

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 58-year-old naturalized citizen of the U.S. from Israel. Applicant works for a defense contractor and has held a security clearance since 1988. Applicant has family members who are citizens and residents of Israel that he maintains close contact with. Applicant maintains an Israeli passport and uses it when traveling to Israel. Applicant has rental property, a certificate of deposit and a joint bank account in Israel. Applicant is unwilling to renounce his Israeli citizenship or relinquish his passport. Clearance is denied.

CASENO: 03-20386.h1

DATE: 04/05/2005

DATE: April 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20386

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 58-year-old naturalized citizen of the U.S. from Israel. Applicant works for a defense contractor and has held a security clearance since 1988. Applicant has family members who are citizens and residents of Israel that he maintains close contact with. Applicant maintains an Israeli passport and uses it when traveling to Israel. Applicant has rental property, a certificate of deposit and a joint bank account in Israel. Applicant is unwilling to renounce his Israeli citizenship or relinquish his passport. Clearance is denied.

STATEMENT OF CASE

On May 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence and Guideline C, foreign preference considerations.

In a sworn statement, dated August 7, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all allegations contained in the SOR. Department Counsel submitted the government's case on October 22, 2004. A file of relevant material (FORM) was received by Applicant on November 2, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional information. The case was originally assigned to another judge and due to case load considerations it was reassigned to me on February 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 58 years old and became a naturalized citizen of the United States in 1986. He maintains dual citizenship with Israel. Applicant has been employed as a technology principal with a defense contractor since 1980, and has held a secret security clearance since 1988.

Applicant was born in Russia to Polish parents who returned to Poland after World War II. At the age of four his parents immigrated to Israel. Applicant remained in Israel until he came to the U.S. to attend graduate school. Prior to coming to the U.S., Applicant was employed with the Israeli Ministry of Defense from 1971-1976 as an engineer. Applicant has a college degree from an Israeli college and an MBA from a U.S. college. Applicant served in the Israeli military prior to becoming a naturalized U.S. citizen. Military service was compulsory.

Applicant's three children are also dual citizens of Israel and the U.S. All three possess active Israeli passports. Applicant's wife is deceased. Applicant's parents, brother, sister-in-law, nephews, nieces and a cousin are all citizens and residents of Israel. Applicant keeps "close and frequent family contact"⁽²⁾ via telephone with his parents and cousin in Israel. Applicant's father is a retired electrician from the Tel Aviv municipality and his mother is a retired housewife. Applicant's cousin is a retired Israeli Air Force Officer. Applicant maintains monthly contact with his cousin.

Applicant's brother is a veterinarian who works for the municipality of Tel Aviv and his brother's wife is a school teacher. They have two children. Applicant admits having "regular contact" with his family members living in Israel. He visited his parents in 2003, and before that in 1999. Prior to 1999 he would visit annually, but now it depends on the security conditions in the country. His parents visited him in the U.S. approximately 15 years ago. Applicant's cousin visited him in the U.S. several times over the years, and the last time was in 2000.

Applicant owns three apartments in Israel that are used as rental properties. Applicant pays annual Israeli property taxes on the property and the property is managed by his brother. He and his brother maintain a joint checking account in Israel for handling the property. Applicant claims he does not maintain his citizenship with Israel to maintain these properties, but rather keeps it for sentimental reasons. Applicant also has a certificate of deposit at an Israeli bank that he inherited from his deceased parents-in-law. Applicant does not support any of his relatives in Israel, nor do any support him financially.

Applicant has a U.S. passport and an Israeli passport that does not expire until May 2005. Applicant travels to Israel on his Israeli passport because he still considers himself an Israeli citizen vice solely a U.S. citizen.⁽³⁾ Applicant renews his passport and his childrens' when they expire because he does "everything to be in good standing as an Israeli citizen."⁽⁴⁾ Applicant stated "It would not be easy for me to reject my Israeli citizenship. I believe that rejecting my Israeli citizenship is an 'active' process, which would be very emotional for me because I have such an emotional connection to Israel."⁽⁵⁾ Applicant further stated "if I had to give up my dual citizenship for my career I would have to consider it with great pain."⁽⁶⁾ In response to the question of whether Applicant would be willing to relinquish his Israeli passport or not, he believed it to be a hypothetical question, but went on to say "I believe it would be a tough choice to make and I believe that I would not be willing to relinquish it."⁽⁷⁾ Applicant further admitted that it would be too difficult for him to reject his Israeli citizenship and does not see himself renouncing his Israeli citizenship. Applicant has not voted in Israel since becoming a U.S. citizen.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁸⁾ The government has the burden of proving controverted facts.⁽⁹⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

No one has a right to a security clearance⁽¹³⁾ and "the clearly consistent standard indicates that security clearance⁽¹⁴⁾

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (15) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (16) 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Guideline C-Foreign Preference- a security risk may exist 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 interest of the United States.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under both Guideline B and Guideline C.

The State of Israel is a parliamentary democracy with a modern economy. It is an ally and conducts trade with the U.S. In accordance with Israeli law, Israeli citizens naturalized in the U.S. retain their Israeli citizenship. (17) Children born in the U.S. to Israeli parents usually acquire both U.S. and Israeli nationality at birth. (18) "Israeli citizens, including dual

nationals must enter and depart Israel on their Israeli passport." ⁽¹⁹⁾ Industrial espionage and foreign economic collection by foreign governments, corporations, and individuals is a continuing threat to the national security of the U.S. Israel ranks third on a list of the most active collectors. ⁽²⁰⁾

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) 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*); FI DC E2.A2.1.2.3. (*Relatives, cohabitants, or associates who are connected with any foreign government*); and FI DC E2.A2.1.2.8. (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*) apply in this case. Applicant's parents, brother and cousin are all citizens and residents of Israel. His children are also dual citizens of Israel.

Applicant's cousin is a retired Air Force officer. Applicant owns three rental properties in Israel, a certificate of deposit and a joint bank account with his brother.

I have considered all the mitigating conditions and specifically considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*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*), FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and FI MC E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*), and conclude they do not apply. Although Applicant's parents are retired, no information was provided as to whether his father receives a government pension through the City of Tel Aviv or any other ties he may have. This also holds true for Applicant's brother who presently works for a government municipality. No additional information was provided regarding Applicant's brother, his employment, and contacts with the government. Applicant's cousin is a retired Air Force Officer and it is likely she receives a pension from the government, although no specific information was provided.

Applicant readily admits he has close and frequent contact with all of his relatives living in Israel. He talks to them frequently by phone and visits them when he returns to Israel. His contact can not be characterized as casual and infrequent. Applicant also has a financial interests in Israel. No information was provided regarding the actual value of his properties or the amount of rental income he reaps from them. His brother manages them and they keep a joint account with regards to the properties. In addition, Applicant has a certificate of deposit in Israel. No information was provided as to the value of this item. Applicant has failed to mitigate Guideline B pertaining to foreign influence.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*), FP DC E2.A3.1.2.2. (*Possession and/or use of a foreign passport*), FP DC E2.A3.1.2.3. (*Military service or a willingness to bear arms for a foreign country*), all apply in this case. Applicant exercises dual citizenship when he uses his Israeli passport to enter and leave Israel. Applicant has a current Israeli passport and renews it upon its expiration. Applicant served in the Israeli military.

I have considered all the mitigating conditions and specifically considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), FP MC E2.A3.1.3.2. (*Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*) and FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) and conclude none apply. Applicant exercised dual citizenship with Israel beyond his parents' citizenship. He uses an Israeli passport during his visits to Israel. He owns income producing rental property in Israel that further ties him as an Israeli citizen. Although Applicant's military service occurred prior to his U.S. naturalization and was compulsory, his use of his passport and his unwillingness to renounce his dual citizenship indicate a foreign preference. Applicant still considers himself an Israeli citizen and does "everything to be in good standing as an Israeli citizen."⁽²¹⁾ In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport...." Surrender of the passport contemplates returning it to the issuing authority. When specifically asked about relinquishing his Israeli passport, Applicant was not willing to do so. Therefore, Applicant has failed to mitigate Guideline C, foreign preference.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by foreign influence and foreign preference considerations. Accordingly, Guideline B and Guideline C are decided against Applicant.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Foreign Preference (Guideline C) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Paragraph 2. Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. Against the Applicant

Subparagraph 2.h. Against the Applicant

DECISION

In light of all 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Applicant Statement dated June 22, 2004.
3. Item 6.
4. Id.
5. Id.
6. Id.
7. Id.
8. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
9. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
10. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
13. *Egan*, 484 U.S. at 531.
14. Id.
15. Id.; Directive, Enclosure 2, ¶ E2.2.2.
16. Executive Order 10865 § 7.
17. Item 11 at 2.
18. Id.
19. Id. at 3.
20. Item 10.
21. Item 6.