

DATE: November 5, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27350

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 70-year-old employee of a defense contractor. He has worked for defense contractors and held a security clearance for 43 years. Applicant's daughter and granddaughter are dual-citizens of Israel and the U.S., living in Israel. Applicant's daughter is divorced and has primary custody of her child. However, an order of an Israeli court prevents Applicant's daughter from taking her child out of Israel for more than 30 days each year; violation of the court order could result in forfeiture of a \$15,000.00 bond and loss of custody of the child. Considering the foreign power in question, the circumstances of the family members, and the extent of Applicant's familial, financial, and patriotic ties to the United States, Applicant has mitigated the security concerns arising from the potential foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On February 22, 2002, Applicant submitted an application for a security clearance. Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 29, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B of the Directive, Foreign Influence.

Applicant answered the SOR in writing on September 30, 2003. On October 28, 2003, he elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 14, 2004. At the hearing, I granted the government's motion to amend the SOR, ¶¶ 1.b and 1.c, from "son-in-law" to "former son-in-law," without objection. Tr. at 65-66. The government presented five exhibits. Applicant presented seven exhibits, called one witness, and testified

on his own behalf. DOHA received the transcript on September 29, 2004.

FINDINGS OF FACT

Applicant admitted the factual allegations, with explanations. Applicant's Answer to SOR, dated September 30, 2003, at 1. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 70 years old. He attended college between 1952 and 1956, and was awarded a bachelor of science degree in aeronautical engineering. Ex. 2, at 1.

He has a long history of service to the Department of Defense. Applicant served on active duty in the U.S. Army between 1956 and 1958. Between 1958 and 1962, Applicant served three years in the U.S. Army active reserves in a military police unit and a helicopter transportation unit, and one year in the inactive reserves. Ex. 2, at 3; Ex. B, at 1. He was honorably discharged from the Army. Ex. 2, at 4; Ex. D.

Applicant began working in the aerospace industry in 1959 as an engineer working on the development of nozzles for rocket motor boosters. He began working for his present employer in 1962. Ex. 2, at 1; Ex. B. Applicant works on classified programs relating to the internal ballistics of solid rockets. Tr. at 26. He submitted a Certificate of Merit awarded for 41 years of perfect attendance. Ex. A. Applicant has had a security clearance for over 43 years. Ex. B, at 2. His security clearance has never been revoked, suspended, or denied. Ex. 2, at 6.

Applicant got married in 1964, and lives with his wife in the home they have shared since 1967. Ex. 2, at 1-2. Most of Applicant's assets and family ties are in the United States. He owns his own home. Tr. at 46. His brother is a college professor in the United States, and they own real estate together. *Id.* Applicant's financial resources are substantial, and are most are located in the United States. Tr. at 47. Additionally, his and his wife's extended family members all live in the United States. Tr. at 39.

Applicant has three children. His son and his youngest daughter live in the United States. His youngest daughter is an educational counselor at a junior college. Tr. at 31. His son has a degree in economics. Tr. at 32.

Applicant's oldest daughter resides in Israel. *Id.* at 2-3. She first visited Israel while attending college. Ex. 3, at 1. After graduating in 1986, she moved to Israel and lived on a kibbutz helping to process immigrants. *Id.* While there, she met an Israeli citizen and married him in California in 1997. Ex. 3; Tr. at 38. Her husband ran a swimming school. Ex. 3. He is a reserve officer in the Israeli Army, as part of the country's compulsory military service. Tr. at 35-36. Applicant's daughter is a school teacher in Israel. Ex. C. She is a dual-citizen of the United States and Israel. Tr. at 33.

Applicant's daughter has one child of the marriage—a daughter born in April 2000. Ex. B. Applicant's granddaughter is also a dual-citizen of the United States and Israel. Applicant visited his daughter and her family in Israel in 1996, 1998, and annually from 2000 until the present time. Ex. C; Tr. at 48. Applicant's daughter and her husband visited Applicant in the United States in 1997 and 1999. Ex. 3, at 2. Applicant talks to his daughter by telephone about once each week, and communicates by e-mail about three or four times per week. Tr. at 38.

Applicant's daughter filed for divorce in 2002 and it became final in December 2004. Tr. at 34, 63-64. Applicant provided Exhibit E, an untranslated document he described as a Jewish Get, or divorce. Tr. at 17. Applicant has not had contact with his former son-in-law since the initiation of the divorce in 2002. Tr. at 40. Applicant's daughter was awarded primary custody of her daughter in the divorce. However, by court order the child cannot leave Israel for more than 30 days per year. Tr. at 43. The Israeli court required Applicant's daughter to post a \$15,000.00 bond to assure compliance with the court's order. Tr. at 44. Applicant provided the funds for his daughter to post the bond. Tr. at 41. Applicant believes his granddaughter will be permitted to elect where she wants to live when she reaches a certain age, perhaps 15 to 18 years old. Tr. at 45.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that

eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline B, Foreign Influence. A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Under ¶ E2.A2.1.2.1 of the Directive, it may be disqualifying where, "[a]n immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Applicant's daughter is an immediate family member (*See* Directive, ¶ E2.A2.1.3.1), and his granddaughter is a person with whom Applicant has close ties of obligation or affection. His daughter and granddaughter reside in Israel, and are dual-citizens of Israel and the United States. The Government's documentary matters and Applicant's admissions constitute substantial evidence of this disqualifying condition, raising security concerns.

Under the Directive, these security concerns can be mitigated in certain circumstances. Under ¶ E2.A2.1.3.1 of the Directive, it may be mitigating where the individuals in question "are not agents of a foreign power" or are not "in a

position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States."

Applicant's daughter and granddaughter are not agents of a foreign power. *See* 50 U.S.C. § 1801(b). Applicant's former son-in-law is a reserve officer in the Israeli Army, but there is no evidence indicating he engages in clandestine intelligence gathering activities. In any event, he is no longer a member of Applicant's immediate family, nor does Applicant have close ties of affection or obligation to him.

In assessing whether relatives are vulnerable to exploitation by a foreign power, it is necessary to consider several factors, including the character of the government of the foreign country concerned. Israel is a parliamentary democracy (Ex. 5), whose interests are not inimical to those of the United States. Indeed, the United States and Israel enjoy close economic and political ties. Residents and U.S. visitors are subject to strict security requirements, but there is no history indicating Israel uses force or coercion against its citizens or U.S. visitors for intelligence purposes. Ex. 5. Israel has, in the past, been an active collector of intelligence information. Ex. 4. However, it is not likely that Israel would attempt to force or coerce its citizens to act adversely to the interests of the United States.

It is also important to consider the vulnerability of Applicant's relatives in Israel. Applicant's daughter is a teacher, employed by the Israeli Ministry of Education. Thus, she has some ties to the Israeli government, but not those branches normally involved in intelligence collection activities. Applicant's daughter and granddaughter are also citizens of the United States, and would be free to enter the United States at any time if desired. Applicant's daughter is especially vulnerable in one respect: an order from an Israeli court prevents Applicant's granddaughter from leaving Israel for more than 30 days each year, and the order is enforced by the requirement of a \$15,000.00 bond. Applicant's daughter would like to return to the United States permanently, but is constrained from doing so because she will not leave her daughter in Israel. At the same time, Applicant's daughter has lived in Israel since about 1986, and there have been no attempts to exert pressure on Applicant through his daughter.

Another significant factor is Applicant's vulnerability to pressure or coercion. Undoubtedly, Applicant and his wife are devoted to their daughter and granddaughter in Israel. At the same time, he has extensive familial ties to the United States; all the rest of his family members are citizens of the United States and reside in this country. He also has substantial financial interests in this country, including real estate, retirement funds, and bank accounts. His foreign financial interests are minimal and not sufficient to affect his security responsibilities. *See* Directive, ¶ E2.A2.1.3.5. Applicant has been a loyal soldier and defense contractor employee for 43 years. Applicant testified that every year they have a security clearance briefing and take an oath to guard the classified materials in their possession, and that he takes that obligation very seriously. Tr. at 27. He also stated that if anyone ever attempted to use his daughter or granddaughter to apply pressure on him to compromise security, he would go directly to the FBI. *Id.* I find Applicant to be very credible and sincere in this regard. Considering all the circumstances, I find Applicant is not unusually vulnerable to coercion or duress as a result of having family members residing in Israel. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies in this case.

I considered all the circumstances in light of the "whole person" concept. I conclude any potential security concerns arising from Applicant's relatives residing in Israel are mitigated by Applicant's extensive ties to and interests in the United States.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: 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. Clearance is granted.

Michael J. Breslin

Administrative Judge