KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a citizen of Israel through operation of Israeli law and of the U.S. from birth, was raised in Israel from age 7 to age 17. On graduating from high school in the U.S., he served in the Israeli Defense Forces as required of all non-exempt young Israeli citizens. Since returning to the U.S. to live permanently in 1985, he actively exercised his foreign citizenship by acquiring and using an Israeli passport so that he could travel to Israel. The foreign preference concerns created by his military service for Israel and his possession and use of a foreign passport are mitigated by his significant ties to the U.S., and his surrender of the passport to Israeli authorities with expressed renunciation of his Israeli citizenship. The foreign influence concerns raised by his brother's dual citizenship (Israel and U.S.) and Israeli residency are mitigated as his brother is not an agent of the Israeli government nor in a position where he is likely to be exploited. Clearance is granted.

CASENO: 02-28320.h1

DATE: 03/10/2005

DATE: March 10, 2005

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-28320

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

SYNOPSIS

Applicant, a citizen of Israel through operation of Israeli law and of the U.S. from birth, was raised in Israel from age 7 to age 17. On graduating from high school in the U.S., he served in the Israeli Defense Forces as required of all non-exempt young Israeli citizens. Since returning to the U.S. to live permanently in 1985, he actively exercised his foreign citizenship by acquiring and using an Israeli passport so that he could travel to Israel. The foreign preference concerns created by his military service for Israel and his possession and use of a foreign passport are mitigated by his significant ties to the U.S., and his surrender of the passport to Israeli authorities with expressed renunciation of his Israeli citizenship. The foreign influence concerns raised by his brother's dual citizenship (Israel and U.S.) and Israeli residency are mitigated as his brother is not an agent of the Israeli government nor in a position where he is likely to be exploited. Clearance is granted.

STATEMENT OF THE CASE

On December 18, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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 the Applicant. (1) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign preference (Guideline C) and foreign influence (Guideline B) concerns.

On January 29, 2004, Applicant filed a *pro se* Answer to the SOR and requested a hearing. The case was assigned to me on May 3, 2004. On June 22, 2004, counsel for Applicant entered her appearance. Pursuant to formal notice of June 23, 2004, a hearing was scheduled for July 12, 2004. At the hearing, nine government exhibits were proffered, eight were

admitted. Applicant's case consisted of three documents and the testimony of Applicant, his spouse, and a group manager at work, as reflected in a transcript received on July 29, 2004.

The record was ordered held open until July 26, 2004, for Applicant to submit an affidavit from his father. On July 26, 2004, Applicant was granted a brief extension at the request of his counsel. By facsimile on July 30, 2004, Applicant timely submitted a one-page notarized statement. On August 2, 2004, Department Counsel indicated the government did not object to Applicant's submission. Accordingly, the document was marked and admitted as Applicant exhibit D.

FINDINGS OF FACT

DOHA alleged foreign preference concerns related to Applicant's exercise of dual citizenship with Israel and the U.S.; his acquisition as a U.S. resident of an Israeli passport in July 1994; his possession of an Israeli passport renewed in August 2000 valid to July 2004; his use of an Israeli passport to travel to Israel in 1994, 1998, and 1999, and his service in the Israeli Army from 1982 to 1985. Foreign influence concerns were also alleged due to Applicant's brother being a dual citizen of the U.S. and Israel, living in Israel with his Israeli citizen spouse, and serving in the Israeli military reserves; Applicant having several cousins and extended family members residing in Israel; Applicant maintaining twice monthly contact with an Israeli Air Force captain assigned to his worksite; Applicant standing to inherit one-third share of an apartment in Israel; and Applicant traveling to Israel to visit family members in 1994, 1998, 1999, and 2000.

In his Answer, Applicant admitted his dual citizenship with the U.S. and Israel, the latter conferred on him automatically when he moved to Israel with his parents as a minor, but he expressed an intent to revoke his Israeli citizenship. Applicant also admitted applying for an Israeli passport while he was living in the U.S. out of necessity, as he was denied exit from Israel in 1991 on his U.S. passport until he paid a fee and was told he would need an Israeli passport to return to Israel. Applicant acknowledged as well his service in the Israeli military which was required of him if he wanted to return to Israel in the future. Applicant also admitted the foreign influence allegations, but denied he would compromise classified information. Applicant maintained he was not close to his cousins residing in Israel, did not seek out the Israeli Air Force captain who had been on a two-year rotation to his firm, and had only taken three trips rather than four to Israel since 1994. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

Applicant is a 42-year-old lead structural engineer who has worked for his present employer since January 2000. He seeks a confidential security clearance for his duties, which include leading an engineering team in the structural analysis of jet engine design and components.

Applicant was born in the U.S. in August 1962. His mother, a native of the Czech Republic, had been naturalized in the U.S. in May 1960. Applicant's father, then a citizen only of his native Israel, had graduated from a prestigious private university in the U.S. and was employed by a U.S. defense contractor. In May 1964, Applicant's brother was born in the U.S. That September, Applicant's father became a U.S. naturalized citizen. From 1968 to 1970, Applicant's father worked on communications systems for the U.S. military. He held a secret security clearance for his duties.

In 1970, Applicant's father moved the family to Israel. Applicant and his brother acquired Israeli citizenship automatically. After one year working for a U.S. company on Israel's first satellite station, Applicant's father left his job for a defense marketing position with a major Israeli electronics company involved in computers, military command and control systems, and aircraft weapon delivery and navigation systems. In January 1976, Applicant's sister was born in Israel. She acquired U.S. citizenship by virtue of her birth abroad to U.S. citizens.

In 1977, Applicant received his national identification card in Israel. The following year, with military service in Israel mandatory for all non-exempt Israeli citizens and Israeli permanent residents between the ages of 18 and 23, Applicant started the process for his future entry into the Israeli military. In about April 1980, his father moved the family back to the U.S. Before he left Israel, Applicant committed in writing that he would return to Israel on completion of his high school studies in the U.S. to fulfill his 40 months of mandatory military service. Applicant was advised that failure to honor his military commitment to Israel would subject him to prosecution should he attempt to enter Israel in the future. Applicant acquired Israeli and U.S. passports that he used to exit Israel and enter the U.S., respectively.

Following his graduation from high school in the U.S. in June 1981, Applicant returned to Israel to fulfill the military service required of his Israeli citizenship. Assigned as a corporal to a youth fighting unit in the Israeli Defense Forces from January 7, 1982, to June 17, 1985, Applicant served 18 months of that time in combat duty. Applicant felt he had no choice but to comply with Israeli law. Applicant's brother returned to Israel when he turned 18 as well to perform his mandatory military service, and was discharged from active duty at a rank equivalent to sergeant major.

While Applicant was performing military service for Israel, his father possessed a Department of Defense secret clearance for his duties with a defense contractor in the U.S. Applicant's father continued to work for the U.S. company until his retirement in 1993.

Discharged in June 1985 with no further obligation to Israel, Applicant returned to the U.S. where he pursued undergraduate studies. After he earned his bachelor's degree in June 1990, Applicant commenced employment as a structural engineer for an aerospace company in the U.S. That September, he married a native U.S. citizen whom he had met while in college.

In 1991, Applicant and his spouse traveled to Israel as he wanted to show her the country. Applicant traveled solely on his U.S. passport, issued to him on July 8, 1996 and valid for ten years, as his Israeli passport had expired and he saw no

need to renew it as he was no longer living in Israel and had fulfilled his obligations to Israel. Applicant experienced no difficulty entering Israel on his U.S. passport, but he was denied exit on the passport until he paid a $120 fee. He was advised by Israeli border control that as an Israeli citizen he would need an Israeli passport to enter the country in the future,[(2)] and his Israeli identification number was entered onto his U.S. passport by border control.

After he completed his college studies in the U.S., Applicant's brother returned to Israel to live. In preparation for a trip to Israel for his brother's wedding to an Israeli citizen in summer 1994, Applicant applied for an Israeli passport, which was issued to him by the Israeli consulate in the U.S. on July 12, 1994. The passport was valid until July 1999. Applicant applied for the Israeli passport because of the advice given to him by Israeli border control in 1991 (he would not be allowed into Israel without an Israeli passport). Applicant and his spouse traveled to Israel later in July 1994 where he had to present his Israeli passport before being allowed to enter that country. After the wedding, Applicant and his spouse took a five-day scuba diving trip to Egypt. Applicant used his U.S. passport to enter Egypt and on re-entry into the U.S.

In May 1995, Applicant was awarded his master's degree in mechanical engineering from a U.S. university. In late March 1996, Applicant traveled to Hong Kong to see his parents, who were living there at the time. During his stay, he took short excursions into the People's Republic of China and Macao. All this travel was on his U.S. passport. From late December 1998 into January 1999, Applicant traveled to Israel for his cousin's wedding. On entering Israel, he presented his U.S. passport first, but was allowed to enter only after he showed his Israeli passport. He used his U.S. passport to gain entry to the U.K. during that trip.

In January 2000, Applicant began working for his present employer. At the request of his supervisor, Applicant completed a security clearance application (SF 86) on May 24, 2000. Applicant disclosed that he, his siblings, and his father possess dual citizenship (Israel and the U.S.) but that his spouse, two children (sons born in 1995 and 1998), and mother are citizens only of the U.S.[(3)] Applicant reported that he had served in the Israeli military from 1982 to 1985 which he was required to do as an Israeli citizen, and he had held an Israeli passport issued July 1994 that expired in July 1999, adding that he must present an Israeli passport to enter Israel. At the time his application was submitted for processing, Applicant was given no reason to believe his dual citizenship was a problem for his clearance.

In August 2000, Applicant went to Israel for his grandmother's funeral. Since his Israeli passport had expired, he presented his U.S. passport to enter Israel. When a check of Israeli records revealed Applicant's Israeli citizenship, border control allowed him to enter Israel on his U.S. passport but he was advised he would have to renew his expired Israeli passport during his stay. On August 22, 2000, Applicant had his Israeli passport extended by Israeli authorities to July 11, 2004.

During his stay in Israel, Applicant got together socially with at least one person with whom he had served in the Israeli military. Applicant initiated the contact. During his meeting, Applicant shared pictures of his children and updated the other person as to his activities. Applicant has had no contact with any of the persons with whom he served in the Israeli military since his trip to Israel in 2000.

In late 2001/early 2002, Applicant learned a fellow employee with foreign citizenship was having difficulties obtaining her security clearance because of her possession of a foreign passport. On March 20, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his dual citizenship and ties to Israel. Applicant asked the agent whether he should renounce his foreign citizenship and turn in his foreign passport. He was told to wait until someone told him to do so. Applicant expressed to the agent a willingness to relinquish his foreign passport to the proper Israeli authority and to renounce his foreign citizenship as he wanted to retain his job with the U.S. defense contractor.

Following his DSS interview, Applicant told his spouse he had no problem with renouncing his Israeli citizenship if required to do so. On receipt of the SOR, Applicant sent his Israeli passport to his father, who twice attempted to surrender it to Israeli consular officials in his area on Applicant's behalf. When the Consulate refused to accept Applicant's passport, Applicant inquired as to the process for formal renunciation of Israeli citizenship. He was advised by consular officials in another office that he would have to bring his spouse and children to the Consulate, register them as Israeli citizens, and then revoke Israeli citizenship for all. Applicant then contacted the Israeli Consulate nearest to him. Told to bring in his two passports with a letter from his U.S. employer indicating that he needed a security clearance for his duties, Applicant assumed from the inconsistent advice given him by Israeli consular officials that there was no formal process for renunciation. On the advice of legal counsel retained for his upcoming security clearance hearing, he invalidated his Israeli passport by defacing and cutting it up. On July 7, 2004, Applicant sent the Israeli Embassy this destroyed passport and an affidavit indicating, in part, "I . . . hereby revoke my Israeli citizenship. I understand and intend that this decision be irrevocable and permanent." Should Israel require other action to revoke his Israeli citizenship, Applicant plans to pursue the process until his foreign citizenship is revoked.

As of March 2002, Applicant was acquainted with an Israeli captain in the Israeli Air Force who worked at his place of employment auditing for contract compliance and inspecting the engines sold by the company to Israel. Applicant was introduced to this Israeli citizen at a local Jewish community center that they both attend, and they had a casual, once every two months, social acquaintance there. Applicant had no contacts with this foreign national at the workplace other than unplanned meetings (walking by each other) in the company's cafeteria. By July 2004, this Israeli military officer had completed his tour and returned to Israel.

As of July 2004, Applicant stands to inherit a one-third share of an apartment owned by his father in Israel that is valued at $200,000 to $250,000 and inhabited by Applicant's brother and brother's spouse and two minor children. Applicant and his spouse own their home in the U.S., in which he has about $160,000 in equity. They have 401K assets of about $150,000 in the U.S. and no financial assets in Israel.

Also, as of July 2004, Applicant's parents and sister live in the U.S. Applicant's brother works for an international investment firm in Israel as an information technology manager. He has two young children and plans to remain in Israel for the foreseeable future as his spouse, an only child, does not want to leave Israel, at least not as long as her father is alive. Applicant has a close relationship with his brother and would like him to leave Israel as he does not consider it safe to live there. Applicant has telephone contact with his brother once a month on average. As of March 2002 and perhaps as recently as January 2004,[(4)] Applicant's brother was still in the Israeli Reserves and required to serve 30 to 45 consecutive days per year. Applicant also has three cousins and an aunt (father's sister-in-law) who are resident citizens of Israel whom he visited when in Israel. Applicant does not feel close to these relatives.

Applicant has demonstrated to his group manager at work that he can handle sensitive information appropriately. Applicant has been conscientious in ensuring that neither he nor others without a clearance inadvertently access technical attributes of the engines that are classified in nature.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines C and B:

Guideline C, foreign preference, concerns are raised when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., as he or she may then be prone to provide information or make decisions that are

harmful to the interests of the U.S. A dual citizen of Israel and the U.S.,[(5)] Applicant spent most of his formative years in Israel where his father was employed. At age 17, he returned to the U.S. as his father had taken a job with a U.S. defense contractor. Before he left Israel, Applicant committed in writing to return to Israel to perform compulsory military service on graduating from high school. From January 7, 1982 to June 17, 1985, he served in the Israeli Defense Forces as a corporal in the infantry where he saw 18 months of combat. While status as a dual national is not necessarily indicative of a foreign preference (*see* E2.A3.1.3.1., *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*, as mitigating of foreign preference concerns),[(6)] Applicant actively exercised foreign citizenship by returning to Israel to fulfill his military obligation and entering on an Israeli passport.

After his discharge from the Israeli military, Applicant established his home and career in the U.S. where he earned bachelor's and master's degrees, married a U.S. citizen, started a family, and worked for a succession of private companies. In 1991, he traveled to Israel on his U.S. passport as his Israeli passport had expired. Allowed to exit Israel only after payment of fees, he was informed he would need an Israeli passport to enter Israel in the future. So before traveling to Israel for his brother's wedding in 1994, he acquired a new Israeli passport that he presented (albeit apparently only after attempting to use his U.S. passport) to enter and exit Israel on that trip and on a subsequent trip in December 1998 for a cousin's wedding. Applicant entered Israel for his grandmother's funeral in August 2000 using his U.S. passport since his Israeli passport had expired, but he renewed his Israeli passport during his stay on the advice of Israeli border control. Under guideline C, disqualifying conditions E2.A3.1.2.1. *The exercise of dual citizenship,* E2.A3.1.2.2. *Possession and/or use of a foreign passport,* and E2.A3.1.2.3. *Military service or a willingness to bear arms for a foreign country,* apply. However, in the absence of any evidence that Applicant is receiving any educational, medical, retirement, social welfare or similar benefit from Israel, Department Counsel's reliance on disqualifying condition E2.A3.1.2.4. *Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*, is misplaced.[(7)] Applicant was last educated in Israeli institutions some 24 years ago, and he cannot reasonably be held responsible for his parents' decisions to move to Israel and to enroll him in Israeli public school.

Applicant submits in mitigation of both his foreign military service and use of Israeli passport that he had no choice but to comply with these obligations of his foreign citizenship if he wanted to travel to Israel in the future. As reported by the U.S. State Department, Israeli citizens, including dual nationals, are subject to Israeli laws requiring service in Israel's armed forces, and a failure to serve absent deferment or exemption may subject one to criminal penalties. The DOHA Appeal Board has held that the willingness to bear arms for a country "is strong evidence of a profound, deeply personal commitment to the interests and welfare of that country." *See* ISCR Case No. 00-0317, decided March 29, 2002. While fear of the consequences should he not fulfill his mandatory military service undoubtedly was a major factor in his decision to return, his service in the Israeli Defense Forces shows some commitment to that nation and the obligations of his foreign citizenship. In the two years he was in the U.S. before he returned to Israel, Applicant made no effort to obtain an exemption from Israel or to inquire of Israeli or U.S. authorities as to the likely consequence to him should he fail to report. Yet, Applicant's decision to bear arms for Israel as a young adult does not raise the same level of concern as recent conduct indicative of foreign preference, *i.e.*, Applicant's subsequent compliance with the Israeli passport requirement.

As clarified by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence in August 2000, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the United States.[(8)] Despite his continuous residency in the U.S. since 1985 and his possession of a U.S. passport, Applicant renewed his Israeli passport in August 2000 to exit Israel.

On learning that his foreign citizenship and possession of a foreign passport could prevent him from obtaining the requested confidential security clearance, Applicant expressed to the DSS in March 2002 a willingness to renounce his foreign citizenship and relinquish his foreign passport if required. He sought advice from the DSS agent about what he should do and was told to wait for guidance which was not forthcoming. On receipt of the SOR, Applicant's father attempted twice to turn in Applicant's Israeli passport to the Consulate without success. Applicant then inquired of two different offices of the Israeli Consulate about the process for citizenship renunciation. Faced with inconsistent advice from Israeli officials, he invalidated his Israeli passport by defacing it and cutting it up, returning the pieces to the Israeli Embassy in July 2004, declaring at that time that he irrevocably renounced his Israeli citizenship. An expressed willingness to renounce foreign citizenship (*see* MC E.2.A3.1.3.4.) is mitigating of foreign preference concerns. There is no indication that Applicant's statement of renunciation has been accepted by the Israeli government. However, if a more formal process is required for citizenship renunciation, Applicant intends to pursue the process to completion.

Applicant has effectively alleviated the concerns underlying the possession and/or use of a foreign passport (doubts about primary allegiance and the risk of unverifiable travel) and his now dated service for the Israeli military. There is no risk of travel on a damaged, returned passport and his statement of renunciation to the Israeli Embassy shows a preference for the U.S. In the last 20 years, Applicant has established substantial ties to the U.S. which make any future act of foreign preference unlikely. He is married to a U.S. citizen and they have two children. Although his children may well be considered by Israel to be derivative citizens, Applicant has taken no steps to formally register them as Israeli citizens. Applicant has visited Israel for personal reasons on only four occasions since he completed his military service in 1985. On two of the trips to Israel, he entered on his U.S. passport. He renewed his Israeli passport in August 2000 only to ensure his exit from Israel. Travel to all other foreign nations has been on his U.S. passport. Applicant has a potential one-third inheritance share of his parents' assets in Israel, but no financial assets of his own in Israel while he and his spouse have a home in the U.S. and substantial 401K assets. He is committed to his career in the U.S. Favorable findings are returned with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e. of the SOR as there is little risk, if any, that he will act in preference to Israel (or any other foreign nation for that matter) in the future.

Guideline B, foreign influence, concerns 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. Like Applicant, Applicant's father and sister are dual citizens of Israel and the U.S. residing in the U.S. However, his brother returned to Israel sometime after he finished his college studies in the U.S. and in 1994 married an Israeli citizen. Applicant's brother works as an information technology manager for an international investment firm. Applicant admits he has a close relationship with his immediate family members, including his brother. Applicant's situation clearly falls within disqualifying condition 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*.

The potential for undue foreign influence because of the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that the family members 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 (*see* E2.A2.1.3.1.). There is no indication that any of Applicant's relatives have ever been agents of the Israeli government. Applicant's father held a security clearance for his duties for a U.S. defense contractor even while Applicant was on active duty in the Israeli military from 1982 to 1985. Applicant's brother served in the Israeli infantry where he attained a rank equivalent to sergeant major, but there is no evidence he was involved in any

intelligence gathering activities.

Applicant still has the burden of demonstrating that his family members are not in positions where they are likely to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, family members subject to the laws of a foreign nation, whether or not physically within the foreign jurisdiction. Countries that have good relations with the U.S. and respect the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses and hostility to the U.S., although the particular circumstances of each case must be taken into account. Israel is a parliamentary democracy dependent on U.S. continued recognition and financial support. Despite difficulties in U.S./Israeli relations over Palestinian and other issues, and Israeli efforts to secure U.S. economic and proprietary information, especially involving military systems, the U.S. remains committed to Israel's security, and Israel does not have a history of pressuring its citizens. There is nothing about Applicant's brother's present duties as an information technology manager for an international investment firm that suggests a military or intelligence connection. Applicant's father and sister have demonstrated their preference for their U.S. citizenship by not returning to Israel to live. As noted, his father worked for many years in the U.S. defense industry where he was trusted with U.S. classified information.

Albeit unlikely, the risk of undue foreign influence cannot be completely ruled out as long as Applicant's brother is within the physical reach of Israeli authorities and subject to Israeli laws. The issue is whether Applicant can be counted on to fulfill his fiduciary obligations to the U.S. government should pressure be placed on his sibling. Applicant has indicated that in the event of any undue pressure or influence being brought to bear on a family member, he would immediately report the contacts to the appropriate authorities. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0501 (December 19, 2000); ISCR Case No. 01-26893 (October 16, 2002). Yet, his substantial ties to, and his preference for, the U.S. lead me to conclude that Applicant can be trusted to place his obligation to the U.S. government ahead of any sense of loyalty or obligation to his brother, their close relationship notwithstanding. With the exception of his brother, all of his immediate family members are in the U.S. His family, career, and assets are firmly rooted in the U.S., and he is not likely to jeopardize his life here.

Applicant also has an aunt (father's sister-in-law) and some cousins who are resident citizens of Israel. He attended one cousin's wedding in late 1998/early 1999 in Israel, and saw his cousins during his August 2000 trip to attend his grandmother's funeral. But he does not have a close relationship with them and there is no evidence of any ongoing correspondence. Although not alleged by the government, Applicant had in-person, social contact as recently as his trip in August 2000 with some of the persons with whom he served in the Israeli military in the past. Yet, he testified uncontroverted by the government that he has had no contact with these individuals since 2000. Mitigating condition E2.A2.1.3.3., *Contact and correspondence with foreign citizens are casual and infrequent*, applies as there is little risk of undue foreign influence because of the foreign citizenship and residency of these more distant relatives and associates.

Applicant's contacts with an Israeli captain who worked onsite at Applicant's place of employment from approximately

2002 to at least January 2004 were also sufficiently casual to raise little guideline B concern. Applicant's relationship with this foreign military officer was social in nature. They met at a local Jewish community center where they ran into each other at functions once every two months. At work they were assigned to different programs, and their contact there was limited to a passing acquaintance in the cafeteria. As of July 2004, this foreign national had returned to Israel.

Applicant's potential inheritance of a one-third share of his parents' assets, including an apartment in Israel, is too speculative a financial interest to raise foreign influence concerns. Conceivably, his parents could bequeath the property solely to his brother, who currently resides in the apartment. Or they could sell the property before their deaths. Applicant has no foreign financial assets of his own. DC E2.A2.1.2.8., *A substantial financial interest in a foreign country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence*, does not apply. After considering all the evidence of record, favorable findings are returned as to subparagraphs 2.a., 2.b., 2.c., 2.d., and 2.e. of the SOR.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Israeli citizens, including dual nationals, must enter and depart Israel on their Israeli passports. *See* U.S. State Department's Consular Information Sheet on Israel, the West Bank and Gaza.

3. Applicant's sons were born in the U.S. The U.S. State Department reports that children born in the U.S. to Israeli parents usually acquire both U.S. and Israeli nationality at birth (*see* Consular Information Sheet on Israel, the West Bank and Gaza), so Israel may well consider Applicant's children as citizens of Israel.

4. Neither the Government or the Applicant presented any evidence showing his brother was sill in the Israeli Reserves as of the hearing. The only evidence of record concerning his brother's military obligation is Applicant's statement of March 2002. It is noted that when he answered the SOR, Applicant did not deny subparagraph 2.a.. which alleges in part that his brother "serves in the Israeli military reserves." In closing, Applicant's counsel argued there is no evidence Applicant's brother, who is 40 years old, still has a reserve obligation.

5. Although Applicant had notified the Israeli Embassy in July 2004 that he no longer wanted to be an Israeli citizen, there is no evidence that his foreign citizenship had been revoked by Israel.

6. Dual citizenship is recognized by the United States. While the U.S. Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. As the

DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.

7. While the right to present oneself as a citizen of one's country when traveling may be considered a benefit of citizenship, E2.A3.1.3.4. applies to those benefits which provide support, monetary or otherwise.

8. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent 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.