

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Although Applicant made a number of trips to Israel using his Israeli passport after he became a citizen of the United States, he has mitigated foreign preference concerns by renouncing his Israeli citizenship and surrendering his Israeli passport. However, he has not mitigated the foreign influence disqualifying condition resulting from his close contact with his mother-in-law, brother-in-law, and sister-in-law, as well as other close friends who are citizens and residents of Israel. Clearance is denied.

CASENO: 02-12760.h1

DATE: 07/28/2004

DATE: July 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-12760

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Although Applicant made a number of trips to Israel using his Israeli passport after he became a citizen of the United States, he has mitigated foreign preference concerns by renouncing his Israeli citizenship and surrendering his Israeli passport. However, he has not mitigated the foreign influence disqualifying condition resulting from his close contact with his mother-in-law, brother-in-law, and sister-in-law, as well as other close friends who are citizens and residents of Israel. Clearance is denied.

STATEMENT OF THE CASE

On November 15, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement of Reasons (SOR) to Applicant. The SOR details security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

Applicant submitted a response to the SOR, dated December 2, 2002, in which he requested a decision on the written record, in lieu of a hearing. The Applicant received the File of Relevant Material (FORM), containing six documents, on September 19, 2003. On October 30, 2003, he submitted a response to the FORM. This case was assigned to me on January 15, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is a 56-year-old technical integrator employed by a U.S. defense contractor. He was born in Poland and became an Israeli citizen when his parents moved to Israel and became citizens (SOR ¶ 1.a). From 1966-1969, Applicant served in the Israeli Defense Forces (SOR ¶ 1.f).

Applicant immigrated to the United States in 1969. He and his wife, a dual citizen of the United States and Israel, were married in 1970. They have three children, all of whom are dual citizens of the United States and Israel (SOR ¶ 2.a). Applicant's wife and children reside in the United States and none of them is an agent of a foreign power.

In 1975, Applicant became a U.S. citizen. He subsequently applied for and was issued a U.S. passport.

Applicant moved back to Israel in 1982 at the urging of his wife, who wanted to be close to her parents. He was employed as an aerospace engineer with an Israeli aircraft manufacturer from November 1982 until his return to the United States in July 1988 (SOR ¶ 1.c).

Between 1990 and 2001, Applicant traveled to Israel two to three times per year on behalf of his current employer (SOR ¶ 1.d). During these trips, he used his Israeli passport (SOR ¶ 1.b, e).

When he travels to Israel, Applicant visits his mother-in-law, brother-in-law, and sister-in-law, all of whom are citizens and residents of Israel. He also has weekly to monthly telephonic contact with them (SOR ¶ 2.b). During his trips to Israel, Applicant also visits three married couples who are his close friends (SOR ¶ 2.c). Some of these relationships have existed since his childhood.

On September 19, 2003, Applicant relinquished his Israeli passport to the Israeli government

(SOR ¶ 1.b). On December 31, 2002, Applicant submitted a renunciation of his Israeli citizenship to the Israeli government. His request was approved by the Israeli government and his Israeli citizenship was revoked on July 7, 2003. (SOR ¶ 1.a).

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (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 individual'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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline C: Foreign Preference

The concern is that 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. Directive E2.A3.1.1. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.1, the exercise of dual citizenship (Disqualifying Condition 1); and E2.A2.1.2, possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to an August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (ASDC3I Memo), "application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." Conditions that could raise a security concern and may be disqualifying also include: E2.A3.1.2.3, military service or the willingness to bear arms for a foreign country (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A3.1.3.1, dual citizenship is based solely on parents' citizenship or birth in a foreign country (Mitigating Condition 1). They also include E2.A3.1.3.2, indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United states citizenship (Mitigating Condition 2), and E2.A3.1.3.4, the individual has expressed a willingness to renounce dual citizenship (Mitigating Condition 4).

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, 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 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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, 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 (Mitigating Condition 1).

CONCLUSIONS

Guideline C: Foreign Preference

Although Applicant's Israeli citizenship was based on his parents' citizenship, he exercised his Israeli citizenship after becoming a U.S. citizen by obtaining and repeatedly using an Israeli passport to travel to Israel. This raises Disqualifying Condition 1 and Disqualifying Condition 2. His service in the Israeli Defense Forces also raises Disqualifying Condition 3.

Applicant's Israeli military service is mitigated in accordance with Mitigating Condition 2. It occurred before he immigrated to the United States and became a U.S. citizen.

Mitigating Condition 1 is also applicable to Applicant's Israeli citizenship. It resulted from his parents citizenship. Nevertheless, it does not totally mitigate Applicant's Israeli citizenship because he exercised that citizenship after obtaining his U.S. citizenship by obtaining and using an Israeli passport for his trips to Israel. However, Applicant has mitigated his possession and use of an Israeli passport by renouncing his Israeli citizenship and surrendering his Israeli passport.

Although Applicant moved back to Israel for six years after becoming a U.S. citizen, it appears he did so at the urging of his wife, who wished to be close to her parents. There is no evidence that Applicant and his wife obtained any benefits from the Israeli Government or that they have any financial interest in Israel. Although Applicant has traveled to on a regular basis, he has done so to perform his duties with his U.S. employer. Based on the record, I find in favor of Applicant with regard to Guideline C.

Guideline B: Foreign Influence

Applicant's wife and three children are citizens of Israel as well as of the United States. His mother-in-law, brother-in-law, and sister-in-law are Israeli citizens who reside in Israel. Applicant also has close friends who are Israeli citizens and reside in Israel. Each of these relationships raise Disqualifying Condition 1.

Although Applicant's wife and children are Israeli citizens, all of them are also citizens of the United States. None of them are agents of a foreign power and none of them appear to be in a position to be exploited by a foreign power because they reside in the United States. Therefore, I find in favor of Applicant with regard to SOR ¶ 2.a.

However, Applicant's mother-in-law, brother-in-law, and sister-in-law, to whom he has close ties of affection or obligation, are Israeli citizens who reside in Israel. The same is true with respect to his close friends. Although Applicant asserts that he has not visited them since September 2001, he still maintains regular contact with his in-laws. This increases the likelihood the contacts may come to the attention of a foreign security or intelligence service that may wish to exploit them. Applicant has the burden of presenting evidence to support the application of specific mitigating conditions. ISCR Case No. 01-22693 (September 22, 2003) at p. 5. Applicant must mitigate Disqualifying Condition 1 by demonstrating that these individuals are not agents of a foreign power *and* are not in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them and the United States.

Applicant maintains that none of them are agents of any foreign power. However, he has not addressed the second condition that must be met in order to establish Mitigating Condition 1. ISCR Case No. 02-14995 (July 26, 2004) at p. 5. With regard to the second condition, Applicant has not offered evidence of where his in-laws and close friends live and work in Israel or other evidence that would establish that they are not in a position to be exploited by a foreign power.

Applicant cites the decision of another Administrative Judge as applicable to his own case. ISCR Case No. 00-0317 (October 31, 2001). Although another Administrative Judge's decision is not binding but may be considered as persuasive authority (ISCR Case No. 01-26893 (October 16, 2002) at p. 4), the DOHA Appeal Board (Board) reversed the decision cited by Applicant. ISCR Case No. 00-0317 (March 29, 2002). The Board found the Administrative Judge's Guideline B findings were erroneous because he gave undue weight to his conclusion that Israel is a friendly country unlikely to use coercive means against the applicant or his relatives. The decision ignored the fact that exploitation can involve non-coercive influence as well. Even though Israel has a close relationship with the United States, the fact remains it has engaged in espionage against the United States. Although the Israeli government may not engage in coercive actions against its citizens, this does not preclude the use of non-coercive exploitation that the Board recognizes.

Based on Applicant's failure to mitigate the disqualifying condition established by his close ties to in-laws and friends who are citizens and residents of Israel, he has not met his burden in accordance with E3.1.15 of the Directive. I find against Applicant with regard to SOR ¶ 2.b and c.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.