

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Born in Israel, Applicant, exercised dual citizenship when he possessed and used a foreign passport after obtaining U.S. citizenship in 1984. However, once he understood the security policy requirements, he immediately took steps to surrender his foreign passport as required and renounced his Israeli citizenship. While his elderly mother and sister live in and are citizens of Israel, Applicant credibly established he would not be subject to pressure as he has strong ties in the U.S. and has previously twice held a security clearance without incident. If overtures were made to pressure him or his family, he would report such a contact or threat to a responsible security official. Thus, Applicant mitigated security concerns under Guidelines C and B. Clearance is granted.

CASENO: 03-19101.h1

DATE: 05/23/2005

DATE: May 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19101

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Born in Israel, Applicant, exercised dual citizenship when he possessed and used a foreign passport after obtaining U.S. citizenship in 1984. However, once he understood the security policy requirements, he immediately took steps to surrender his foreign passport as required and renounced his Israeli citizenship. While his elderly mother and sister live in and are citizens of Israel, Applicant credibly established he would not be subject to pressure as he has strong ties in the U.S. and has previously twice held a security clearance without incident. If overtures were made to pressure him or his family, he would report such a contact or threat to a responsible security official. Thus, Applicant mitigated security concerns under Guidelines C and B. Clearance is granted.

STATEMENT OF THE CASE

On September 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The SOR [\(1\)](#) informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. On October 26, 2004, Applicant answered the SOR (Answer) and requested a hearing.

The case was assigned to me on January 6, 2005. On February 1, 2005, DOHA issued a Notice of Hearing and set this case to be heard on February 23, 2005 in a city near where Applicant lives and works. At the hearing the government presented eight exhibits (Exhibits 1-8) which were admitted into evidence without objection. As Applicant did not object, I also granted Department Counsel's request that I take administrative notice of the information contained in Exhibits I-VI. (TR 24-28)

At the hearing Applicant presented one exhibit (Exhibits A) which was admitted without objection. Applicant also testified in his own behalf. Department Counsel did not object to my leaving the record open until March 23, 2005, so that Applicant could

submit additional evidence. (TR 11-12, 29) Subsequently, on March 4, 2005, Department Counsel submitted a legal memorandum on the issues in this case and provided a copy to Applicant.

Consequently, Applicant requested additional time until April 22, 2005, to submit his evidence; this additional time was granted (2) as Department Counsel did not object. Applicant submitted his additional evidence on April 21, 2005. (Exhibit B) On May 6, 2005, Department Counsel declared he had no objection (3) to the admission into evidence of Exhibit B. Exhibit B was admitted into evidence; and the record closed on May 6, 2005. DOHA received the transcript (TR) on arch 10, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant, age 52, was hired at his corporation (Corporation #1) in State #1 in 2001 and continues to work there as a principal engineer. He completed (4) a Security Clearance Application (SF 86) in December 2002. He worked for Corporation #2 from 1996 to 2001. Previously, he was granted a Secret security clearance in 1995 when he worked for Corporation #3 from 1995 to 1996. In 1994 he worked for Corporation #4, but did not need a security clearance. Earlier he had been granted a security clearance in 1992 when he worked for Corporation #5 from 1992-93. Previously, he fully disclosed in his security forms that he was a dual citizen of the U.S. and Israel and had served in the Israeli military. (Answer; Exhibits 1, 2, 6, 7; TR 30-31; 39-40; 49-50; 55-56)

Applicant earned a B.S.E.E. degree in June 1987 from a U.S. university in State #1. He married in 1980; his wife is a naturalized U.S. citizen but remains a dual citizen of Israel; they have two children who were born in the U.S. and are dual citizens of the U.S. and Israel. (Exhibit 1; TR 39; 44-46)

Guideline C - Foreign Preference and Guideline B - Foreign Influence

Applicant was a citizen of the Israel by his birth there in 1952. He served in the Israeli Air Force from 1972 to 1979 as an electronics technician. Applicant first came to the U.S. with his wife in 1980 when he was 27 to explore educational possibilities and to be near his wife's parents who are naturalized U.S. citizens. His mother who lives in and is a citizen

of Israel is a housewife who never worked outside the home. He visits her once a year and speaks to her every week or two for 15-20 minutes. His sister is a housewife who also works as a part-time secretary in the Ministry of Religions. He sees her once a year and speaks to her every two months. His sister's husband has no ties to the government of Israel. (Exhibit 2; TR 32-34, 39-43, 47-49)

Applicant became a naturalized U.S. citizen in February 1984. The U.S. is his "country of choice for residence and living." He never voted in any election in Israel and has no financial interests in Israel. For several years he maintained his dual citizenship with U.S. and Israel. Even after the Assistant Secretary of Defense for Command, Control, Communications and Intelligence Arthur L. Money issued clarifying guidance (the "Money memorandum") August 16, 2000, stating that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport," he was never so advised by his corporation security officials or by the Defense Security Service (DSS) that dual citizenship and use of a foreign passport raised a security concern. When questioned in his April 2003 DSS interview, he stated he would be willing to renounce his dual citizenship if necessary as a condition of access to classified material. While he maintained an Israel passport, he stated to DSS in April 2003 that he would be willing to relinquish his Israeli passport. DSS did not advise him that relinquishment was required by DoD policy, so he renewed his Israeli passport on 2003 to visit his mother in Israel who has been ill. He holds a U.S. passport issued in 1995 which he used for all his travel except to Israel. (Answer; Exhibits 2, 3, 4, 5, 6; TR 36-37; 50-51; 56-57)

As required by Israel law, Applicant renewed his Israeli passport after becoming a U.S. citizen and used his Israeli passport to enter and exit Israel. He only used his Israeli passport for travel to Israel; he has visited Israel in January 1996, September 1997, August 1998, December 2000, November 2001, and from December 2002 to January 2003, and from October 2003 to November 2003. (Exhibits 2, 3; TR 33)

Applicant does not remember getting the Money Memorandum^(S) with his SOR that explained the DoD security policy prohibiting use or possession of a foreign passport, and no evidence was provided that he ever received it. (TR 51-52; 60-61) In a statement to DSS in 1992 he also stated he would be willing to relinquish his Israeli citizenship but took no steps to do so until he understood the DoD policy in January 2005 when Department Counsel explained to Applicant the requirement to surrender his foreign passport. Applicant credibly explained that had he been informed earlier of the U.S. security policy, he would have acted earlier. (Exhibits 7, 8; TR 52, 57-61; 64-66)

As soon as he understood the security requirement, in January 2005 Applicant immediately began the process of renouncing his Israel citizenship and relinquishing his passport. His request to waive his Israeli citizenship was approved in March 2005, and he was notified in April 2005 that he was to return his passport and all documents affirming his Israeli citizenship. He went to the Israeli consulate on April 13, 2005 and submitted his Israeli passport and received his citizenship-waiver document. (Exhibit A, Exhibit B; TR 52; 63-64)

Administrative Notice

The complex nature of the relationship between the U.S. and Israel was detailed in documents that the Department Counsel submitted for administrative notice which I have reviewed. (ON I- VI) The U.S. recognize Israel in May 1948 within minutes after Israel declared its independence. (ON IV) Israel is a parliamentary democracy with a modern economy with widely available tourist facilities. (ON I) Israel is a long-term ally of the U.S., and the U.S. has expressed its commitment to Israel's security and well-being through large-scale American military and economic assistance. However, the U.S.-Israel relationship has "not been free of friction." Indeed, even after the espionage operation involving Jonathan Jay Pollard who was sentenced to life imprisonment for selling vital intelligence to Israel, the U.S. "continued to maintain a close relationship with Israel in sensitive areas such as military cooperation, intelligence sharing, and joint weapons research." (ON III) "The United States and Israel share the goal of peace between Israel and its Arab neighbors but the two nations have not always agreed on the best way to achieve peace or on the peace process." (ON IV CRS-4) The most active collectors of intelligence include China, Japan, Israel, France, Korea, Taiwan, and India. (ON VI)

POLICIES

The Directive sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

Guideline C - Foreign Preference

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.

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Burden of Proof

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.

CONCLUSIONS

Guideline C (Foreign Preference)

As Applicant exercised his Israeli citizenship and continued to possess his foreign passport after he became a naturalized U.S. citizen when he used his Israeli passport exclusively for travel to Israel, the government raised a security concern over Appellant's possible preference for a foreign country over the United States. He may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government established its case under Disqualifying Conditions ⁽⁶⁾ (DC) DC 1 and DC 2 as the possession of a foreign passport could allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls which raises concerns when someone has access to U.S. classified information. Further, the Government established through the documents they submitted for administrative notice (AN I-VI) that even a government such as Israel that is a long-term ally of the U.S. may not have identical interests on vital matters.

Balanced against security concerns over Applicant's previous disqualifying conduct is the fact that one of the indicators of possible foreign preference (e.g., his foreign military service) occurred before he obtained United States citizenship in 1984. Thus, Mitigating Condition⁽⁸⁾ (MC) 2 applies to his previous foreign military service. Indeed the SOR did not allege any concerns over his prior military service. With respect to his dual citizenship, Applicant had a security clearance that he held for two separate periods before the Money memorandum was issued in August 16, 2000, which merely clarified the DoD policy. In his 1992 security form Applicant fully disclosed his ties to Israel, and his clearance was granted. There is no evidence of what information was submitted in 1995; however, his security clearance was granted. In his 2002 security form, he again fully disclosed his ties to Israel and explained them further in his DSS interview in 2003.

While Applicant should have been notified of the Money policy when it was issued and again when his SOR was issued in September 2004, there is no evidence in the record that he was informed. He testified credibly that neither DSS nor his corporate security personnel explained the Money policy clarification to him. While normally, ignorance of the law is not a defense, it is appreciably harder for an individual to learn of changes in interpretation of a security policy.

To his credit, once Applicant understood the U.S. security concerns over his retaining his foreign passport and citizenship, he immediately began the steps to renounce his Israeli citizenship and passport in January 2005. The process was complete in April 2005 when he was advised that his Israeli citizenship was revoked; and he returned his foreign passport to the issuing authority. Thus, MC 4 applies because he took required steps to renounce his foreign citizenship. Having turned in his foreign passport to be cancelled, Applicant has complied with the steps required by the Money memorandum of August 16, 2000. While Applicant's surrender of his passport is not alone dispositive of whether he Guideline C should be mitigated, Applicant's actions to comply immediately once he understood the requirements of the Money Memorandum lend credence to his position that he does not prefer interests of another country over those of the U.S.

Additionally, based on Applicant's conduct in renouncing his Israeli citizenship, I conclude that there is little, if any, probability Applicant will someday reacquire his Israeli passport and use it instead of his U.S. passport. He has demonstrated a strong preference for the U.S. over any other foreign nation by giving up his Israeli citizenship even though he has an elderly mother who remains in Israel. Applicant has lived and worked in this country continuously since 1980 and had a U.S. security clearance granted in 1992 and again in 1995. All of his financial assets and his immediate family are in the U.S. Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's conduct was not undertaken in such a way as to establish his preference for a foreign country over the U.S. Thus, I conclude Guideline C for Applicant and find for him with respect to subparagraphs 1.a. through 1.c. of the SOR.

Guideline B (Foreign Influence)

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. The government has established that Applicant's mother and sister are immediate family members who are citizens of a foreign country and reside in a foreign country. As it is within the realm of possibility that the Israeli government might attempt to coerce these family members to leverage Applicant's access to classified information, Disqualifying Condition⁽⁹⁾ (DC) 1 applies. The government urges that Applicant is at risk of compromising classified information because the presence of family members in Israel may be used to coerce Applicant into acting contrary to U.S. national interests even though Israel has been a long-term ally of the U.S. with substantial annual direct aid.

On the other hand, Applicant maintains credibly that he could not be pressured simply because his mother and sister are residents of and citizens of Israel. Neither are agents of the Israeli government nor can be exploited by this foreign power by coercive nor non-coercive means. Applicant's mother is elderly and not dependent on Applicant for her support. While he has concerns for her, he demonstrated he held the security interests of the U.S. as a higher priority. An example is when he took steps to renounce his passport and cancel his passport as discussed above. While his sister has a part-time job with the government, she works in a clerical position. While these family ties raise security concerns, I conclude that their relationship is not such that it might be leveraged by a foreign entity as contemplated by Guideline B. Nor is there any substantial likelihood that these would exercise foreign influence over Applicant. Applicant credibly testified that in past no clandestine efforts have been made by Israel to seek information from him.

Therefore, I conclude mitigating conditions⁽¹⁰⁾ apply. Applicant is not vulnerable to duress merely because of these family ties as he has a long history of responsible conduct having had previous security clearance in 1992 and 1995. Given Applicant's ties to the U.S. over a long period of time, it is improbable that either of his family members would create a situation that could result in the compromise of classified information. Thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Applicant persuasively declared that if he were ever approached by anyone seeking information on his classified work, he would report such a contact or threat to a responsible security official. His annual visits with his mother and sister are not frequent and his phone calls merely address concerns of their health. In light of the available information regarding Applicant's foreign family ties and their relationship, Mitigating Condition (MC) MC 1 and MC 3 apply.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. On balance, I resolve Guideline B for Applicant and find for him with respect to subparagraphs 2.a. through 2.b. of the SOR.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

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

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. This additional time was confirmed by e-mail on May 22, 2005, where Department Counsel #1 also advised that he was going to be on leave and had transferred the case to Department Counsel #2.
3. Initially at the hearing, Department Counsel was granted two to three days after submission to review the evidence and provide his comments. However, given the change in counsel and the fact that the DOHA office moved during that period, I see no harm to Applicant because of the delay in the review time of Applicant's post-hearing submission.
4. Applicant recalled completing a SF 86 in June 2001 but that document was not submitted in evidence. (TR 53-55)
5. On August 16, 2000, Assistant Secretary of Defense for Command, Control, Communications and Intelligence Arthur L. Money issued clarifying guidance (the "Money memorandum") stating that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport."
6. **Conditions that could raise a security concern and may be disqualifying include:** 1. The exercise of dual citizenship; (2) Possession and/or use of a foreign passport⁽⁷⁾
7. The "Money Memo" became DoD policy to clarify Guideline C in August 2000 and required "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport" The August 16, 2000, Policy Clarification Memorandum stated, in part: "The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. **** 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 United State Government."
8. **Conditions that could mitigate security concerns include:** (2) Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
(4) Individual has expressed a willingness to renounce dual citizenship.
9. **Conditions that could raise a security concern and may be disqualifying include:** (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.
10. **Conditions that could mitigate security concerns include:** (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; (3) Contact and correspondence with foreign citizens are casual and infrequent.