

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: This 58-year-old engineer was born in Israel in 1947, came to the U.S. in 1968 to attend college, and became a citizen in 1974. He returned to Israel to reside on two occasions, the second of which was to care for his seriously ill mother. During these periods, he worked for a total of four Israeli companies, none involving a security clearance. He exercised dual citizenship by renewing his Israeli passport after becoming an American and using that passport when traveling on business while working in Israel. He has surrendered his Israeli passport and renounced his Israeli citizenship. He has no family or other ties of any significance with Israel. He has had no contact with any of his former employers or colleagues in Israel. His present colleagues consider Applicant to be a man of integrity and dedication to U.S. interests. Mitigation has been established. Clearance is granted.

CASENO: 03-22653.h1

DATE: 11/08/2005

DATE: November 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22653

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

## **FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 58-year-old engineer was born in Israel in 1947, came to the U.S. in 1968 to attend college, and became a citizen in 1974. He returned to Israel to reside on two occasions, the second of which was to care for his seriously ill mother. During these periods, he worked for a total of four Israeli companies, none involving a security clearance. He exercised dual citizenship by renewing his Israeli passport after becoming an American and using that passport when traveling on business while working in Israel. He has surrendered his Israeli passport and renounced his Israeli citizenship. He has no family or other ties of any significance with Israel. He has had no contact with any of his former employers or colleagues in Israel. His present colleagues consider Applicant to be a man of integrity and dedication to U.S. interests. Mitigation has been established. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 24, 2005, 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 March 19, 2005, 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 case was assigned to me on May 25, 2005. A Notice of Hearing was issued on July 5, 2005, setting the hearing for July 18, 2005. At the hearing, the Government introduced ten exhibits (Government's Exhibits (GX) 1 - 10). Applicant testified and introduced three exhibits (Applicant's Exhibits (AX) A - C). Applicant also submitted a timely post hearing exhibit (AX D). Without objection, all exhibits except GX 8 were admitted into evidence as marked. Applicant pointed out that GX 8 was a document applicable to one of his former employers years after he had left the company (Tr at 22). This document was excluded. The transcript was received by DOHA on August 1, 2005.

## FINDINGS OF FACT

Applicant is a 58-year-old engineer for a defense contractor. The SOR contains ten allegations, 1.a. - 1.j., under Guideline B (Foreign Influence) and six allegations, 2.a.-2.f, under Guideline B (Foreign Influence). In his response, Applicant *denies* all 16 allegations.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

### Guideline C (Foreign Preference)

1.a. - Applicant formerly exercised dual citizenship with Israel and the United States (U.S.). He has now formally renounced his Israeli citizenship, and cut up and surrendered his Israeli passport (AX D). As a result, he no longer exercises dual citizenship.

1.b. - Applicant applied for and received multiple renewals of his Israeli passport, originally issued in about 1968, even though he became a naturalized U.S. citizen on October 25, 1974, and was issued a U.S. passport on November 6, 1979. The Israeli passport expired on May 9, 2003. It was cut up and surrendered/returned to the Israeli Embassy on August 6, 2005 (AX D).

1.c. - Applicant used his Israeli passport to enter and exit Israel on several occasions between 1976 and May 2002. He believed he was required to do so by Israeli law. He traveled to Israel in 1994 to care for his ill mother. Her condition worsened and Applicant decided he had to stay with her, so he obtained employment in Israel. His mother died in May 2002, and Applicant returned to the U.S. His Israeli passport became invalid in 2003, has been returned to Israeli authorities.

1.d. - Applicant used his Israeli passport to travel to Croatia, Hungary, Poland, Turkey, France, Holland, and the United Kingdom on numerous occasions between July 1995 and May 2001, even though he received a U.S. passport in 1979. During the period in question, he was residing in Israel and working for an Israeli company that required such use by its

employees. He did not use the Israeli passport after May 2001. He has tried on several occasions over the past few years to surrender his void passport to Israeli authorities but was unsuccessful. As a result of the hearing, Applicant did send the cut up passport to the Israeli Embassy along with a form renouncing his Israeli citizenship.

1.e. - Applicant resided in Israel from about 1976 to 1980 (for employment) and again from 1994 to 2002 (to care for his ill mother and for employment to make money while he was there).

1.f. - Applicant was employed by Company A in Israel from June 1976 to July 1978;

1.g. - Applicant was employed by Company B in Israel from July 1978 to May 1980;

1.h. - Applicant was employed by Company C in Israel from April 1994 to June 1995;

1.i. - Applicant was employed by Company D in Israel from July 1995 to July 2001 as a marketing manager. This company had defense contracts with the Israeli government. Many employees had an Israeli security clearance, but Applicant was not required to get one.

1.j. - Applicant applied for and received Israeli unemployment benefits between August 2001 and June 2002, after termination of employment at Company D. After June 2001, he returned to the United States.

#### Guideline B (Foreign Influence)

1.a. - The information set forth in subparagraph 1.e., above;

1.b. - The information set forth in subparagraph 1.f., above;

1.c. - The information set forth in subparagraph 1.g., above;

1.d. - The information set forth in subparagraph 1.h., above;

1.e. - The information set forth in subparagraph 1.i., above;

1.f. - The information set forth in subparagraph 1.j., above.

### **POLICIES**

Each adjudicative decision must also 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

Applicant was born in Israel in 1947, came to the U.S. in 1968 (age 21), attended college in State A from 1969 to 1974, got married, and became an American citizen in 1974. In 1976, he returned to Israel at the insistence of his then wife, so their children could be born in Israel. He worked there for two electronics firms, primarily as a packaging engineer (Tr at 61), until 1980, when the family returned to the U.S. Neither child has ever returned to Israel. Both are adults, one a dentist and the other in the insurance business (Tr at 63). In 1980, Applicant joined an electronics firm in State A. Applicant first applied for and was granted a DoD security clearance in 1980, when he began working for a U.S. firm (GX 3 at Item 9 and Item 12). His 1985 security clearance application cites his employment in Israel from 1976 to May 1980 (GX 3 at Item 12, 16).

Applicant resided and worked in the U.S. until 1994, a year in which he was divorced (GX 1 at Item 8) and returned to Israel to care for his seriously ill mother, a situation that stretched out until her death in April 2002 (Tr at 62 and AX A). During this period, he worked for the two Israeli firms cited in 1.h. and 1.1. He worked for the second firm from 1995 to 2001, when he was laid off and went on unemployment for a year, at which time his mother passed away and he returned to the U.S. He never held an Israeli security clearance (Tr at 64). He does not maintain contact with anyone he worked with while residing in Israel and he has no idea if anyone there knows what he does at his current employment (Tr at 94).

### *Guideline C - Foreign Preference*

The stated premise of Guideline C is that when an individual acts in such a way as to indicate a preference for another country over the United States, he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

There is no question that Applicant exercised dual U.S./Israeli citizenship for many years, by renewing and using his Israeli passport and working as an Israeli citizen in Israel between 1976 -1980 and 1984-2001, including the last six years when his company required him to use his Israeli passport to travel internationally on company business. Most currently, Applicant has not used his Israeli passport since 2001, it expired in 2003, was not renewed, and was surrendered in 2005. Once Applicant learned in 2002 that possession of the Israeli passport was a roadblock to his obtaining a DoD security clearance, he made prompt efforts to surrender the passport to Israeli authorities, but was unsuccessful (GX 2). It was not until the hearing that Applicant understood how his goal could be accomplished and he again took prompt action, not only surrendering the passport but renouncing his Israeli citizenship as well (AX D).

Considering the facts and circumstances of his dual citizenship, all of which were supplied by Applicant with

considerable detail and candor, Applicant's conduct in using the Israeli passport

to travel to Israel was based on what he believed to be necessity under Israeli law. His use of the Israeli passport to travel to other countries while residing in Israel from 1994 to 2001, was likewise a requirement of his company and not an exercise of choice or discretion on his part. Indeed, he had any choice, it would be not to travel to Israel or to work for a company did not require him to use his Israeli passport. Nothing in the record suggest he was thinking in terms of expressing, or intending to express, any preference for Israel over the United States.

Specifically, as to the period from 1994 to 2001, the record shows that Applicant moved to Israel out of consideration for his ailing mother (AX C), who passed away in 2002, after which Applicant returned to the U.S. Applicant has shown himself to be a man of considerable integrity, who recognized his obligation to care for his mother, and acted to meet that familial obligation. As Applicant points out, moving to Israel in 1994 "cost [him] a lot of hardship and money and everything else." He left "a very good job" to take care of his mother (Tr at 103). It is hard to find fault with Applicant's conduct. Viewed in the context of the entire record, I conclude that Applicant's employment in Israel, as cited in SOR 1.f.-1.h., did not suggest a preference for Israel and has minimal security significance at present. The record does not reflect any relatives or close friends in Israel or any other economic or other ties to that country and, indeed, none are alleged in the SOR. With the passing of his mother in 2002, no emotional ties or obligations to Israel remain. A number of significant individuals speak highly of Applicant. One man has known Applicant for 25 years and says that Applicant has "always shown great loyalty to his country and dedication to whatever assignment he has been given. He is a great employee and loyal to the United States" (AX B1). A second person has known Applicant for 22 years and states that he has "a deep loyalty to the United States." She verifies that Applicant's only tie to Israel was his mother (AX B2).

A third individual, a retired Air Force Colonel/now Manager thinks so highly of Applicant that when the individual heard that Applicant was returning to the U.S. after the death of his mother, he immediately offered Applicant "a position of responsibility" in his company (AX B3). A fourth friend, a retired Marine, has known Applicant for 16 years, would trust him with his life and money, and has "absolute confidence in his total loyalty to the United States" (AX B4)

Disqualifying Conditions (DC) 1 - exercise of dual citizenship and 2 - possession and/or use of foreign passport existed in the past but the foreign citizenship has been renounced and the foreign passport surrendered. DC 4 - accepting educational, medical, or other benefits, such as retirement and/or social welfare applies the abstract, but only minimally since the unemployment benefits ended

several years ago and Applicant is again employed. Mitigating Condition 4 is applicable since Applicant not only expressed a willingness to renounce his foreign citizenship, but has done so.

*Guideline B - Foreign Influence*

The allegations in most Guideline B cases involve relatives, friends, or associates in a foreign country who might be used to approach an applicant to disclose classified information. That is not the case here. The SOR allegations cite only Applicant's employment by four named companies in Israel while he resided there. The basis for the Governments contention that Applicant's past employment in Israel can open him to the risk of foreign influence is not clear. He has stated he has had no contact with the companies or former fellow employees. The specific disqualifying conditions (DCs) of interest to the Government are not cited in the record, so I have considered all of them.

The SOR does not mention family or friends, so DC 1, 2, and 3 are not applicable. I find no record evidence supporting the applicability of any of the other five disqualifying conditions. The SOR does cite Applicant's period of receiving unemployment benefits from Israel, but to the extent that could be considered a financial interest, it began and ended several years ago and is of no current security significance. Although not cited in the SOR, Applicant is apparently eligible at some future date to receive Israeli social security, in the amount of about \$180 per month. In context, I do not find this possibility to be of any current security significance.

Based on the above analysis, I conclude that none of the Disqualifying Conditions are established by the record.

All of the evidence comes from Applicant's own statements and writings, except for the letters of recommendation he supplied. I find Applicant to be a person of character and integrity. He indicates no reservations about his loyalty to the United States. The record of his life and work demonstrates significant contributions to the national welfare. He has received a number of letters of recommendation from individuals who hold security clearances, have known Applicant for long periods of time, are familiar with his work ethic, and recommend him wholeheartedly.

In summary, the overall record shows Applicant to be a man of integrity and responsibility and one who understands his obligations to his adopted country. Nothing in the evidence suggests otherwise. I conclude he has the judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

### **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) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. 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 Applicant.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**