

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Although his family ties to Israel raise a security concern, Applicant has successfully mitigated the concern because the totality of the facts and circumstances show his family ties do not pose an unacceptable risk of foreign influence. Clearance is granted.

CASENO: 02-30336.h1

DATE: 09/29/2004

DATE: September 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30336

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Although his family ties to Israel raise a security concern, Applicant has successfully mitigated the concern because the totality of the facts and circumstances show his family ties do not pose an unacceptable risk of foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 21, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on December 10, 2003, and elected to have a hearing before an administrative judge.

Department Counsel indicated she was ready to proceed on February 17, 2004 and the case was assigned to me on February 20, 2004. A notice of video-teleconferencing hearing was issued scheduling the hearing for April 8, 2004. Applicant appeared with a personal representative and the hearing took place as scheduled.

The government offered 7 documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant offered 10 documents, which were admitted without objection as Applicant Exhibits (AE) A through J. DOHA received the transcript on April 20, 2004.

FINDINGS OF FACT

In this Answer, Applicant admitted, with explanation, to all the SOR allegations, and his admissions are incorporated into my findings. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant testified during the hearing, and I find his testimony credible.

Applicant is a 58-year-old married man. He is seeking to obtain access to classified information for his employment as a principal senior staff engineer for a defense contractor.

Applicant was born in Romania and lived there until he was 19 years old when he and his parents immigrated to Israel in 1964. He was an only child. Applicant testified that during the time frame 1963 to 1965, the Romanian government relaxed the emigration policy for Romanian Jews to immigrate to Israel. Applicant and his parents as well as significant numbers of other Romanian Jews chose to emigrate to Israel.

Applicant attended a university in Israel and was awarded a BSE Degree in Electronics. Compulsory military service is required by Israeli law and from 1970 to 1978, Applicant served in the Israeli Navy. Thereafter, he served in the Israeli Naval Reserve from 1978 to 1981. He was an officer, achieved the rank of Lieutenant Commander, and was in charge of the technical staff of Israeli radar stations.

In 1969, Applicant married his wife in Israel, who had also emigrated to Israel from Romania. They had two children, a daughter and a son, born in 1971 and 1974, respectively. Both children were born in Israel and accordingly were Israeli citizens by birth. Applicant was employed by two defense contractor related companies in Israel from 1978 to 1988.

Applicant remained in Israel with his wife and two children until July 1988, when they immigrated to the United States. On April 30, 1997, Applicant, his wife, and two children became naturalized citizens of the United States.

When Applicant arrived in the United States in July 1988, he accepted a position with a defense contractor and has remained with that same employer to present.

Applicant's father is deceased. His mother lives in Israel, is 80 years old, and continues to reside in the same building she first lived in when she immigrated in 1964. Her building is primarily inhabited by older widows, who support each

other. She was a housewife her entire adult life and has no contact with anyone in the Israeli government. She remains in very poor health and is unable to travel any significant distance. She recently underwent two cataract surgeries. Applicant sends his mother small amounts of money, and cards and flowers on Jewish holidays. His mother receives a government pension and is self-sufficient.

The SOR alleged Applicant's mother-in-law was a citizen and resident of Israel. She died in May 2003. Accordingly, this aspect of the foreign influence concern is no longer valid.

Applicant has encouraged his mother to move to the United States throughout the years, however, she has been unwilling or unable to do so. Presently, Applicant's mother is unable to make the 10-to-15 hour trip to the United States due to poor health. Applicant speaks with his mother on the telephone on average once or twice a week to check on her well being. He visits his mother approximately once a year.

Applicant has had extensive foreign travel in conjunction with his work. He has always used his United States passport on all foreign travel except to Israel when visiting his mother. When visiting his mother, he used his Israeli passport. Applicant was unaware of any regulations precluding the use of his Israeli passport when traveling to Israel. Applicant successfully used his United States passport when traveling to Israel in 1998. AE G. In 1999, Applicant was challenged by Israeli immigration officers when using his United States passport and informed that since he held dual citizenship, he was required to use his Israeli passport⁽²⁾. AE D. Israeli immigration officers handwrote Applicant's Israeli social security number on his United States passport in lieu of a stamp. AE H. In 2003, Applicant's third and most recent visit after initially using his United States passport, the Israeli immigration officers allowed him to use his United States passport, however, they again handwrote Applicant's Israeli social security number on his passport. AE I, GE 2, Tr. 21-24.

When Applicant received his SOR, he was informed that Department of Defense Policy⁽³⁾ as of August 16, 2000 viewed possession and/or use of a foreign passport as a disqualifying condition for individuals seeking a security clearance. GE 7. Applicant has since surrendered his Israeli passport and renounced his Israeli citizenship to the Israeli Consulate on February 2, 2004. AE C. After submitting his security clearance application in 2002 and prior to receiving his SOR, Applicant sought the advice of his Facility Security Officer and kept him informed of all aspects of his travel to Israel to visit his mother and sought clarification of Department of Defense policy on this issue. AE D.

Applicant and his wife maintain casual contact with their former neighbor and his wife in Israel. His former neighbor owns an electronics company in Israel. Applicant's personal contact with his former neighbor is limited to approximately one-to-two telephone calls a year, generally in conjunction with Jewish holidays. He also sees his former neighbor when visiting his mother. Applicant's wife has more frequent contact with their former neighbor's wife.

Applicant is a homeowner in a suburban West Coast City and has lived at the same address for the last ten years. He also owns a home in a major West Coast City and a retirement home in the Southeast. He has retirement programs worth approximately \$200,000.00. He estimates his assets to be worth approximately \$1,000,000.00. It is his intention

to retire in approximately five years and move with the entire family to the Southeast.

Applicant's wife inherited property in Israel when her mother died worth approximately \$22,000.00. Gaining or losing that property will have a very minimal economic impact on Applicant.

Applicant considers the United States his home as his wife, two children and three grandchildren live here. Applicant pledges his loyalty to the United States and that he would never compromise classified information and that he would report any approaches or suspicious contacts he encountered.

Applicant submitted three compelling character references attesting to his reliability, trustworthiness, loyalty to the United States and potential for contributing to the defense of the United States. AE D, E and J.

As requested by Department Counsel, I took official or administrative notice of the following facts: Israel is one of several countries that is actively engaged in economic collection and industrial espionage in the United States. GE 3. There was no evidence that connected Applicant to any of these activities.

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.

Enclosure (2) of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

CONCLUSIONS

Under Guideline B for foreign influence, a security clearance risk exists 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.

Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country.⁽⁴⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.⁽⁵⁾

Under SOR, subparagraph 2.a, based on the record evidence as a whole, the government has established its case under Guideline B. The concern here is Applicant's immediate family member, his mother, and a person to whom Applicant has close ties of affection, his former neighbor, who both live in Israel.⁽⁶⁾ Applicant's nearly annual travel to Israel to visit his mother and contact with his former neighbor has the potential to make Applicant vulnerable to foreign influence. Along with Applicant's mother and former neighbor in Israel, these circumstances raise a security concern due to the potential for foreign influence.

Applicant's employment with two Israeli defense contractor-related positions do not specifically fall into one of the disqualifying conditions under Guideline B. Presumably, his previous employment with these companies suggests he has knowledge of certain aspects of Israeli defense systems and the people associated with those systems. His employment in Israel and association with those companies ended in 1988 when he immigrated to the United States.

Applicant's mandatory service in the Israeli Navy took place primarily in the 1970s, before he immigrated to the United States in 1988 and before he obtained his United States citizenship in 1997. Once his military service was completed, his contact ended with the Israeli Navy and he is not the beneficiary of any military pension or related benefits. Military service for a foreign country is usually and more appropriately alleged under Guideline C for foreign preference, not Guideline B for foreign influence.

Applicant's contact with his former neighbor in Israel is limited to approximately two telephone calls a year centered around Jewish holidays. These contacts can fairly be characterized as casual and infrequent.

Disqualifying condition applicable under Guideline B raised as a result of Applicant's mother residing in Israel, visiting her, and contact with his former neighbor is: ¶ 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.

Mitigating conditions applicable under Guideline B are: 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*, and E2.A2.1.3.3: Contact and correspondence with foreign citizens are casual and infrequent, respectively.

The record evidence shows Applicant's mother and former neighbor are not Israeli agents, and so the issue under MC 1 is if the family members or associates are in a position to be exploited by the Israeli authorities. Because Israel is one of several countries engaged in economic espionage against private industry in the United States, Applicant has the burden to show his family ties to Israel do not pose a security risk or concern. On this point, I note neither his mother or former neighbor are employed by or connected to the Israeli government and therefore vulnerable to pressure from the government.

Likewise, neither his mother or former neighbor are associated with a political, scientific, commercial, or other activity that would benefit from obtaining United States national security information. His mother is elderly, in poor health, and unable to travel to the United States to visit her son and grandchildren. She has lived in the same building she initially lived in when she immigrated to Israel in 1964 and is surrounded by elderly widows similarly situated. Applicant speaks to his former neighbor one-to-two times a year around Jewish holidays and his contact can be characterized as casual

and infrequent. Although Applicant's wife speaks to the wife their former neighbor on a more frequent basis, her social contacts cannot be imputed to Applicant. Given these circumstances, there is not a reasonably foreseeable risk⁽⁷⁾ that his family ties might be exploited.

Although MC 1 and 2 are applicable mitigating conditions, the analysis does not necessarily end as other facts and circumstances may mitigate the security concern. Applicant and his family have spent the last 16 years in the United States. His ties or connections to the United States are substantial and deserving of consideration in mitigation. Since his arrival here, Applicant can fairly be described as a model immigrant. He, his wife, and two children all became United States citizens on April 30, 1997. He has substantial real property interests in the United States and has a net worth in excess of \$1,000,000.00. The property his wife expects to inherit in Israel from her mother's estate worth \$22,000.00 is insignificant when compared to his assets in the United States. His two children and three grandchildren reside nearby. Applicant has purchased a retirement home in the Southeast and plans to retire and relocate the entire family there. In short, Applicant's whole life is based in the United States. These are examples of ties that bind most members of a participatory democracy such as the United States. His substantial ties to the United States reinforce and lend credibility to Applicant's pledge that he would resist and report any potential foreign influence or pressure by either coercive or non-coercive means. Guideline B is decided for Applicant.

Under Guideline C for foreign preference, a security concern may exist when an individual acts in 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. Applicant held dual citizenship with Israel and the United States, possessed an Israeli passport, and used his Israeli passport when traveling to Israel. Disqualifying conditions raised are: ¶ E2.A3.1.2.1: The exercise of dual citizenship and ¶ E2.A3.1.2.2: Possession and/or use of a foreign passport.

Applicant's past and infrequent use of an Israeli passport when traveling to Israel to visit his mother occurred out of Applicant's mistaken belief that he was required to use his Israeli passport coupled with the fact there he was unaware of any prohibition against the use of his Israeli passport. Upon being made aware of the contents of the Money Memo, he ceased using his Israeli passport and has since renounced his Israeli citizenship and surrendered his Israeli passport to Israeli officials effective February 25, 2004. Applicant has cured this concern by ceasing the use of his Israeli passport when he became of aware it was a concern and by the very definitive and final action of formally renouncing his Israeli citizenship and surrendering his passport.

Mitigating conditions applicable are: ¶ E2.A3.1.3.1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country, E2.A3.1.3.2: Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship, and E2.A3.1.3.4: Individual has expressed a willingness to renounce dual citizenship.⁽⁸⁾ Guideline C is decided for the Applicant.

In summary, the record evidence demonstrates Applicant has all the indicators of an industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, it is my commonsense determination that the

facts and circumstances show Applicant's ties to Israel do not pose an unacceptable risk or concern of foreign influence. In reaching my decision, I have considered the whole-person concept and the appropriate factors and guidelines in the Directive. And I have weighed the record evidence as a whole, and conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of the facts and circumstances, I conclude Applicant has met his burden.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

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

Subparagraph 2.f.: For the Applicant

DECISION

In light of all of 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. Clearance is granted.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 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.
2. This advice was later proven to be incorrect. Under Israeli law, individuals born in Israel are required to use their Israeli passports. Individuals born in a country other than Israel who immigrate to Israel and become Israeli citizens are free to use their passport of choice. GE 2, p. 3.
3. Assistant Secretary of Defense Memorandum for Secretaries of the Military Departments, et al, Subject: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guidelines, dated August 16, 2002. This Memorandum is commonly referred to as the "Money Memo."
4. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.
5. *Id.*
6. As previously indicated, Applicant's mother-in-law has passed away since the SOR was issued and this concern is no longer valid.
7. Consistent with the whole-person concept, the security-clearance process is about risk management. With a few notable exceptions (for example 10 U.S.C. § 986), it is not a black-and-white process, but it depends upon adjudicators and administrative judges to make a fair and impartial commonsense determination on a case-by-case basis.
8. Applicant has also fully complied with the Money Memo by surrendering his passport to Israeli Consulate. See *fn* 4.