

DATE: June 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06928

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's continuing ties to Israel since returning to the United States in 1996 raise doubt about which country he currently prefers. Clearance is denied.

STATEMENT OF THE CASE

On January 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 19, 2003. The case was assigned to the undersigned on March 14, 2003. A Notice of Hearing was issued on March 26, 2003, and the hearing was held on April 30, 2003. The transcript was received on May 7, 2003.

FINDINGS OF FACT

Applicant is 58 years of age. He is employed as an engineer by a defense contractor.

Applicant was born, raised and educated in the United States. In 1976, applicant, his wife, and their two minor children moved to Israel. Applicant's main reason for moving there was to join both his oldest sister and his parents, who had moved there a few years earlier following the father's retirement in the United States. Shortly after their arrival, applicant and his family members became Israeli citizens. The granting of Israeli citizenship was automatic; they took no affirmative action other than moving to Israel to obtain it (TR at 44). As an Israeli citizen, applicant was required to serve in the Israeli armed forces. He served four months on active duty and approximately ten years in the reserves.

Applicant, his wife, and his two children are currently dual citizens.

Applicant worked for approximately 14 years at an Israeli defense contractor that had some relationship with the Israeli government. In 1996, the company offered employees a very generous early retirement offer, and applicant accepted it. Part of the offer applicant accepted included a pension, which at the present time pays applicant about one thousand United States dollars per month. Following applicant's early retirement, applicant and his family moved back to the United States, and they have been here ever since. Applicant does not own any property in Israel.

Applicant surrendered his Israeli passport in 2003 after he became aware it was a security issue. As a result of surrendering the passport, he will no longer be permitted to visit Israel. He has not renounced his Israeli citizenship. He is reluctant to do so because it might result in the loss of his pension. He testified, however, that he was told by an employee of the Israeli consulate that once he surrendered his passport, paperwork will be started to revoke his Israeli citizenship, and the process will take about six months (TR at 66-68). Applicant is not happy about the possibility of losing his Israeli citizenship because, as noted above, it may result in the loss of his pension.

Applicant has purchased his "retirement home" in the United States, and he does not plan to leave the area. His two adult children live in the same city, and they plan on remaining in the United States permanently.

Applicant's father is 95 years old and suffers from dementia. He currently resides in Israel with applicant's oldest sister, who cares for him. They are both dual citizens. Applicant's sister has no connection with the Israeli government. Applicant calls them once every two weeks. These are applicant's only immediate family members living in Israel. Applicant's mother recently passed away. Applicant has one other sibling, a sister, who is a dual citizen of the United States and Israel, and who has lived in the United States for the past eight to ten years.

Three individuals who worked with and/or supervised applicant at his current place of employment appeared at the hearing and testified that they know of no reason why applicant should not have a security clearance. They further testified that they have no reason to question applicant's loyalty to the United States (TR at 8-9, 20-21, 74-75). Applicant's father-in-law, a retired Colonel in the United States armed forces, also appeared at the hearing. He testified that he has known applicant for 36 years, that he has no reason to question applicant's loyalty to the United States, and knows of no reason why applicant should not receive a security clearance (TR at 81).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Foreign Influence

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.

Conditions that could raise a security concern:

1. An immediate family member is a citizen or resident of a foreign country.

Conditions that could mitigate security concerns:

1. The immediate family members in questions 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 involved and the United States.

Foreign Preference

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.

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 for a foreign country.
6. Using foreign citizenship to protect financial or business interests in another country.

Conditions that could mitigate security concerns:

None.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's wife, father, and two sisters are citizens of both the United States and Israel, and that the father and oldest sister currently reside in Israel. Based on the evidence presented, I conclude that these immediate family members are not agents of Israel, or in a position to be exploited by Israel in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States. ^(U) I reach this conclusion for at least two reasons: First, of the four immediate family members noted above, only two reside in Israel. There is no evidence that these two immediate family members, one of whom is in his nineties and suffers from dementia, are connected with the Israeli government, Israeli military, or any of the Israeli intelligence services. Second, it is highly unlikely that Israel, a close United States ally which is highly dependent on the United States for its defense, would risk threatening this relationship by exploiting/threatening its private citizens for the purpose of forcing a United States citizen to betray the United States. Because I do not believe that applicant's immediate family members holding dual citizenship pose a current security risk, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that in 1976, applicant, along with his wife and their two children, moved to Israel and became Israeli citizens. As an Israeli citizen, applicant was required to serve in the Israeli armed forces. Applicant satisfied this requirement by serving four months of active duty and approximately ten years of reserve duty. Applicant also spent 14 of his years in Israel working for an Israeli defense contractor that has some type of relationship with the Israeli government. In 1996, applicant accepted an early retirement offer from the defense contractor, and moved back to the United States. He collects a pension of about one thousand United States dollars per month from the Israeli defense contractor. Applicant's conduct; namely, voluntarily moving to Israel, becoming an Israeli citizen, serving in the Israeli armed forces, working for an Israeli defense contractor, and collecting a \$1,000.00 per month pension from the Israeli defense contractor, shows a clear preference for Israel over the United States, and strongly suggests applicant cannot be relied upon to safeguard classified information.

Although applicant removed the security concern raised by his possession of an Israeli passport by surrendering it to the Israeli authorities, he has not removed the remaining security concerns arising from his earlier conduct. Despite the clear preference for Israel that applicant showed between 1976 and 1996, had he cut all ties to Israel upon his return to the United States in 1996, he might have been able to establish that he now has a clear and unequivocal preference for the United States. However, his continuing ties to Israel, in the form of his Israeli citizenship and his receipt of a not so insignificant pension from the Israeli defense contractor, leave me unable to conclude which country he currently prefers. At best, the evidence is conflicting. Under the "clearly consistent with the national interest" standard for the issuance of a clearance, the doubt raised by the conflicting evidence must be resolved in favor of the national security. Accordingly, Guideline C is found against applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: AGAINST 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 applicant.

Joseph Testan

Administrative Judge

1. Accordingly, Mitigating Condition 1 is applicable to this case.