

DATE: October 21, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24942

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born and raised in Israel. He mitigated security concerns raised by his dual citizenship by renouncing his Israeli citizenship and returning his Israeli passport. Applicant was unable to mitigate the foreign influence security concerns raised by his parents, sister, extended family members, and friends who are citizen residents of Israel. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 13 May 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 7 June 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 29 July 2004. On 24 August 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 10 September 2004.

FINDINGS OF FACT

Applicant is a 42-year-old engineering manager for a defense contractor. He was born and raised in Israel. He served his mandatory Israeli military service from 1982-86, attaining the rank of master sergeant. He held a top secret Israeli clearance to perform his duties in systems engineering; he installed and repaired electronic equipment.

After he completed his military service, Applicant immigrated to the U.S., where he married a U.S. born woman he had met in Israel when she was a student. Applicant and his wife have two children, both U.S. citizens by birth. Applicant became a U.S. citizen in April 1989 and received a U.S. passport in 1990. He was a dual U.S./Israeli citizen. He renewed his Israeli passport in September 2003 with an expiration date of September 2013. Once he received his U.S. passport, he only used his Israeli passport to enter and exit Israel. At Applicant's request, Israel revoked his citizenship on 15

August 2004, and he returned his Israeli passport to that government on 31 August 2004.

Applicant's parents are citizen residents of Israel. His father survived the holocaust and immigrated to Israel after World War II. His mother was born and raised in what is now Israel. Both are retired; they did not work for the government. Applicant maintains contact with his parents by telephone on a weekly basis. Between 1986 and the late 1990s, they visited Applicant in the U.S. annually. The trips have ceased because Applicant's father is in poor health.

Applicant's sole sibling, a sister, and her husband are citizen residents of Israel. They have three children. Although they both served mandatory military service, neither works for the government. Applicant speaks with his sister by telephone approximately once a month.

Applicant has several aunts and uncles to whom he speaks by telephone two or three times a year. He also has three close friends from growing up in Israel with whom he maintains telephonic contact two to four times a year.

Applicant has visited Israel five times since he came to the U.S. in 1986--in 1996, twice in 2000, and once each in 2001 and 2004. Applicant has no financial interests in Israel, but in the event of his parents' death, he believes he would probably share in their modest estate.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline C--Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual U.S./Israeli citizenship (¶ 1.a) and obtained an Israeli passport in 2003 despite having a U.S. passport (¶ 1.b). When an applicant acts in such a way as to indicate a preference for a

foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government established by substantial evidence and Applicant's admissions that he exercised dual citizenship by obtaining and using an Israeli passport after he acquired a U.S. passport. DC E2.A3.1.2.1; DC E2.A3.1.2.2. As a dual citizen, Applicant had a right to hold a passport from both the U.S. and Israel. But a security clearance must "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." Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). Applicant took the appropriate steps and has renounced his Israeli citizenship and returned the Israeli passport. MC E2.A3.1.3.4. Applicant has mitigated the foreign preference security concerns.

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's parents (¶ 2.a), sister (¶ 2.b), and extended family members (¶ 2.c), and three close friends (¶ 2.d) are citizen residents of Israel; and Applicant traveled to Israel four times between 1996 and 2001 (¶ 2.e). A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR--Applicant has immediate family members who are citizen residents of a foreign country. He also has other family members--aunts, uncles, and nieces--and friends in Israel to whom he is bound by ties of affection. DC E2.A2.1.2.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates 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 the individual to choose between loyalty to his family members and loyalty to the U.S. MC E2.A2.1.3.1.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. The evidence established that Applicant is a loyal U.S. citizen. At the same time, the evidence clearly established Applicant has strong ties of affection or obligation to his family members and friends who are citizen residents of Israel. Although these foreign associates are not agents of a foreign power, Applicant failed to demonstrate that his foreign associates are not *in a position of vulnerability* such that he could be forced to choose between loyalty to the U.S. and loyalty to them. Under these circumstances, I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).