

DATE: April 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30301

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Attorney At Law

SYNOPSIS

Applicant's exercise of dual citizenship, and other foreign ties and connections have been mitigated, and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On August 26, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on September 17, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 29, 2003. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 17, 2004. At the hearing the Government presented six exhibits. The Applicant presented twenty three exhibits and he testified on his own behalf. The official transcript (Tr.) was received on February 27, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 41 years of age. He holds a Bachelors of Science in Electrical Engineering, a Masters Degree in Classical Physics and a Ph.D. in Astrophysical Science. He is employed as an Engineering Specialist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is

ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in the United States in 1962 to parents who were United States citizens. He was raised and educated in the United States. After completing his Ph.D. at a prestigious University in the United States in 1990, the Applicant moved to Israel on a two-year post doctorate fellowship. Although he initially intended on staying in Israel for only two years, he met his wife in Israel, a dual citizen of Israel and Germany, and married her in 1992. He became employed in Israel, and worked there until 2000. During his ten years in Israel, the Applicant obtained his Israeli citizenship in 1992. He voted in a mayoral Israeli election in 1994, and also served and trained in the Israeli armed forces in 1995. He was employed as a development engineer in Israel with a national corporation, and was a teacher and lecturer at a college in Israel. In 2000, the Applicant's job search in the United States was successful, he moved his family back to the United States, and began working for a defense contractor with whom he has worked since.

The Applicant first applied to have his Israeli citizenship revoked on June 11, 2002. This request was denied by the Ministry of Internal Affairs of Israel in February 2003. He made a second request to revoke his Israeli citizenship and his request was granted. On January 6, 2004, the Applicant surrender his Israeli passport to the Israeli Consulate. (*See Applicant's Exhibit 0 and Tr. p. 32*).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's wife, with whom he now resides in the United States, is a permanent resident in the United States. She was issued her green card in November 2001. She plans to apply for her United States citizenship when eligible. They have two children from the marriage who were born in Israel, both of whom are dual citizens of Israel and the United States. (*See Applicant's Exhibit P*).

The Applicant and his wife own a house in Israel worth about \$92,5000.00 in United States dollars. He recently transferred ownership of the house to his wife and placed the house on the market to be sold. The house has not yet been sold. (*See Applicant's Exhibits F and G*).

The Applicant had a bank account in Israel in which he maintained approximately \$20,000.00 in United States dollars. He has recently closed this account and transferred the funds to a bank in the United States. (*See Applicant's Exhibits J, K, L and M*).

The Applicant had two retirement accounts, each consisting of two funds, totaling four funds. Three of the four funds have already been transferred to the United States. The fourth fund is in the process of being transferred. The Applicant indicates that he will experience tax consequences as a result of these transfers. (*See Applicant's Exhibit H and Tr. P. 41*).

The Applicant indicates that the only family members he has that still remain in Israel is a father-in law, and a sister and brother-in-law. They are citizens of Israel. The Applicant has little or no contact these family members. None of these individuals are agents of, associated with or employed with the Israeli Government.

Letters of recommendation submitted on behalf of the Applicant from his supervisor and other professional colleagues and associates indicate that the Applicant has an excellent reputation as a careful and thoughtful engineer. He performs only the highest quality work, and is a valuable and trustworthy member of their department. (*See Applicant's Exhibits A, C, D, T,V and U*).

The Applicant's performance appraisals reflect that he has an impressive understanding of computer science and information technology as it applies to his field of expertise. He is a highly productive employee. His work products are of exemplary quality, timely, and do not require correction or amplification. He is considered an outstanding employee. (*See Applicant's Exhibit Q*).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors 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 her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;
3. Military Service or a willingness to bear arms for a foreign country;
8. Voting in foreign elections.

Conditions that could mitigate security concerns:

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

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

1. A determination that that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's

conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence and foreign preference have a direct and

negative impact on his suitability for access to classified information.

The Applicant was born and raised in the United States. At the age of about twenty-seven, he moved to Israel for a two year post-doctorate fellowship that developed into a family and a ten year working career. During that period, he also opened bank accounts, earned a pension plan, voted, served in the military, purchased a home and became a citizen in Israel. In 2000, he became employed in the United States, and moved his family back to the United States to make it his permanent home. Since learning that dual citizenship is an adverse factor when holding a security clearance, the Applicant has done everything possible to demonstrate that the United States is his preference. Most importantly, the Applicant has surrendered his Israeli passport, and unconditionally renounced his Israel citizenship. The Applicant has complied with the provisions of the Money Memorandum, (*See* Government Exhibit 6). Mitigating factor 4 of the Directive also applies. Accordingly, the Applicant has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, although he lived and worked in Israel for ten years, the Applicant's only relatives in Israel are his father-in-law, and a brother and sister-in-law, with whom he has little or no contact. He indicates that he has no ties of affection or obligation to anyone in Israel. Thus, he has no foreign ties or contacts that could potentially influence him. Furthermore, the Applicant's financial interests in Israel, for the most part, have been liquidated and permanently returned to the United States. His only remaining asset in Israel is a house that is currently on the market to be sold. Once the house is sold, the Applicant will have no financial interests in Israel. He will then have severed all of his ties with Israel. Mitigating factors 1, 3 and 5 of the Directive apply. Therefore, there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

Paragraph 2 : For the Applicant.

Subparas. 2.a.: For the Applicant.

2.b.: For the Applicant

2.c.: For the Applicant.

2.d.: For the Applicant

2.e.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge