

DATE: May 29, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04344

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's significant foreign contacts and his intentional falsifications on his security clearance application concerning his citizenship status, foreign passport and foreign travel have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On February 5, 2003, 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's response to the SOR was received by DOHA on February 19, 2003, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 19, 2003. A notice of hearing was issued on April 7, 2003, scheduling the hearing for April 29, 2003. At the hearing the Government presented three exhibits. The Applicant presented two exhibits and he testified on his own behalf. The official transcript (Tr.) was received on May 14, 2003.

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 testimony and exhibits. The Applicant

is 24 years of age and has a Bachelor's of Science Degree in Electrical Engineering. He is employed as 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 was born in the United States in 1979. When the Applicant was a little over a year old, his family moved to Israel. In August 1986, he and his family permanently moved to the United States. The Applicant is a dual citizen of Israel and the United States by virtue of his birth to Israeli parents. The Applicant currently possesses a valid Israeli passport, and indicates that he is willing to surrender it. The Applicant has used his Israeli passport to travel to Israel in 1994, 1995, 1998 and 2001. He has never voted in Israeli elections nor has he ever served in the Israeli military. The Applicant also possesses a United States passport.

The record was left open for five days beyond the hearing date to allow the Applicant an additional opportunity to renounce his Israeli citizenship and surrender his Israeli passport. The Applicant submitted a Post-Hearing Exhibit wherein he indicates that he went to the Israeli Embassy to renounce his Israeli citizenship and surrender his Israeli passport. He completed the application for renouncing his Israeli citizenship and paid the required fee. He first stated in a letter dated May 5, 2003, that the Embassy authorities told him to hold on to his Israeli passport until he is asked to return it. (*See*, Applicant's Post-Hearing Exhibit). In a letter dated May 6, 2003, a day later, he stated that he had surrendered his passport by express mailing it to the Israeli Embassy. He also submitted a copy of the letter he sent to the Embassy surrendering his passport. (*See*, Applicant's Post Hearing Exhibit).

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 mother and father, both grandparents on his mother's side, a grandmother on his father's side, an uncle, an aunt, and six first and second cousins, all reside in Israel and are citizens thereof. The Applicant visits them when he travels to Israel. They represent all of his close family members that he has in Israel. None of his family members are affiliated with the Israeli Government in any way. (Government Exhibit 3).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a security clearance application dated August 28, 2001. Question 3 of the application asked him, "Are you now or were you a dual citizen of the U.S. and another country?" The Applicant answered "NO" to the question. (*See*, Government Exhibit 2). This was a false answer. The Applicant was a dual citizen of Israel and the United States. The Applicant stated that he did not try to conceal anything from the Government when he answered this question. He explained that he was under the false impression that he was no longer an Israeli citizen. He thought that because he did not serve in the Israeli Army and possessed a United States passport that he was only an American. (Tr. p. 35).

Question 15, of the same application, asked the Applicant, "In the last seven years have you had an active passport that was issued by a foreign government?" The Applicant answered "NO" to the question. (*See*, Government Exhibit 2). This was also a false answer. The Applicant possessed an Israeli passport. The Applicant explained that he was not aware that his parents had applied for a passport on his behalf. On all of the trips they took to Israel, the Applicant's parents would carry the passports. (Tr. p. 36).

Question 16, of the same application, asked the Applicant, "Have you traveled outside the United States on other than official Government orders in the last seven years?" The Applicant answered "YES," and indicated that he had traveled to Israel in August 1998 and September 1998. (*See*, Government Exhibit 2). The Applicant failed to list that he had traveled to Israel in 1995. The Applicant believes that it must have been a computer error as to why his trip to Israel was not revealed in 1995. (Tr. p. 37).

Having been offered no reasonable explanation for Applicant's incorrect responses to these straightforward questions on his security clearance application, I find that the Applicant intentionally provided false information on his application. The Applicant has not been frank and truthful with the Government concerning his answers to questions 3, 15 and 16 on his security application regarding his citizenship, his foreign passport and his foreign travel. I have reviewed the Applicant's excuses for not providing truthful information to the Government on his application, and do not find them credible. The Applicant knew or should have known this information.

The Government also alleged that the Applicant failed to register for the Selective Service. Although the Applicant thought that he had not registered, his Post-Hearing Exhibit shows that when he went to register, he was informed that he had actually registered for the Selective Service in 1997, while in high school. Accordingly, this allegation is found for the Applicant.

### Mitigation.

The Applicant's father testified that he had applied for the Applicant's Israeli passport. He also stated that when they travel to Israel, he holds the Applicant's Israeli passport. (Tr. p. 26-27).

## **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:

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.

#### 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;

Condition that could mitigate security concerns:

None.

Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Condition 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), Guideline B (foreign influence) and Guideline E, (Personal Conduct), 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 and deliberate falsifications on his security clearance application 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 who possessed an Israeli passport and used it to enter and exit Israel during his travels. He has not only expressed a willingness to surrender his Israeli passport, he has in fact surrendered his passport to the proper authorities by mailing it to the Israeli Embassy to be destroyed. He is in compliance with the provisions of the Money Memorandum. Thus, he has demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C, (Foreign Preference).

With respect to Guideline B, the Applicant has significant foreign contacts, as well as emotional and family ties, in Israel. His family members, in this case his parents are dual citizens of Israel and the United States. His maternal grandparents, his paternal grandmother, uncle, aunt and first and second cousins, with whom the Applicant has a close relationship, are all citizens of Israel and reside there. There remains the possibility of pressure being placed on them, and through them, on the Applicant. 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, (Foreign Influence).

With respect to the Guideline E, the Applicant's personal conduct, I find that his falsifications on his security clearance application were intentional. He knew or should have known whether he is a dual citizen, whether he possesses a foreign passport, and when he engaged in foreign travel. Accordingly, I find against the Applicant under Guideline E, (Personal Conduct), except allegation 3(d), which is found for the Applicant.

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

### **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: For the Applicant.

Subparas. 1.a.: For the Applicant 1.b.: For the Applicant 1.c.: For the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

2.c.: Against the Applicant

Subparas. 3.a.: Against the Applicant.

3.b: Against the Applicant

3.c.: Against the Applicant

3.d.: For 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