

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Israel and is a naturalized U.S. citizen. His wife and two brothers are Israeli citizens residing in the U.S. One sister is a citizen and resident of Israel. Another sister is a U.S. citizen but resides in Israel. Applicant's family owns a residence in Israel and his father visits Israel about once a year to maintain it. Applicant vacationed in Israel yearly from 1987 until 1994, and he was married in Israel in August 2000. Security concerns based on foreign influence are not mitigated. Clearance is denied.

CASENO: 02-29871.h1

DATE: 01/12/2005

DATE: January 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29871

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Israel and is a naturalized U.S. citizen. His wife and two brothers are Israeli citizens residing in the U.S. One sister is a citizen and resident of Israel. Another sister is a U.S. citizen but resides in Israel. Applicant's family owns a residence in Israel and his father visits Israel about once a year to maintain it. Applicant vacationed in Israel yearly from 1987 until 1994, and he was married in Israel in August 2000. Security concerns based on foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken 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 (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive. It alleges Applicant's spouse, mother, and brother are citizens of Palestine residing in the U.S. (§§ 1.a., 1.g., and 1.e.); his sister and two aunts are citizens of Palestine residing in Israel (§§ 1.b., 1.c.); his sister is a U.S. citizen residing in Jerusalem, Israel (§ 1.d.); Applicant traveled to Israel annually from 1987 until 1994 and again in 2000 to attend his wedding (§ 1.f.); Applicant's father, mother, and one sibling were residing in their house in West Bank, Israel in July 2002 (§ 1.h.); and Applicant's father visits the West Bank house about once a year to maintain it (§ 1.h.).

Applicant answered the SOR in writing on April 27, 2004, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted all the allegations in the SOR and submitted explanations. Department Counsel submitted the Government's written case on September 28, 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on October 12, 2004, and he did not submit any additional material. The case was assigned to me on November 30, 2004.

FINDINGS OF FACT

Based on the entire record, I make the following findings of fact:

Applicant is a 35-year-old electrical engineer employed by a defense contractor. He was born in Jerusalem, attended college in the U.S., graduated with a bachelor's degree in electrical engineering in December 1993, and became a naturalized U.S. citizen in May 1994. He has worked for his current employer since April 2001. He was granted an interim security clearance in March 2002.

Applicant vacationed in Israel every year from 1987 until 1994. He traveled to Israel in August 2000 to marry an Israeli citizen. His spouse was born in Jerusalem and resided for a time in the West Bank. She now resides with Applicant in the U.S. and has applied for U.S. citizenship.

Applicant's father was born in Israel. He resides in the U.S. and has been a U.S. citizen for about 30 years. Applicant's mother was born in Israel, became a permanent U.S. resident, and has applied for U.S. citizenship.

Applicant has three sisters. His oldest sister was born in Israel, resides in the U.S., and became a U.S. citizen in January 1999. His middle sister is a native-born U.S. citizen residing in Israel. His youngest sister was born in Israel and is a citizen and resident of Israel.

Applicant has three brothers. His oldest brother was born in Israel and is now a citizen and resident of the U.S. His younger brothers are native-born Israeli citizens residing in the U.S.

Applicant's two aunts are Palestinians residing in Israel. Applicant does not consider them immediate family members.

Applicant's parents maintain a home in Israel and resided there for an unknown period in July 2002. Applicant's father travels to Israel about once a year to maintain the home.

Israel has a generally good human rights record. However, there have been problems with respect to Israel's treatment of its Arab citizens, especially in the occupied territories. *See* U.S. Department of State, *Israel and the Occupied Territories, Country Reports on Human Rights Practices* 1-2 (Feb. 25, 2004). (FORM, Item 8)

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 restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

Department Counsel asserts Applicant admitted his mother, spouse, sister, aunts, and brother are citizens of Palestine. This assertion is not supported by the record. In his answer to the SOR, Applicant asserts Palestinian citizenship does not exist and these family members have no citizenship. Applicant's security application (SF 86) lists these family members as Israeli citizens.

A disqualifying condition (DC 1) may arise when "[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." Directive ¶ E2.A2.1.2.1. Applicant's spouse is an Israeli citizen. One of Applicant's sisters is a U.S. citizen but resides in Israel. His youngest sister is a citizen and resident of Israel. Two of his brothers are Israeli citizens. Based on the Israeli citizenship and residences of these immediate family members, I conclude DC 1 is established.

In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters) . . . 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government has produced substantial evidence to establish DC 1, the burden has shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries that are hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Israel is friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, even friendly nations can have profound disagreements with the United States over matters that they view as important to their vital interests or national security. Finally we know even friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant has provided no information about his family members' occupations, social positions, political positions, or other factors that would shed light on their vulnerability to coercion, persuasion, or duress. In the absence of such evidence, I conclude Applicant has not carried his burden of establishing the second prong of MC 1.

Aunts are not immediate family members within the meaning of DC 1. Department Counsel has not produced any evidence of a close relationship between Applicant and his aunts. Applicant's response to the SOR asserts they "may or may not be American citizens and they could be residing anywhere," suggesting Applicant knows little about his aunts. I conclude Applicant has mitigated the security concerns raised any relationship with his aunts.

Applicant has produced evidence that his annual trips to Israel from 1987 to 1984 were solely for vacations. His trip in 2000 was solely for his wedding. I conclude Applicant has mitigated the concerns raised by his travel to Israel, alleged in the SOR ¶ 1.f.

Applicant admits his parents own and sometimes reside in a home in Israel. "A substantial interest in a country . . . that could make the individual vulnerable to foreign influence" is a disqualifying condition (DC 8) under Guideline B. There is no evidence Applicant has any financial interest in this property. Thus, DC 8 is not established with respect to Applicant. However, his parents' financial interest may make his parents vulnerable and thus subject Applicant to indirect coercion or influence.

The security concern raised by his parent's financial interest in Israel could be mitigated by showing his parents' foreign

financial interests are "minimal." However, Applicant has provided no information about the value of this property. Furthermore, he has presented no evidence regarding his parents' and siblings' governmental ties, economic interests, or political ties, or other factors that would affect their vulnerability to foreign influence. Thus, I conclude Applicant has not mitigated the concerns raised by his immediate family's economic interest in and travel to Israel, as alleged in the SOR ¶1.h.

FORMAL FINDINGS

The following are my formal findings regarding each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against 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 a security clearance to Applicant. Clearance is denied.

LeRoy F. Foreman
Administrative Judge