KEYWORD: Foreign Preference Foreign Influence

DIGEST: This 53-year-old engineer was born in 1951 in Egypt, and moved to Israel with his family at age 8 because of religious persecution. In 1986, he came to the U.S. on an Israeli passport and began working as a software engineer, and has resided here ever since. He became a U.S. citizen in 1993. He is married, and has children who were born here. He has retained and renewed his Israeli passport (now expired) and used it to travel to Israel. He has not renounced his Israeli citizenship. He has numerous close family members who are Israeli and reside there, including one brother who is a retired Air Force officer. Applicant has not shown an unequivocal preference for the U.S. and the record does not permit a finding that the presence and status of his family members in Israel constitute an acceptable risk. Mitigation has not been established. Clearance is denied.

CASENO: 03-20777.h1

DATE: 05/19/2005

DATE: May 19, 2005

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-20777

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 53-year-old engineer was born in 1951 in Egypt and moved to Israel with his family at age 8 because of religious persecution. In 1986, he came to the U.S. on an Israeli passport, began working as a software engineer, and has resided here ever since. He became a U.S. citizen in 1993. He is married, and has children who were born here. He has retained and renewed his Israeli passport (now expired) and used it to travel to Israel. He has not renounced his Israeli citizenship. He has numerous close family members who are Israeli and reside there, including one brother who is a retired high Air Force officer. Applicant has not shown an unequivocal preference for the U.S. and the record does not permit a finding that the presence and status of his family members in Israel constitute an acceptable risk. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On November 23, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On December 15, 2004, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on January 18, 2005. On February 15, 2005, a Notice of Hearing was issued, setting the hearing for March 1, 2005. At the hearing, the Government did not present any witnesses, but offered three exhibits, which were marked for identification as Government Exhibit (GX) 1 - 3. Applicant testified and did not offer any exhibits at the hearing, but later submitted five timely post hearing exhibits, which were marked as Applicant's Exhibits (AX) A - E, respectively. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on arch 10, 2005.

FINDINGS OF FACT

The SOR contains three allegations, 1.a. - 1.c., under Guideline C (Foreign Preference) and eight allegations, 2.a. - 2.h., under Guideline B (Foreign Influence). Applicant admits the factual language in all 11 allegations, but denied the conclusionary language that he is a security risk. Applicant's admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant exercises dual citizenship with the United States and Israel. As of March 21, 2005, he retains his Israeli citizenship.

1.b. - Applicant possesses an Israeli passport and has used that passport to travel to Israel.

That passport has now expired. Applicant sought to surrender it to the Consulate General of Israel, but was told he cannot "deposit" an expired passport and must use a valid Israeli passport to enter and exit Israel (AX A). I find that this is true only so long as Applicant remains a citizen of Israel and that Applicant can now seek a valid Israeli passport at any time.

1.c. - Applicant served in the Israeli Army from 1970 to 1974.

Guideline B (Foreign Influence)

2.a. - Applicant's wife and two children are dual citizens of the U.S. and Israel and live with him in the U.S.

2.b. - Applicant's mother is a citizen and resident of Israel.

2.c. - Applicant's four siblings are citizens and residents of Israel.

2.d. - One of his sisters is a citizen and resident of the United Kingdom.

2.e - One of his brothers-in-law is a citizen and resident of Israel.

2.f. - One brother retired from the Israeli Army with the rank of General.[(1)]

2.g. - Applicant owns an apartment in Israel that is worth about $150,000 to $200,000.

2.h - Applicant has traveled to Israel on at least two occasions since 1996.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood

of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors,

individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are

denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

As with all DOHA decisions, the facts and circumstances, as applied to the two Guidelines, determine the outcome. The literal language of the 11 suballegations is clearly supported by the evidence of record and the evidence has a logical connection or nexus with his eligibility to hold a security clearance. The remaining question is whether he has adequately demonstrated mitigation or extenuation of the Government's evidence.

Guideline C (Foreign Preference)

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.

Conditions that could raise a security concern and may be disqualifying include:

1. the exercise of dual citizenship;

2. possession of a foreign passport;

3. service in a foreign military.

Conditions that may be mitigating include:

1. dual citizenship is based solely on parents' citizenship or birth in a foreign country. However, the weight to be given this factor is reduced since Applicant has taken affirmative action, by obtaining, renewing, and using his Israeli passport.

2. indicators of possible foreign preference (e.g., foreign military service) occurred long before obtaining U.S. citizenship, so such service cannot logically be viewed as expressing a preference for Israel over the United States.

4. Applicant has expressed only a conditional willingness to renounce his Israeli citizenship, so the positive impact effect of MC 4 is reduced.

Applicant received the August 2000 Memorandum from the DoD Assistant Secretary of Defense Arthur Money (the Money Memorandum) (Tr at 16 and Official Notice Document 1). I am required to comply with the contents of this Memorandum, which states 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 States Government." In the present case, the evidence shows that the Israeli passport expired in 2004 and that Applicant did send it to the Israeli Consulate General, which declined to accept it because it had expired. The SOR cites possession of the passport as a concern but does not mention the Money Memorandum. In any case, I conclude that Applicant did take action to surrender the passport, as required by the Memorandum.

Applicant has longstanding, close, and intimate ties to Israel and to his family there. He is obviously proud of his

background and cannot properly be criticized for those feelings. He also expresses a close affinity for the U.S. When a foreign national becomes a naturalized U.S. citizen, he or she takes an oath of allegiance to the U.S. and renounces any loyalty to a foreign power. The U.S. Supreme Court recognizes however, that holding U.S. citizenship brings with it certain rights,

and that holding a foreign citizenship is not an automatic basis for losing the U.S. citizenship. Holding a security clearance, on the other hand, is a privilege, and not a right, and it is an applicant's obligation to establish that he or she is eligible to hold a clearance, and not on the government to prove to the contrary.

It is clear that Applicant is in an awkward position. Applicant's most recent Israeli passport expired on May 13, 2004, and has apparently not been renewed. At the same time he retains his Israeli citizenship, although he "would be willing to renounce my Israeli citizenship in order to obtain a security clearance" (GX 2, and Tr at 33). When asked at the hearing if he was willing to renounce his Israeli citizenship, he replied: "I'm not sure of that. I'm ready to relinquish my passport, only because, again, it was a concern that my travels cannot be tracked. So, if I travel with one passport, I don't see any concern anymore" (Tr at 29). He understands that renouncing his Israeli citizenship does not automatically mean will receive a clearance (*Id*.).

As I view the present record, Applicant retains his Israeli citizenship, which means that at any time he could apply for, receive, and use a new and valid Israeli passport, which he could then use to again travel to Israel, as either a matter of convenience or because of Israeli law. The retention of his Israeli citizenship is his right, in the sense that it does not affect his eligibility to hold U.S. citizenship, but it clearly may have an effect on his eligibility to be granted access to U.S. classified information and materials. I accept the sincerity of Applicant's statement of loyalty to the United States. However, I am bound by the language of the Directive and its guidelines. The overall record suggests, if not a preference for Israel in some aspects of his life, then at least not an unequivocal preference for the United States and an unacceptable risk of undue influence.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The record shows that Applicant has extensive personal (including a mother and four siblings) ties to Israel. A 57-year-old brother living in Israel is retired about 10 years ago from the Israeli Army as a General and an Engineer (Tr at 23, 24 and GX 1 and GX 2). In most DOHA case I have processed involving relatives in foreign countries, those relatives are generally neither affiliated with, or known to, the foreign governments. In addition, in most cases, the relatives do not know the details of what the Applicant does for a living. In the instant case, the status of the one brother as retired Israeli Army General (or Major) raises the risks above just conjecture. I have taken into consideration that Israel is an important ally of the United States, but it is also recognized by the U.S. Government as being active in intelligence

gathering in the United States.

Applicant has significant financial ties (an apartment worth between $150,000 and $200,000) to Israel but his home in the U.S. is worth about $650,000 (Tr at 24) and his yearly salary is about $130,000 per year (*Id.*). Overall, I conclude his financial ties to Israel are far outweighed by his assets and net worth in the U.S.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country;

3. (relatives who are connected with a foreign government (brother who was an officer in the Israeli Army)) are applicable

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk. However, Applicant's close relationship with his parents, siblings and extended family, with Israeli citizenship and living in Israel, indicate continuing close ties to that country.

For the reasons discussed above under Guideline C, and in the context of the entire record, I am unable to make a determination that Applicants relatives and family would not constitute an unacceptable security risk (MC 1). In addition, I am unable to conclude that his contacts with his family and relatives are casual or infrequent (MC 3).

For the same reasons, I conclude that Applicant has not mitigated the negative impact of the evidence under both Guidelines that supported issuance of the SOR.

Applicant can reapply for a clearance one year after the date that this decision becomes final. If he wishes, he can provide new evidence that addresses the Government's concerns.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) Against the Applicant

Subparagraph l.a. Against the Applicant

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. For the Applicant

Guideline B (Foreign Influence) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant.

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. For the Applicant

Subparagraph 2.h. For 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

`

1. This information comes from Applicant's sworn statement of July 3, 2003 (GX 2). The brother's name is not stated. However, in the SF 86 (GX 1), there appears a brother with a name beginning with Y. A post hearing exhibit (AX C), is from a brother whose name begin with Y (slightly different spelling in English of a Hebrew name). This brother identifies himself as a retired Major (not a General) in the Israeli Army, who worked as an Engineer. I have considered the difference in rank and conclude it does not make any significant difference in my evaluation.