

DATE: December 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18095

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Melvin A Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a United States born dual citizen of Israel and the United States, has fulfilled the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, (Money Memorandum) by returning his Israeli passport to the Israeli Government. Additionally, he has renounced his Israeli citizenship. Applicant's contacts with his family members, who are citizens of and reside in Israel are infrequent. None of these people are in a position to be exploited by Israel in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated June 2, 2003, to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members (wife, parents-in-law, brother-in-law, and two sisters-in-law) and foreign preference (guideline C) related to his exercise of dual citizenship with the United States and Israel.

Applicant, acting *pro se*, filed a notarized response dated June 24, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On August 8, 2003, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated September 9, 2003, a hearing was held on September 29, 2003.

At the hearing, Department Counsel offered six documentary exhibits (Exhibits 1 - 6) and no witnesses were called.

Applicant offered eight documentary exhibits (Exhibits A - H) and offered his own testimony. The transcript (TR) was received on October 15, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) and Guideline C (Foreign Preference) and of the Directive. The SOR contains four allegations, 1.a., 1.b., 1.c., and 1.d., under Guideline B, and three allegations, 2.a., 2.b., and 2.c. under Guideline C. Applicant admitted all of the SOR allegations. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 31 years old and is employed as a network engineer by a United States defense contractor. He received a Bachelor of Science degree in Computer Information Systems from a United States university in 2001. Applicant was born in the United States. His parents and his sister are citizens of and reside in the United States.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant is married to a woman, who was born in Israel. She now resides in the United States and became a naturalized United States citizen in 2003 (Exhibit H). She is now a dual citizen of Israel and the United States. Applicant and his wife have two children, who were born in the United States and are United States citizens.

Applicant's parents-in-law, brother-in-law, and two sisters-in-law reside in and are citizens of Israel. None of these family members belong to, participate in, or are active with any government agency of Israel (Tr at 28, 33-36). Applicant never telephones or initiates contact with his Israeli relatives. He will speak to them, if he answers the telephone first when they call to speak to his wife. He generally speaks to his parents-in-law approximately once every three months. He last spoke to his brother-in-law one and a half years ago, and he speaks to his sisters-in-law every few months or less (Tr at 32-36).

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 indicate a preference for another country over the United States.

Applicant was born in the United States in 1972. He first traveled to Israel in 1990 for a vacation, and he returned to Israel in 1991, where he stayed until 1996. During that period, he became an Israeli citizen, and voted in one Israeli election. He never renounced his United States citizenship (Exhibit 2). While he was living in Israel, he was required to serve in the Israeli military, which he did officially from November 1995 through November 1996. Because he was injured while in the service, the time he actually served was considerably less than one year (Tr at 41, 42).

On September 5, 2003, Applicant sent to the Israeli Consulate Office a letter in which he renounced his Israeli citizenship and revoked his Israeli passport. Enclosed in the letter was his Israeli passport, immigrant papers and identity card (Exhibits B- G).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary

or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Foreign Influence

E2.A2.1.1. 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.

E2.A2.1.2. 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.

E2.A2.1.3. 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), 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.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

Foreign Preference

E2.A3.1.1. 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.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A3.1.2.1 The exercise of dual citizenship.

E2.A3.1.2.2. Possession and/or use of a foreign passport.

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country.

E2.A3.1.2.8. Voting in foreign elections.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.4 Individual had expressed a willingness to renounce his dual citizenship.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines B and C:

Under Guideline B, a security risk 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 United States or may be subject to duress. The evidence of a wife, who is a dual citizen of Israel and the United States, and the existence of immediate family members, who are citizens of and reside in Israel comes within Disqualifying Condition (DC) E2.A2.1.2.1. Based on the nature of the overall record and the totality of the evidence, including the lack of government involvement of Applicant's family members and Applicant's limited emotional attachment to the family members in Israel, I have determined that his wife and his family members in Israel do not constitute an unacceptable security risk, and Mitigating Conditions (MC) E2.A2.1.3.1. applies. MC E2.A2.1.3.3. also applies because Applicant's contacts with his foreign relatives in Israel is casual and infrequent.

After considering all of the evidence of record on this issue, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would reject it, and would report the incident to the proper authorities.

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's decision to move to Israel, become an Israeli citizen, serve in the Israeli army, and obtain and use an Israeli passport raises serious foreign preference (guideline C) concerns. At the time the SOR was issued, DC E2.A3.1.2.1., the exercise of dual citizenship, and DC E2.A3.1.2.2., possession and/or use of a foreign passport applied. However, Applicant has renounced his Israeli citizenship and revoked his Israeli passport. Neither the Money Memorandum nor DC E2.A3.1.2.2 now applies in this case. DC E2.A3.1.2.3. applies because of Applicant's brief Israeli military service, and DC E2.A3.1.2.8. is also applicable because Applicant did vote in one Israeli election. Because Applicant not only stated his intention to renounce his Israeli citizenship, but actually did it, MC E2.A3.1.3.4 applies.

Applicant, who is now 31, was 21 years of age when he emigrated to Israel and became an Israeli citizen. He never renounced his United States citizenship. Since he returned to the United States, seven years ago, his wife has become a

United States citizen, he has had two children born in the United States, he has stated his intention to raise his family in the United States, and he has established a career here. I conclude that there is little, if any, risk that Applicant will act in preference to Israel over the United States.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: 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

Paragraph 2. Guideline C: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: 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.

Martin H. Mogul

Administrative Judge