DATE: February 17, 2004

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-14006

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

David H. Shapiro, Esq.

SYNOPSIS

The residence of Applicant's parents, two sisters and brothers-in-law, and brother and sister-in-law raise security concerns under the foreign influence guideline. These concerns are mitigated by a determination the family members are not foreign agents. Although the family members are dual citizens of the United States (U.S.) and Israel, and in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member(s) and the United States (U.S.), Applicant's 20-year record of possessing a security clearance without infractions or violations, and his deep ties to the U.S. justify complete confidence he will resist any

coercive or non-coercive efforts to force him to choose between the person(s) involved and the US. Clearance is granted.

STATEMENT OF CASE

On July 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the Applicant detailing 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. On July 31, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 5, 2003. On October 2, 2003, this case was set for hearing on October 30, 2003. The Government submitted one exhibit and Applicant submitted two exhibits. Testimony was taken from Applicant and four witnesses. The transcript was received November 10, 2003.

RULINGS ON PROCEDURE

Government exhibits shall be referred to as (GE) while Applicant's exhibits shall be marked as (AE). References to the transcript shall be referred to as (Tr.) followed by the page number. Applicant's proposed corrections to the transcript are accepted.

My review of the evidence has included taking official notice of the U.S. Department of State, Israeli Consular Information Sheet (October 24, 2003), the U.S. Department of State, Travel Warning (October 24, 2003), and, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2002.

FINDINGS OF FACT

The SOR alleges foreign influence (Guidiline B). Applicant's admissions to the factual allegations shall be incorporated into the following findings of fact:

Applicant, a 44-year-old staff engineer, has worked for the same defense contractor since 1983. In conjunction with his employment, Applicant completed a security-clearance application (SCA) on July 13, 2000, disclosing (1) he was born in the US (New York) October 20, 1960; he and his wife were married in August 1982 and have lived at the same U.S. address since 1986; (2) he was awarded his master's degree in electrical engineering in 1983 (GE 1; Tr. 19); (3) he has four children, born in the U.S., that range in age from 7 to 17; and, (4) he has held a security clearance since October 1980.

Applicant's parents are dual citizens of the U.S. and Israel. (Tr. 40) Applicant's father, 76 years old, is a retired teacher/educator who was Director of the Board of Jewish Education for the District of Columbia for 25 years. (Tr. 54) Applicant's 70-year-old mother was educated for the teaching profession and worked sporadically as a teacher when she was not carrying out housewife responsibilities. His parents moved to Israel to be closer to their grandchildren. (Tr. 59)

Applicant's brother, 38 years old, is a dual citizen of the U.S. and Israel. He was a tax lawyer admitted to the bar of three contiguous U.S. states in the middle Atlantic region, and is currently working with Israeli companies to be listed on American exchanges.[(1)] Applicant's sister-in-law is a dual citizen of the United Kingdom and Israel. (Tr. 41)

Applicant's sister, 45 years old and a dual citizen of the U.S. and Israel, is a private doctor who teaches at a private city university in Israel. (Tr. 55) Her husband, Applicant's brother-in-law, is also a dual citizen of the U.S. and Israel. Applicant's second sister, 42 years old and a dual citizen of the U.S. and Israel, is a computer programmer for a world-wide conglomerate. (Tr. 55) Her husband, Applicant's brother-in-law is also a dual citizen of the U.S. and Israel.

In 1984, Applicant studied in Israel for approximately 10 months at an Israeli extension of an American university to become an ordained rabbi. He has returned to Israel six times on business and one time for pleasure since April 1994. Applicant has no property in Israel. (Tr. 49)

Witness 1, Applicant's wife for 21 years, was born in the U.S. She and Applicant have four children. She has visited Israel with Applicant in 2002 and 1989. She communicates with Applicant's sisters and brother on special occasions. The parents of witness 1 are U.S. citizens and she communicates with them regularly. She and Applicant see Applicant's parents irregularly because his parents have a home in two U.S. states, and a home in Israel. Witness 1 believes most of Applicant's family lives in Israel because that is what they want to do.

Witness 2, chairman of the reliability engineering department, was Applicant's coworker for about 22 years before becoming his supervisor for the past three years. Witness 2 indicated Applicant has always complied with security regulations.

Witness 3 is retired but is performing some contract work for Applicant's employer. Witness 3 and Applicant were coworkers for approximately 12 years then Witness 3 became his supervisor for 10 years. Witness 3 recommends Applicant for a position of trust.

Witness 4, a lawyer, has known Applicant for about 30 years, having met him when they both were in elementary school. Witness 4 noted that Applicant is very loyal to the U.S. and is careful not to disclose information about his work.

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance decisions. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way 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 case presents its own unique facts and circumstances, it should not be assumed that the disqualifying and mitigating conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Foreign Influence

Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close bonds of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions (MC):

1. A determination that the 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 US.

3. Contact and correspondence with foreign citizens are casual and infrequent;

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under general policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge 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 establish a *prima facie* case under foreign influence (Guideline B), which establishes doubt about a person's judgment, reliability and trustworthiness. 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 repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Under the foreign preference guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the US or

may be subject to duress. Applicant's parents, two sisters and brothers-in-law and brother are dual citizens of the U.S. and Israel. Applicant's sister-in-law (married to Applicant's brother) is a dual citizen of United Kingdom and Israel. Applicant maintains regular contact with his parents but irregular contacts with his siblings. In addition, he has made seven trips to Israel for business or pleasure reasons. The relationships and contacts raise security concerns under DC 1 of the foreign influence guideline.

In mitigation, having weighed and balanced all the circumstances surrounding each family member at issue under MC 1 of the foreign influence guideline, I determine Applicant's parents, his sisters and brothers-in-law, and his brother and sister-in-law are not agents of a foreign country or power. I also do not believe any of the family members (including the members outside Applicant's nuclear family, i.e. brother-in-law, and not identified in MC 1) are in a position to be exploited to force Applicant to choose between the family member and U.S. First, his father was the Director of the Jewish Board of the Education in the District of Columbia for 25 years and at 76 years old, has moved back to Israel for part of the year to enjoy his grandchildren. Applicant's mother, age 70, also moved back for the same reasons.

Applicant's 38-year-old brother is not a foreign agent but a lawyer assisting Israeli companies get listed on the American stock exchanges. There is nothing in the brother's background as a U.S. tax lawyer to suggest he could be exploited to force Applicant to choose between loyalty to the individual an the U.S.

Applicant's 45-year-old sister is a medical doctor who also teaches at a private university in Israel. There is no evidence to infer that she or her 42-year-old sister, a computer programer for a worldwide technology company, are agents or instruments of a foreign country or foreign power, or that they are in a position to be taken advantage of in a way that forces Applicant to choose between them and the U.S. Considering the evidence as a whole, MC 1 applies to mitigate the security concerns raised regarding Applicant's parents, brother, two sisters, and sister-in-law.

Although there is no evidence describing the occupations of the two brothers-in-law, and the sister-in-law, the overwhelming weight of the evidence shows no foreign influence by Applicant. This conclusion is based on the strong ties Applicant has to the U.S. First, Applicant and his wife are native-born U.S. citizens. They have four children born in the U.S. Second, except for ten months in 1984, Applicant obtained primarily all of his educational and religious training in the U.S. Third, Applicant has worked for the same U.S. employer for more than 23 years, receiving consistently good reviews by former coworkers who now supervise him. Fourth, Applicant has held a security clearance for more than 20 years. Fifth, Applicant has lived with his wife and family for more than 16 years at the same address. Finally, Applicant has no property in Israel. Having weighed the entire record, including the general factors of the whole person concept, and having taken official notice of information from the U.S. Department of State, I find for Applicant under the foreign influence guideline.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign influence): FOR THE APPLICANT.

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. 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 Applicant.

Paul J. Mason

Administrative Judge

1. Although I am not absolutely certain, I believe Applicant is referring to one of the American stock exchanges.