

KEYWORD: Foreign Influence

DIGEST: Under a whole person analysis, Applicant has mitigated security concerns over foreign influence that arise from his mother and sister living in and being citizens of Israel. Applicant has strong ties in the U.S. and has consistently disclosed his family ties in Israel. Notably, on two prior occasions he 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. Considering all of these factors, Applicant credibly established he would not be subject to pressure. Thus, Applicant mitigated security concerns under Guideline B. Clearance is granted.

CASENO: 03-19101.h2

DATE: 04/14/2006

DATE: April 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19101

REMAND DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Under a whole person analysis, Applicant has mitigated security concerns over foreign influence that arise from his mother and sister living in and being citizens of Israel. Applicant has strong ties in the U.S. and has consistently disclosed his family ties in Israel. Notably, on two prior occasions he 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. Considering all of these factors, Applicant credibly established he would not be subject to pressure. Thus, Applicant mitigated security concerns under Guideline 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, 2004 in a city near where Applicant lives and works. At the hearing the government presented 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 Exhibit A which was admitted without objection. Applicant also testified in his own behalf. Department Counsel did not object to my leaving the record open, 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. On April 21, 2005, Applicant submitted his additional evidence, Exhibit B, which was admitted into evidence without objection. The record closed on May 6, 2005. DOHA received the transcript (TR) on March 10, 2005.

On January 31, 2006, the Director of the Defense Office of Hearings and Appeals (DOHA) forwarded the Case Record and the Appeal Board Decision and Remand Order of January 31, 2006, concerning a favorable security clearance decision issued May 23, 2005. On appeal Department Counsel challenged both the Guideline C and Guideline B results. The Board held that the conclusion that the foreign preference concerns were mitigated was "supported by the record and was not arbitrary or capricious." ISCR Case No. 03-19101 at 6 (App. Bd. January 31, 2006). Thus Guideline C is not an issue on Remand. However, with respect to Guideline B, Foreign Influence, the Board found error in the application of Mitigation Conditions 1 and 3, and directed that a Remand decision be issued.

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 a Security Clearance Application (SF 86) in December 2002. He worked for Corporation #2 from 1996 to 2001. Initially, he had been granted a security clearance in 1992 when he worked for Corporation #5 from 1992-93. He fully disclosed in his security forms that he had relatives in Israel and was a dual citizen of the U.S. and Israel. In 1994 he worked for Corporation #4, but did not need a security clearance. Also, Applicant was granted a Secret security clearance in 1995 when he worked for Corporation #3 from 1995 to 1996. Again, he fully disclosed in his security forms that he had relatives in Israel and was a dual citizen of the U.S. and Israel. (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 became a naturalized U.S. citizen in 1984. 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. (Exhibits 1, 3; TR 39; 44-46)

Although born in Israel, Applicant 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 lives in and is a citizen of Israel; she is a housewife who never worked outside the home. She receives a pension from Israel and from Germany which is similar to the U.S. social security payments. He visits her once a year and speaks to her every week or two for 15-20 minutes. His sister also lives in and is a citizen of Israel; she is a housewife who also works as a part-time secretary and clerk 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 as he is a manager for a food distribution company. (Exhibit 2; TR 32-34, 39-43, 47-49)

Applicant attested that he had lived in the U.S. for 25 years, raised his family in the U.S. and chose to be in the U.S. He stated he would not be influenced by any foreign pressure to jeopardize his employment or the safety of the U.S. where he lives. (TR 74) Applicant affirmed his all important loyalty to the U.S. If anyone were to attempt to influence his mother or sister to persuade him to reveal classified information, Applicant would stand by his "Pledge of Allegiance" to the U.S. and report it to his security office. (Exhibit 3; TR 62)

After Applicant became a naturalized U.S. citizen in February 1984, the U.S. became his "country of choice for residence and living." (Answer; Exhibits 2, 3, 4, 5, 6; TR 36-37; 50-51; 56-57)

As soon as he understood the security requirement, 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)

On all earlier SF 86s, Applicant disclosed⁽²⁾ he had family in Israel. (TR 49-50) This connection never previously prevented him from being granted a security clearance either in 1992 when he worked for Corporation #5 from 1992-93 or in 1995 when he worked for Corporation #3 from 1995 to 1996. (Answer; Exhibits 1, 2, 6, 7; TR 53-60)

Israel is a parliamentary democracy with a modern economy. (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." 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) A report from the National Counterintelligence Center entitled *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for the year 2000 cites a private survey of "nearly a dozen selected Fortune 500 companies." The report does not indicate how the companies were selected, what companies were selected, or how they decided up their input to the survey. While the survey shows that Israel is an active collector of foreign economic information there is no indication how this activity could affect national security. (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. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant adjudication guidelines as set forth below:

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 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.

E.2.2. Adjudication Process:

E.2.2.1.1. The nature, extent, and seriousness of the conduct;

E.2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;

E.2.2.1.3. The frequency and recency of the conduct;

E.2.2.1.4. The individual's age and maturity at the time of the conduct;

E.2.2.1.5. The voluntariness of the participation;

E.2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;

E.2.2.1.7. The motivation for the conduct;

E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and

E.2.2.1.9. The likelihood of continuation or recurrence.

Burden of Proof

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest for an applicant to be eligible to 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. 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. 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. 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.

CONCLUSIONS

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. Applicant's mother and sister are immediate family members who are citizens of a foreign country and reside in a foreign country. The government maintains that the Israeli government might attempt to coerce these family members to leverage Applicant's access to classified information, so Disqualifying Condition 1 ⁽³⁾ applies.

With respect to Guideline B, Foreign Influence, the Board found the favorable conclusions regarding the first prong of Foreign Influence Mitigation Condition 1 were arbitrary and capricious. With respect to the second prong of Foreign Influence Mitigation Condition 1, the Board observed that there was insufficient evidence in the record to support a conclusion that Applicant's family members are not in a position to be exploited by the Israeli government. The Board concluded that an observation that Israel was a long-term ally of the U.S. was undercut by the finding that Israel being an active gatherer of intelligence. Also, the Board concluded that the decision failed to provide a rational basis for the conclusions that Applicant's mother's age and her lack of financial dependency of Applicant mitigated the government's security concerns. Further, the Board concluded it was error to find him credible based on Applicant's assurances of what he might do in the future "under some hypothetical set of circumstances." A statement of intent is not entitled to much weight unless there is record evidence that Applicant has acted similarly in the past under similar circumstances. On the other hand, they also concluded it was error to rely on Applicant's past actions when he reported that in the past Israel had made no clandestine efforts to seek information from him. The Board concluded that Applicant's vulnerability is "the same whether or not the Israeli government has sought to exercise such influence or pressure in the past." Further, they concluded the "issue is not what choice the applicant will make once placed in the position of choosing, but rather whether circumstances exist that might require an applicant to make that choice." In short, it was error to rely on any part of Foreign Influence Mitigation Condition 1. ISCR Case No. 03-19101 at 7-8 (App.Bd. January 31, 2006)

Moreover, the Board concluded there was no rational basis to apply Foreign Influence Mitigation Condition 3 as contacts with his mother and sister in Israel cannot be considered infrequent and casual. *Id.* at 8. While these errors concerning the Adjudication Guidelines may have influenced the "whole person" analysis, the Board concluded that these errors "did not significantly under cut" the "whole person" analysis so as to warrant reversal. Accordingly, the Board remanded the case for a new decision which would correct these errors. *Id.* at 9-10.

Even accepting the Appeal Board's analysis of error in applying Mitigating Condition 1 or 3, Applicant nevertheless mitigated concerns under a whole person analysis. Applicant established that he would never act contrary to U.S. national interests and demonstrated his reliability by his past history where the same circumstances existed and where, nevertheless, he was granted a security clearance in 1992 and 1995. In evaluating his testimony and past conduct, I considered the Adjudication Process factors.

To his credit, on this SF 86 and on earlier SF 86s, Applicant consistently disclosed his ties to his family in Israel. Previously, he was granted a security clearance in 1992 when he worked for Corporation #5 from 1992-93. Again, he was granted a Secret security clearance in 1995 when he worked for Corporation #3 from 1995 to 1996. Significantly, in his closing argument

Department Counsel conceded that Applicant's earlier disclosures of his family ties in Israel in his previous SF 86 in 1992 could be considered a mitigating factor. His full disclosures and his previous reliable conduct while granted access to classified information demonstrate that there is little likelihood that he would be subject to foreign influence if he were to be trusted for a third time with access to classified information.

While the government has the right to review someone's eligibility, Applicant has previously been found trustworthy, and no new factors or policies exist to raise security concerns. Indeed, Applicant complied with the new policy and renounced with dual citizenship, so that concern was mitigated. Notably, after Applicant was granted eligibility for access to classified information in 1992 and again in 1995, he consistently demonstrated reliability and trustworthiness. In those periods no security concerns were ever documented or raised.

Further, Applicant has lived in the U.S. for 25 years, raised his family in the U.S., and chose to be in the U.S. He consistently demonstrated he would not be influenced by any foreign power to jeopardize the safety of the U.S. where he lives. He has demonstrated that he does not have any motive to succumb to any attempts to influence that Israel might bring to bear on his mother and sister in Israel. While Applicant shows family solicitude for his mother and sister, he demonstrated he held the security interests of the U.S. as a higher priority. For example, soon as he understood the security concerns, Applicant took steps to renounce his Israeli citizenship and cancel his passport. While his sister has a part-time job with the government, she works in a clerical position. While these family ties raise concerns, I conclude that the risk is so slight as to not evoke a substantial security concern.

If Applicant's family were pressured, he testified credibly that he would take the appropriate actions and report this pressure to his security office as a countermeasure. Applicant's credibility is bolstered by his past conduct. Credibility determinations as to the sincerity of his belief is at the heart of a trial judge's discretion. While he had a security clearance previously, no clandestine efforts were made by Israel to seek information from him. While not the only consideration, I note that even the documents that the government submitted for official notice concur that 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. 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." While that history does not preclude the possibility of future attempts, I give great weight to Applicant's past responsible conduct as a strong indicator that it is improbable that he could be exploited in the future by coercive or non-coercive means by the government of Israel in a way that could force Applicant to choose between loyalty to his family in Israel and his loyalty to the United States. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable.

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong ties to the U.S. with his immediate family in the U.S., Applicant established that there is little likelihood that he would submit to any potential pressure on his family who remain in Israel. His allegiance is solely to the U.S. Thus, I conclude there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) In sum, 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 and given Applicant's ties to the U.S. over a long period of time. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. In reaching my conclusion, I have considered the totality of those ties and contacts, not just each one in isolation as the Appeal Board has mandated in the Appeal Board

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude Applicant's family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. Thus, foreign influence security concerns are mitigated under a whole person analysis. 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 2. Foreign Influence (Guideline B): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For 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. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. In his closing argument Department Counsel argued that the fact that Applicant had disclosed his family in Israel since 1992 could be considered as a mitigating factor. (Exhibits 6, 7; TR 70-71)
3. 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.