-law, are Israeli citizens of long standing and reside there. The Applicant's wife is also an Israeli citizen. Together, they have many extended relatives in Israel. Relatives in a foreign country are a major security concern. In this case, there remains the possibility of pressure being placed on them, and through them, on the Applicant. In addition, the Applicant owns and maintains a significant asset, a rental property worth approximately \$170,000.00 in Israel, that he collects rents from, and owns no property in the United States. It is 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.

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility, based his testimony and the written record. Overall, I conclude that 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

1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

1.f.: Against the Applicant

1.g.: Against the Applicant

1.h.: Against the Applicant

1.i.: Against the Applicant

1.j.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant

2.c.: Against the Applicant

2.d.: Against the Applicant

2.e.: 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