

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11872

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of Israel and the United States. He held an Israeli passport until November 2003. The foreign passport has been cancelled and he has initiated the process to revoke his Israeli citizenship. The Applicant's wife and children reside in the U.S. and are dual citizens of Israel and the U.S. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his dual citizenship and that of his wife and children. Clearance is granted.

STATEMENT OF THE CASE

On February 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 11, 2003, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

A file of relevant material (FORM) dated July 29, 2003, was sent to the Applicant. I was assigned the case on October 31, 2003. On November 18, 2003, the Applicant responded to the FORM. Department Counsel (DC) had no objection to the Applicant's response. On November 26, 2003, when the Applicant became aware of the need to surrender his passport, he asked that consideration of his case be postponed 30 days. DC had no objection to the request and it was granted.

On January 16, 2003, DC commented on the Applicant's Reply to the FORM. DC noted the Applicant had not provided any evidence to support his assertion he had surrendered his foreign passport. On January 16, 2004, an Order to Provide Documents and Argument was sent to DC and the Applicant. The Applicant was given until January 23, 2004 to submit additional documents and argument to the court, which he did. DC having no objection to the documents presented, the material was admitted as Applicant Exhibit A. On January 30, 2003, the Applicant provided a copy of his foreign passport. DC having no objection, it was admitted into evidence.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits the allegations except for being on a kibbutz in 1975, which he says occurred in 1974. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 49 years old, has worked for a defense contractor since November 1998, and is seeking a security clearance.

The Applicant was born and raised in the United States. Under the Law of Return the Applicant became an Israeli citizen. Being an Israeli citizen gave additional benefits in getting an apartment, in insurance, education, and health insurance. In 1974, he--then age 20-- traveled to Israel and volunteered at a kibbutz, a communal farming settlement in Israel. In December 1974, he began studying religion at a yeshiva, a Jewish institute of higher learning. In May 1976, he returned to the U.S. to marry and both went to Israel in August 1976. From 1976 until March 1986, he resided in Israel. He voted in Israeli elections while living there and registered for military service in the Israeli military, but never served. The Applicant's decision to return to the U.S. was influenced by the possibility of having to serve in the Israeli army.

In 1985, the Applicant obtained an Israeli passport. The Applicant last lived in Israel in 1986, having lived there eleven years. He last renewed his Israeli passport in 1999, which was due to expire in April 2004. He retained the passport because of convenience and expediency. Israel requires him to use his Israeli passport whenever he enters or leaves Israel. On November 18, 2003, following receipt of the FORM, the Applicant stated he would return his Israeli passport and renounce his foreign citizenship. He asked for an additional thirty days to complete the process. In his response to the FORM, dated November 18, 2003, the Applicant states he returned his and his wife's Israeli passport and they renounced their Israeli citizenship. In January 2003, the Applicant submitted a copy of the cover of his Israeli passport and six pages of the passport. The six pages were stamped "CANCELLED." From the material presented, it is not possible to determine if the Israeli passport had been used.

In January 2003, the Applicant clarified the status of the renunciation of his Israeli citizenship. He has started the process to renounce his foreign citizenship. However, it is a lengthy process and must be submitted to an administrative judge before his request to renounce his Israeli citizenship can be approved.

The Applicant's spouse and children are dual citizens of Israel and the U.S. All live in the U.S. Two of his sons previously lived in Israel when they were students. He has no financial interests in Israel, neither property nor investments. He has no retirement or social benefits in or from Israel. He has no business connections with Israel. He has no relatives in Israel.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most

pertinent to this case:

Foreign Preference (Guideline C) The Concern: 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. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
8. Voting in foreign elections. E2.A3.1.2.8.

Conditions that could mitigate security concerns include:

4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

Foreign Influence (Guideline B) The Concern: 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 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.

Conditions that could raise a security concern and may be disqualifying include:

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. E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. E2.A2.1.3.1.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by

the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the United States. Security concerns over the Applicant's possible foreign preference arise from his dual Israeli and U.S. citizenship. Disqualifying Condition (DC) 1⁽²⁾ applies. The Applicant possessed an Israeli passport and voted in Israeli elections. Therefore, DC 2⁽³⁾ and DC 8⁽⁴⁾ apply.

From 1974 until March 1986, the Applicant lived in Israel. While in Israel he volunteered at a kibbutz and studied religion at a yeshiva. While living in Israel, he voted in Israeli elections and registered for Israeli military service, but never served. The Applicant's 1986 return to the U.S. was partly influenced by the possibility he would have to serve in the Israeli army. I do not find these actions show a preference for a foreign country over the United States. I find for the Applicant as to SOR 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h.

The Applicant possessed an Israeli passport until November 2003. That passport has been stamped "cancelled" and he has started the process to renounce his Israeli citizenship. The surrender of the passport and initiating the renunciation of his foreign citizenship show a willingness⁽⁵⁾ to renounce dual citizenship. C 4⁽⁶⁾ applies. I find for the Applicant as to SOR subparagraphs 1.a. and 1.b.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's spouse and children are dual citizens of Israel and the U.S. Disqualifying Condition (DC) 1⁽⁷⁾ applies.

The Applicant's wife and children, although dual citizen, live in the United States. At one time his sons studied in Israel. His sons have returned to the U.S. I am convinced his wife and children, living in the U.S., do not represent a credible security risk to this nation. His wife and children are not agents of a foreign power, nor are they in a position they could be exploited by a foreign power such that the Applicant would be forced to choose between his loyalty to his family and the U.S. MC 1⁽⁸⁾ applies. I find for Applicant as to SOR subparagraphs 2.a. and 2.b.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Foreign Preference, 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

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2 Foreign Influence, Guideline B.: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
3. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
4. DC 8. Voting in foreign elections. E2.A3.1.2.8.
5. MC 4 only requires a "willingness to renounce" and does not require an applicant to actually renounce his foreign citizenship. Although actual renunciation is a stronger finding than mere willingness to do so.
6. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
7. DC 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. E2.A2.1.2.1.
8. MC 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 the loyalty to the person(s) involved and the United States. E2.A2.1.3.1.