

DATE: July 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30071

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant became a U.S. citizen in 1992. As a dual national with Israel, however, when traveling to Israel, he was required to use an Israeli passport. He has now surrendered this Israeli passport in compliance with the *Money Memorandum*, and has done everything possible to renounce his Israeli citizenship. The Applicant's Israeli brother is a bus driver. There is no evidence that his brother has any connection with any foreign government or is in a position to be exploited by any government. The Applicant also owns one-half interest in an apartment in Israel. His financial interest in the apartment is about \$50,000. He plans to transfer this interest to his brother. The Applicant's net worth in the U.S. is about \$1,000,000, and his annual income is about \$300,000. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On January 27, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about February 3, 2003.

The case was received by the undersigned on April 28, 2003. A notice of hearing was originally issued on May 5, 2003, setting this case for hearing on May 23rd. Pursuant to specific requests from the Applicant, which the Government did not oppose, the case was continued to and heard on July 8, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on July 21, 2003. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance. The Applicant admits the underlying factual basis for all

of the allegations. Those admissions are adopted as Findings of Fact.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 47 years of age, and is the president of a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

1.a.~1.d. The Applicant served in the Israeli Army from 1976~1980, prior to his emigrating to the United States and his eventually becoming a U.S. citizen in 1992 (Transcript (TR) at page 19 lines 12~19, and Government Exhibit (GX) 2 at page 1). When he became a U.S. citizen, however, Israel still considered him to be a dual national; and as such, he retained an Israeli passport (TR at page 21 line 24 to page 22 line 10, and at page 26 line 9 to page 27 at line 10, and Applicant's Exhibit (AppX) 3 at pages 2~3). As a result, when the Applicant visited Israel on several occasions during the period 1996~1999, he was required to use his Israeli passport (*id*). Most recently, however, the Applicant has surrendered his Israeli passport to the Israeli Consulate, and he has also initiated the renunciation process regarding his Israeli citizenship (TR at page 20 line 16 to page 21 line 23, at page 26 lines 2~7, and AppXs A and C).

Guideline B - Foreign Influence

2.a.~2.c. The Applicant's brother is a citizen of and resides in Israel (TR at page 19 lines 1~11, at page 31 lines 12~25, GX 2 at page 3, and GX 3 at page 2). His brother, who the Applicant has visited on numerous occasions when the Applicant traveled to Israel, is a bus driver (*id*). The Applicant also owns one-half interest in an apartment in Israel (TR at page 22 line 19 to page 24 line 3, at page 32 lines 1~11, and GX 3 at page 2). He jointly owns this apartment with his brother, and intends to transfer his \$50,000 half interest to his brother (*id*). The Applicant's net worth in the U.S. is about \$1,000,000, and his annual salary about \$300,000 (*ibid*).

Mitigation

The Applicant's business partner, and vice-president of their company, thinks most highly of the Applicant (AppX B).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign Preference

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession . . . of a foreign passport;
3. Military service . . . for a foreign country;

Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States

citizenship;

4. Individual has expressed a willingness to renounce dual citizenship;

Foreign Influence

Conditions that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;
8. A substantial financial interest in a country . . . that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . 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;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's

adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

When the Applicant became a U.S. citizen in 1992, under Israeli law he still retained his Israeli citizenship. As a dual national, when entering Israel he was required to use his Israeli passport. This he did on numerous occasions during the time frame 1996~1999. Since being apprised of the *Money Memorandum*, however, the Applicant has surrendered his Israeli passport. He has also initiated the process to surrender his Israeli citizenship, thus satisfying the last mitigating condition under foreign preference. The fact that he served in the Israeli Army is not problematic. This was done more than 12 years before he became a U.S. citizen, thus also satisfying the second mitigating condition under foreign preference. Guideline C is therefore found in his favor.

The Applicant's Israeli brother is a bus driver. This brother is not connected with any government, and there is no evidence that his presence in Israel can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The Applicant would reject any such pressure to violate U.S. security interests. As to the Applicant's financial interests in Israel, in light of his net worth and annual income in the U.S., his foreign financial interests are minimal. Furthermore, he intends to transfer his half interest in the apartment to his brother. The first and last mitigating conditions under foreign influence are therefore applicable. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge