

DATE: January 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24074

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The credible testimony of Applicant and his supervisors, together with Applicant's forthright action in surrendering his Israeli passport during the renunciation process of his Israeli citizenship provide persuasive evidence Applicant's sole preference is for the United States (U.S.). In addition, the initial security concerns raised under foreign influence are eliminated as none of Applicant's immediate family members (including the brother who works for the Israeli government) are agents of a foreign power or in a position to be exploited by a foreign power in such a way as to force Applicant to choose between his family member(s) and the U.S. Clearance is granted.

STATEMENT OF CASE

On June 27, 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 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On July 21, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 8, 2003. On October 2, 2003, this case was set for hearing on October 30, 2003. The Government submitted two exhibits and Applicant submitted 3 exhibits. Testimony was taken from Applicant and two witnesses. The transcript (Tr.) was received on November 10, 2003.

RULINGS ON PROCEDURE

The Government exhibits (GE) shall be identified by number. Applicant's exhibits (AE) shall be identified by letter. References to the transcript (Tr.) shall be followed by the page number of the transcript.

I have taken official notice of the following documents: (1) "Israel, the West Bank and Gaza," October 24, 2003, Consular Information Sheet, U.S. Department of State; (2) "Travel Warning, Israel, the West Bank and Gaza," Bureau of Consular Affairs, U. S, Department of State; (3) Annual Report to Congress on Economic Collection and Industrial Espionage, 2000.

On November 18, 2003, Applicant submitted 13 proposed corrections to the transcript. Department Counsel's proposed objections to locations #7 and #8 of the transcript are hereby **sustained**. After reviewing pp. 52 through 54, I find the topic of discussion is how long ago before Applicant's current job was he serving in the Israeli military. Applicant is mistaken when he twice identified the number "10" on page 52 and page 53. However, a reasonable, commonsense reading of his testimony at page 53, lines 8 and 9, indicates he was estimating his age when he was about to receive a discharge from the Israeli navy. The year would be 1977 when Applicant was twenty-four years old, reasonably close to the time he was discharged from the military and when he began employment with the avionics company. See, GE 1 and GE 2. Applicant's remaining proposed corrections (#1 through #6, #9 through #13) are hereby **accepted**.

The dates entered by Applicant on his security clearance application (SCA, GE 1) under module 11 are also incorrect. In GE 2, Applicant pointed out the incorrect dates in GE 1 and furnished the accurate dates.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). Applicant denied subparagraphs 1.d., 1.e., and 2.e. He admitted the remaining allegations. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is 50 years old and employed as a software developer by a defense contractor. He seeks a secret clearance.

Foreign Preference. Applicant was born in Israel on September 15, 1953. He fulfilled required military service in the Israeli navy from February 1972 to April 1976. (GE 1) He served one extra year in the military than the three year minimum so he could become a qualified mechanical technician. (Tr. 50). Then he worked for an avionics business for about 10 months before working two and one-half years for the airlines. (Tr. 54) During his employment with the avionics employer, he opened up a retirement account. In 1979, he came to the U.S. on a visitor's visa, and received his green card in 1981. He married his first wife in 1980, however, that union ended in divorce a year later.

In December 1987, Applicant became a naturalized U.S. citizen. He married his second wife, a U.S. citizen in 1991, and they currently have two children, both U.S. citizens (GE 1) Applicant received a Bachelor of Arts degree from a U.S. technical university in May 2001. (GE 1)

Applicant received his first U.S. passport in April 1988 and his most recent U.S. passport was issued in April 1998. Applicant obtained his first Israeli passport in 1977 and used it every two years until the passport expired in April 2003. Applicant last used his Israeli passport when he traveled to Israel in March 2000. (GE 1, GE 2) Acting on his intention expressed in his statement dated June 2002 that he was willing to renounce his citizenship and give up his passport, Applicant initiated the process in 2003 and his Israeli citizenship was revoked on August 17, 2003. (AE A) As a part of the renunciation process, the Israeli Embassy confiscated his passport. (Tr. 60) He promises to use only his U.S. passport when traveling to Israel or any other foreign country in the future. (GE 1; 36-39)

Foreign Influence. Applicant's mother, father and nine siblings are currently resident citizens of Israel. (Tr. 41) Applicant's father, a retired veterinarian, passed away on October 26, 2003 at the age of 69. Applicant's mother, 64 years old, is a retired housewife, having raised nine children. (Tr. 40; GE 1)

Applicant's 47-year-old brother is a resident citizen of and employed as an office worker by the Israeli government. (Tr. 42) Applicant's 46-year-old brother is a truck driver and hauls trash. Applicant's 45-year-old brother is a truck driver also. Applicant's 37-year-old brother is a rental car agent. (Tr. 45-47)

Applicant is closest to his oldest sister who is 51 years old and a resident citizen of Israel. She is a housewife/maid. Applicant's 45-year-old sister is citizen of Israel currently residing in the U.S. She is a housewife. Applicant's last contact with her was in 1999. Applicant could not provide a specific reason for not maintaining closer communication

with her except to say in a large family, there is always one member who does not receive the same attention the others do. (Tr. 48)

Applicant's 41-year-old sister is a part-time teacher. Applicant's 39-year-old sister is a school teacher. Applicant also has a 35-year-old sister, who is an office assistant to a lawyer. She recently took pregnancy leave. (Tr. 48)

Applicant maintains monthly contact with his mother while talking to his siblings on a frequent basis. Since his father died, Applicant has been talking daily with his older sister. (Tr. 69) Using an Israeli passport, Applicant traveled to Israel every two years since his arrival in the U.S. in 1979. He intends to use only his U.S. passport in the future.

As noted within the foreign preference portion of Findings of Fact, Applicant opened up a retirement account while he was working for the avionics company in 1976. By the time Applicant closed out the account on July 13, 2002, it had grown to \$6,000.00. He used some of the money to pay for his air conditioning and the rest he gave to his brother to cover the costs of his father's funeral. (Tr. 56)

Character evidence. Now that Applicant has relinquished his bank account, he has no ties to Israel except for his family members. He did not maintain dual citizenship to protect his financial interest. He has never sought political office in Israel. He has not voted in Israeli political elections since coming to the U.S. in 1979. Applicant's commitment is to the U.S. because his family is located here. (Tr. 65) Applicant has coached soccer in the community for the past six years.

Witness 1 has known Applicant professionally since 2000 and has been his supervisor for 2 ½ years. Witness 1 characterized Applicant as a conscientious employee who is honest and family oriented.

Witness 2 has known Applicant 2 ½ years but worked in another department until two months ago when she became his second line supervisor. While she has yet to author performance evaluations for Applicant, his former supervisor told her Applicant is dedicated to his job and the U.S. According to Witness 2, Applicant investigated the procedure for renouncing his citizenship when he discovered there could be a problem in obtaining a security clearance. (Tr. 33)

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) which must be given binding consideration in making security clearance determinations. 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 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 Preference

Disqualifying Conditions (DC):

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Also applicable in determining whether foreign preference exists is the Memorandum of August 16, 2000, entitled "Guidance to DoD Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," by the Assistant secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo." The memorandum guidance indicates:

possession and/or use of a foreign passport may be a disqualifying condition. It contains no mitigating factor related to the applicant's convenience, safety, requirements of foreign law, or the identify of the foreign country. The only

applicable mitigating factor addresses the official approval of the United States Government from the possession or use. The security concerns underlying the guideline are that the possession and use of a foreign passport in reference to a U.S. passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the U.S. Therefore, consistent 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 U.S. Government.

Mitigating Conditions (MC):

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.
2. Indicators or possible foreign preference occurred before obtaining U.S. citizenship.
4. Individual has expressed a willingness to renounce dual citizenship.

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government.

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 U.S.;
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 additional 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 preference (Guideline C) and 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 Applicant presently qualifies for a security clearance.

CONCLUSIONS

Foreign Preference. When an individual acts in a way that demonstrates a preference for a foreign country over the U.S., he or she may be disposed to provide information or make decisions that are harmful to the interests of the U.S. Applicant's dual citizenship, his possession and use of his Israeli passport every two years from 1977 until March 2000, and his military service in the Israeli navy raise security concerns under DC 1, DC 2, and DC 3 of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. Although Applicant had a bank account in Israel since about 1976 when he worked for the avionics company, DC 6 is inapplicable since there is no evidence to infer or suggest Applicant used his Israeli citizenship to protect his financial interest. Furthermore, Applicant closed out the account in 1992.

The security concerns surrounding foreign preference may be mitigated when the dual citizenship is based solely on an applicant's birth in a foreign country (MC 1), the indicators of possible foreign preference occurred before obtaining U.S. citizenship (MC 2), the activity is sanctioned by the U.S. (MC 3), and the applicant has declared a willingness to renounce his foreign citizenship (MC 4). Although MC 1 is immediately pertinent because of Applicant's birth in Israel, Applicant's subsequent exercise of his dual citizenship requires a careful evaluation of the remaining mitigating conditions to ascertain whether Applicant has overcome the evidence of foreign preference.

MC 2 is available to mitigate indicators of foreign preference that occurred before 1988 when Applicant received his U.S. citizenship. Applicant's compulsory Israeli military service between 1972 and 1976 is mitigated by MC 2 because it occurred before Applicant obtained his US. citizenship in 1988. The extra year Applicant spent in the Israeli military is sufficiently explained by his desire to learn to be a mechanical technician. Applicant's retention and use of his foreign passport for travel to Israel every two years from the late 1970s through his most recent use in March 2000 is not mitigated by MC 2 because Applicant continued to use his Israeli passport after receiving his U.S. citizenship. And, his continued use of his Israeli passport was not sanctioned by the U.S. (MC 3) Though Applicant's continued use of his Israeli passport demonstrates foreign preference concerns, those concerns must be weighed and balanced with the likelihood Applicant did not know his possession and use of his Israeli passport would have a negative impact on his application for a security clearance.

When Applicant discovered in June 2002 (GE 2) his dual citizenship could thwart his chances of obtaining a security clearance, he took documented action toward relinquishing his foreign citizenship. (AE A) Applicant's conduct falls within the scope of MC 4 as representing strong evidence demonstrating Applicant's sole preference is for the U.S. When he instituted measures to renounce his citizenship at the Israeli embassy he was required to surrender his Israeli passport. His renunciation was granted on August 20, 2003.

Applicant's statements and conduct since June 2002 (GE 2) demonstrate Applicant's sole preference is for the U.S. This conclusion is supported by the testimony of Applicant's two supervisors. In addition, Applicant no longer has any financial interest in Israel. Applicant married his current wife (a U.S. citizen) in 1991 and currently has two children, both U.S. citizens. Applicant has lived at his present address since 1995. Applicant has coached soccer to the youths in his community for approximately six years. Applicant never voted in Israeli elections after coming to the U.S. in 1979, but has voted in U.S. elections since that time. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e., are resolved in Applicant's favor.

Foreign Influence. Under the foreign influence guideline, 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 U.S. citizens or may be subject to duress. Applicant's mother, father, and eight brothers and sisters are resident citizens of Israel. The Government has established a *prima facie* case under DC 1, and DC 3 of the foreign influence guideline. Applicant's parent, brothers and sisters are resident citizens of Israel.

In mitigation, Applicant's father is deceased, however, before his death, he was a veterinarian. Applicant's mother is a retired housewife, having raised nine children. Given their ages and former occupations, I find neither his father or his mother were or are agents of a foreign power, and commonsense indicates they have never been in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his mother and the U.S.

(MC 1)

All of Applicant's siblings are resident citizens of Israel except for his sister who is a citizen of Israel but lives in Florida. I find his sisters are not agents of the Israeli government or a foreign power. (MC 1) Applicant's oldest sister is 51 years old and is a housewife/maid. Applicant's 45-year-old sister is a housewife living in the U.S. Applicant's 41-year-old sister is a part-time teacher. Applicant's 39-year-old sister also teaches school. Applicant's 35-year-old sister is a lawyer's assistant presently on maternity leave. Considering the entire record, the sisters are not in a position to be exploited by a foreign power in such a way as to force Applicant to choose between the sister(s) and the U.S. While Applicant's frequency of contact with his sisters and other members of his immediate family removes MC 3 from consideration, that contact raises no foreign influence issues. Instead, the contact represents an ongoing effort by Applicant to maintain a close relationship with his family, especially now that his father has passed.

I also find that Applicant's four brothers, who are resident citizens of Israel, are not agents of the Israeli government or a foreign power. Applicant's 46-year-old brother is a truck driver who hauls trash. Applicant's 45-year-old brother is a truck driver also, while Applicant's 37-year-old brother is a rental car agent. The jobs of these three brothers do not place them in a position to be exploited by a foreign power in a way that could force Applicant to choose between the brother(s) and the U.S.

Though Applicant's fourth brother is an office worker for the Israeli government (DC 3), I find he is not an agent of the Israeli government. After a commonsense evaluation of the overall facts and circumstances of the entire record showing a lack of foreign influence on Applicant, and the strong evidence under the foreign preference guideline demonstrating Applicant's preference for the U.S. is paramount, I conclude Applicant's brother is not in a position to be exploited by a foreign power in a way that could force Applicant to choose between the brother and the U.S. (MC 1) This conclusion is based on Applicant's sound ties with the U.S. First, Applicant obtained his U.S. citizenship in 1987 followed by his marriage to a U.S. citizen in 1991, resulting in two children born in the U.S. Also, Applicant has lived at the same address since 1995, and has worked for U.S. employers since 1994. In light of Applicant's renunciation of his Israeli citizenship in August 2003 (and the surrender of his passport), after he discovered his foreign citizenship would interfere with his security clearance application, plus the credible testimony from his supervisors, my predictive judgment is that Applicant has the necessary willpower to resist and report any potential influence through coercive or non-coercive means. Applicant has met his ultimate burden of persuasion under the foreign influence guideline, and I find for Applicant under subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e., 2.f., and 2.g. The favorable decision under both guidelines includes consideration of the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Preference, Guideline C): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

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

- a. For the Applicant.
- b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. 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