

DATE: September 15, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27647

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Juan J. Rivera, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has mitigated foreign influence concerns involving a brother and sister who are citizens of Israel. However, he has failed to mitigate foreign preference concerns. Applicant has possessed an Israeli passport ever since he became a U.S. citizen in 1978. Since 1996, he has used his Israeli passport for five trips to Israel. Although he has applied to renounce his Israeli citizenship, he still retains possession of his Israeli passport. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 6, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On November 19, 2002, Applicant responded to the SOR and requested a hearing. The case was assigned to me on January 7, 2003. A notice of hearing was issued on January 15, 2003, and the hearing was held on February 13, 2003. During the hearing, four Government exhibits, nine Applicant exhibits, and the testimony of Applicant were received. The transcript (Tr) was received on February 28, 2003.

### **FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 57-year-old hardware engineer employed by a defense contractor and is seeking a security clearance.

Applicant was born in Israel. Following high school, he was drafted and served in the Israeli Army from 1964 to 1966.

(1) From 1967 to 1969, he served in the Israeli Army reserves. (2) At that time, military service was mandatory for Israeli citizens at age 18. Upon completion of active duty, service in the reserves was also mandatory for Israeli males. (3)

Applicant obtained a degree from an Israeli university. At the university, he met his first wife, an American citizen. They married after he came to the United States in 1970. (4) They divorced in 1976. (5)

From 1970 to 1971, Applicant was employed at the Israeli embassy as a guard and for less than a month in the economic section, where he "clipped news stories from newspapers." (6)

Applicant married his current wife in 1976. (7) They have a daughter who was born in 1987. (8) Applicant's wife works for the U.S. State Department and holds a Top Secret security clearance with access to Sensitive Compartmented Information. (9)

Applicant became a naturalized citizen of the United States on February 3, 1978. (10) He obtained a U.S. passport July 20, 1983 and renewed his current U.S. passport on December 15, 1993. (11)

Applicant has held a current Israeli passport ever since he came to the United States in 1970. (12) His current Israeli passport was issued on May 4, 2001 and will expire on April 4, 2006. (13) The United States Government has not requested nor approved Applicant's possession of an Israeli passport. (14)

Applicant's parents are deceased. He has a brother and sister, both of whom are Israeli citizens who live in Israel with their families. Applicant's brother is a computer technician for a hospital and his sister is a housewife. (15) Applicant communicates with his sister and brother by telephone or e-mail. (16) Neither his brother, his sister, their spouses, or their children work for the Israeli Government. (17) Applicant traveled to Israel to visit his brother and sister and their families in 1996, 1998, 1999, 2001, and 2002. (18) For all of these trips, he used his Israeli passport to enter and leave Israel. (19) Israeli law requires an Israeli citizen, who holds dual citizenship, to enter and exit Israel with the Israeli passport. (20)

On July 23, 2002, a special agent of the Defense Security Service (DSS) interviewed Applicant concerning his application for a security clearance. Applicant provided information pertaining to his dual citizenship with Israel, members of his family living in Israel, and his possession and use of an Israeli passport. (21) On October 4, 2002, Applicant submitted an application to the Israeli Government to renounce his citizenship. (22)

The Israeli Government is actively engaged in military and industrial espionage in the United States. An Israeli citizen working in U.S., who has access to proprietary information, is likely to be a target of such espionage. (23)

## **POLICIES**

The burden of producing evidence initially falls on the Government to present evidence, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Directive E3.1.14. Once the Government meets its burden, the burden then shifts to the applicant to present evidence to refute or mitigate the Government's evidence and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline C. - 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 and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship (Disqualifying Condition 1);

E2.A3.1.2.2. Possession and/or use of a foreign passport (Disqualifying Condition 2); Pursuant to an August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (ASDC3I Memo), "application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country (Disqualifying Condition 3);

E2.A3.1.2.9. Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States (Disqualifying Condition 9).

Conditions that could mitigate security concerns include:

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship (Mitigating Condition 4).

Guideline B - 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 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 and may be disqualifying include:

E2.A2.1.2.1. An 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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) cohabitant, or associate(s) in question 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(s) involved and the United States (Mitigating Condition 1).

## **CONCLUSIONS**

## Guideline C

Applicant expressed his concern that his loyalty and integrity are being questioned. He misconstrues the security process. Executive Order 10865 clearly provides that "any determination under this order adverse to an applicant 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." (Emphasis added.) Section 7.

Applicant's foreign military service raises a security concern. However, he has explained his active duty and reserve service in the Israeli Army so that Disqualifying Condition 3 has not been established with regard to SOR ¶ 1.e. His service was mandatory under Israeli law. Moreover, it occurred before he immigrated to the United States and became a U.S. citizen.

With respect to SOR ¶ 1.f, Applicant's employment at the Israeli Embassy also raises a security concern but the evidence fails to establish Disqualifying Condition 9. This employment occurred well before Applicant became a U.S. citizen. His interview for the employment was arranged by his first wife, an American citizen who worked at the Embassy. It was Applicant's first employment in the United States and his low level positions at the Embassy only lasted a brief time. At that point, Applicant obtained a position with an international organization, which had been his original choice of employment.

The record is unequivocal as to the fact Applicant possesses a current Israeli passport, as alleged in SOR ¶ 1.b. It further demonstrates that he has exercised his Israeli citizenship by continuing to renew his Israeli passport. Applicant has thereby held a current Israeli passport ever since he became a naturalized citizen of the United States, as alleged in SOR ¶ 1.c. As alleged in SOR ¶ 1.d, he exercised his Israeli citizenship and used his Israeli passport to enter and exit Israel on five occasions since 1996. This evidence establishes both Disqualifying Condition 2 and Disqualifying Condition 1. In accordance with the guidance in the ASDC3I Memo, Applicant's failure to surrender the passport or to obtain approval for its use from the United States Government requires that his application for a security clearance be denied.

Applicant relies on the fact that Israeli law requires a citizen to use an Israeli passport to enter and exit the country. This does not excuse his possession of an Israeli passport. Foreign law cannot be allowed to trump the requirements of American security nor does it. Moreover, any dilemma this presented to Applicant was essentially due to his desire to maintain his dual citizenship. Renunciation of that citizenship would allow him to travel to Israel as an American citizen.

As alleged in SOR ¶ 1.a, Applicant has attempted to mitigate the Government's case by applying to the Israeli Government to renounce his citizenship. His actions are not sufficient to mitigate pursuant to Mitigating Condition 4, when he continues to hold an Israeli passport and has exercised his Israeli citizenship through the renewal and use of a foreign passport for the entire 25 years that he has been a citizen of the United States. The record suggests that his application to renounce his Israeli citizenship is merely a reluctant and belated effort to obtain a security clearance.

Applicant cites the decision of the administrative judge in ADP Case No. 01-17630 as support. First of all, a decision of one administrative judge is in no way binding on another administrative judge. Secondly, the decision in that case concerns computer access rather than a security clearance. Furthermore, the facts in the case that Applicant relies on are clearly and critically distinguishable from the facts of his own. Unlike the Applicant, the record in ADP Case No. 01-17630 established that the applicant had surrendered his Israeli passport.

Contrary to Applicant's request, the Directive does not permit a conditional finding, pending future events or acts. A decision must be based on the evidence of record. Applicant's 25 year possession and repeated use of a foreign passport, from a country which is known to be actively engaged in military and industrial espionage in the United States, are sufficient to raise security concerns. Once such acts are shown, an applicant has the heavy burden of not only explaining or mitigating those acts, but demonstrating that it is clearly consistent with the national interest to grant him a security clearance. Section E3.1.15 of the Directive. Applicant's continued possession of an Israeli passport does not enable him to meet that burden. He has failed to mitigate the Disqualifying Conditions that have been established with regard to SOR ¶ 1.a, ¶ 1.b, ¶ 1.c, and ¶ 1.d.

## Guideline B

Two members of Applicant's immediate family, his brother and sister, are citizens and residents of Israel. This evidence is sufficient to raise Disqualifying Condition 1. Moreover, he maintains a close relationship with them, through telephonic and electronic contact with them, as well as periodic trips back to Israel.

Neither Applicant's brother or sister or any member of their families are agents of the Israeli Government or any other foreign power. Despite the fact that Israel is actively engaged in espionage against the United States, it has a democratic form of government. There is no evidence that Israel would exploit its own citizens in an effort to further the goals of it espionage. There is also no evidence that either of Applicant's siblings is in a position to be exploited by any other foreign power. Although various terrorist groups continue to target Israeli citizens, such attacks do not include the taking and exploiting of hostages. Therefore, Mitigating Condition 1 applies with regard to SOR ¶ 2.a.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

#### Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Tr 24.
2. Govt Ex 2 at 5.
3. Ap Ex J.
4. Tr 24.
5. Tr 25.
6. Applicant's response to the SOR at 3; Tr 71.

7. Tr 26.

8. *Id.*

9. Ap Ex D.

10. Govt Ex 1 at 1.

11. Ap Ex G

12. Tr 80.

13. Ap Ex G; tr 80.

14. Tr 80-81.

15. Tr 70.

16. Tr 85.

17. Tr 81-83.

18. Govt Ex 1 at 5; Tr 78-79.

19. Ap Ex G.

20. Ap Ex H.

21. Govt Ex 2.

22. Ap Ex E; Ap Ex F.

23. Govt Ex 3; Govt Ex 5.