

DATE: July 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27067

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esq.

SYNOPSIS

The fact that applicant's two siblings are citizens and residents of foreign countries (Israel and the UK) does not leave him vulnerable to coercion or pressure. In addition, applicant's conduct since arriving in the United States in 1981 indicates a clear preference for the United States. Clearance is granted.

STATEMENT OF THE CASE

On February 5, 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 13, 2003. The case was assigned to the undersigned on March 19, 2003. A Notice of Hearing was issued on April 15, 2003. Applicant requested a change of venue, which was granted, and an Amended Notice of Hearing was issued on April 26, 2003. The hearing was held on May 8, 2003. The transcript was received on May 23, 2003.

FINDINGS OF FACT

Applicant is 50 years of age. He is employed as an engineer by a defense contractor.

Applicant was born in Israel. From 1971 to 1976, he was enrolled in the Israeli ROTC program. After leaving the program with a college degree in 1976, he entered the Israeli military. In 1981, after serving five years in the military, he moved to the United States to attend graduate school. He eventually earned two advanced degrees from an American university. After working as an Assistant Research Scientist at a different American university for several years, he

joined his current employer. He has been employed by the same defense contractor since 1997. Applicant became a permanent United States resident in 1995, and a United States citizen in 2000.

Applicant has visited Israel three times since moving to the United States in 1981. He last visited Israel in 1993.

At the time the SOR was issued, applicant had some retirement accounts in Israel valued at less than \$5,000.00. The accounts have since been closed (Exhibit H).

Applicant has two siblings. His sister is a resident and citizen of Israel. She does not work for the Israeli government. His brother is a citizen and resident of the United Kingdom (UK). He does not work for the UK government.

In February 2003, after receipt of the SOR, applicant notified Israeli authorities that he intended to forfeit his Israeli citizenship (Exhibits I and J). He has submitted all the required paperwork to Israeli officials, and it's just a matter of time until all of the paperwork is processed and he loses his Israeli citizenship. Although the Israeli consulate told applicant that they would not accept his Israeli passport while he is still an Israeli citizen, applicant, through his attorney, mailed his passport to the Israeli consulate shortly before the hearing (Exhibit R).

Applicant is "very grateful," and considers himself "very fortunate," to have been given the opportunity to become a United States citizen (Exhibit 3).

Letters from five individuals well acquainted with applicant were admitted into evidence (Exhibits A, B, C, D and P). All five individuals state that applicant is a man of integrity who is loyal to the United States.

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 member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member 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.

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on birth in a foreign country.
2. Indicators of possible foreign preference occurred before obtaining United States citizenship.
4. Individual has expressed a willingness to renounce dual citizenship.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant has a sister who is a citizen and resident of Israel and a brother who is a citizen and resident of the UK. Based on the evidence presented, I conclude that these immediate family members are not agents of Israel or the UK, or in a position to be exploited by Israel or the UK in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States.⁽¹⁾ I reach this conclusion for at least three reasons: First, there is no evidence that either of these immediate family members are connected with the Israeli or UK governments, Israeli or UK military, or any of the Israeli or UK intelligence services. Second, it is highly unlikely that Israel or the UK, close allies of the United States, would risk threatening their relationships with the United States by exploiting their private citizens for the purpose of forcing a United States citizen to betray the United States. Third, as evidenced by applicant's testimony and Exhibits A, B, C, D and P, since coming to the United States in 1981, applicant's conduct has indicated that he is a reliable and trustworthy individual who is loyal to the United States. This leads me to conclude that, even in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities.

With respect to Guideline C, the evidence establishes that applicant's dual citizenship is based on his birth in Israel. Since moving to the United States in 1981, his conduct has indicated a clear preference for the United States. He has, through his actions and deeds, made it clear that he is grateful to have been given the opportunity to become a United States citizen, and that the United States is his home. Given these facts, and the fact applicant satisfied the security concern raised by his possession of the Israeli passport by surrendering it to Israeli authorities, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: FOR THE APPLICANT

DECISION

In light of all 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.

Joseph Testan

Administrative Judge

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

