

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23318

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The fact that applicant's parents are citizens and residents of Israel does not leave him vulnerable to coercion or pressure. In addition, applicant's conduct since arriving in the United States in 1977 indicates a clear preference for the United States. Clearance is granted.

STATEMENT OF THE CASE

On April 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on April 26, 2004. The case was assigned to the undersigned on June 17, 2004. A Notice of Hearing was issued on June 22, 2004, and the hearing was held on July 16, 2004. Following the hearing, applicant submitted two separate sets of documents. The first set consisted of six pages of documents. These six pages, as well as Department Counsel's two page response to this post-hearing submission, were marked as Exhibit M and admitted into evidence. The second set consisted of three pages of documents. These three pages, as well as Department Counsel's one page response to this submission, were marked as Exhibit N and admitted into evidence. The transcript was received on August 6, 2004.

FINDINGS OF FACT

Applicant is a 56 year old Research Engineer.

Applicant was born and raised in Israel. In the late 1960s and again in the early 1970s, he served in the Israeli army. In

1977, he left Israel and moved to the United States. He has lived here since then. In 1982, he became a United States citizen. He has been employed by the same defense contractor since 1988. He married a native born United States citizen in 1973. They have one child who was born in the United States.

Applicant has visited Israel on numerous occasions since moving to the United States, including one visit during each of the three previous years. He has always used his Israeli passport to enter and exit Israel because Israeli law required him to do so. He has used his United States passport for all other travel.

In May 2004, after receipt of the SOR, applicant completed the required paperwork to renounce his Israeli citizenship, and personally filed it with Israeli authorities. This process takes approximately six months (Exhibit B). At the time he met the Israeli officials to renounce his citizenship, he tried to surrender his Israeli passport, but the authorities told him they could not accept it until the renunciation process was completed (TR at 32). Subsequent to the hearing, applicant cut up the passport and mailed it to the Israeli authorities (Exhibit M). The passport was mailed back to applicant who, in turn, mailed it back to the Israeli consulate with a letter stating, "Should this passport be sent back to me I will resend it back to you again and again" (Exhibit N).

Applicant's elderly parents are citizens and residents of Israel. Applicant visits them in Israel an average of every three years. He calls them weekly.

Applicant has two acquaintances who are Israeli citizens. He rarely communicates with them, and he clearly has no sense of obligation to them.

When applicant became a naturalized United States citizen in 1982, he made the decision to make the United States his permanent home. Had he had been told at the time that he had to renounce his Israeli citizenship he would have done so (Exhibit A). He plans on retiring and living the rest of his life here (TR at 57). He considers himself "to be as loyal a US citizen as anyone" (Exhibit 2).

One of applicant's coworkers appeared at the hearing and testified that he has known applicant on a professional basis for 14 years. He further testified that applicant is reliable, and that he would not hesitate to recommend applicant for a position of trust.

Letters from two other individuals who work with applicant were admitted into evidence (Exhibits K and L). Both long-time colleagues of applicant state that applicant has never done or said anything that would make them doubt applicant's loyalty to the United States, and both state they would not hesitate to recommend him for a position of trust.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's elderly parents are citizens and residents of Israel. This fact requires application of Disqualifying Condition E2.A2.1.2.1

(an immediate family member . . . is a citizen of, or resident or present in, a foreign country).

Based on the evidence presented, I conclude that these immediate family members are not agents of Israel, or in a position to be exploited by Israel in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States. I reach this conclusion for at least two reasons: First, there is no evidence that applicant's parents are connected with the Israeli government, Israeli military, or any of the Israeli intelligence services. Second, it is highly unlikely that Israel, a close ally of the United States, would risk threatening its relationship with the United States by exploiting two of its elderly private citizens for the purpose of forcing a United States citizen to betray the United States. I further conclude that since coming to the United States in 1977, applicant's conduct has indicated that he is a reliable and trustworthy individual who is loyal to the United States. This leads me to conclude that, in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 *(a determination that the immediate family member(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)* is applicable, and Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant is currently a citizen of both Israel and the United States, he served in the Israeli military, and he has renewed and used an Israeli passport to travel to Israel after he obtained United States citizenship. These facts require applicant of Disqualifying Conditions E2. A3.1.2.1 (*the exercise of dual citizenship*), E2.A3.1.2.2 (*possession and/or use of a foreign passport*), and E2.A3.1.2.3 (*military service or a willingness to bear arms for a foreign country*).

It is clear that since moving to the United States in 1977, applicant's conduct has indicated a clear preference for the United States. His statements that United States is his permanent home, and that he would have renounced his Israeli citizenship at the time he became a United States citizen if he was required to, were credible and worthy of belief. Now that he has been made aware that his dual citizenship is considered a significant security concern, and that the possession of a foreign passport would automatically bar him from having access to classified information, applicant has taken steps to renounce his Israeli citizenship and has surrendered his passport. These were not easy decisions for applicant because until his Israeli citizenship is formally revoked, he is considered by Israel to be an Israeli citizen, and an Israeli citizen without an Israeli passport is not permitted to enter Israel. With two elderly parents (his father is 90) living in Israel, applicant is taking a risk that he may not see his one or both of his parents again.

Applicant qualifies for Mitigating Conditions 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., military service) occurred before obtaining United States citizenship*) and E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). Given these Mitigating Conditions, and the fact applicant satisfied the security concern raised by his possession of the Israeli passport by surrendering it to Israeli authorities, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE 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.

Joseph Testan

Administrative Judge