

DATE: November 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22842

## **ECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Government established a *prima facie* case under Guideline B based on the fact applicant's brother is a citizen and resident of Israel. The applicant has, however, presented convincing evidence that his brother does not present a significant security risk. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

### **STATEMENT OF THE CASE**

On May 14, 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, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 28, 2004. The case was assigned to the undersigned on June 22, 2004. A Notice of Hearing was issued on August 9, 2004, and the hearing was held on October 26, 2004. The transcript was received on November 10, 2004.

### **FINDINGS OF FACT**

Applicant is a 57 year old engineer. He has been employed in the defense industry for 25 years.

Applicant was born in an Eastern European country. In 1964, his family moved to Israel. In 1974, applicant moved to the United States. He became a naturalized United States citizen in 1980. His wife, from whom he is now divorced, is a citizen of Israel and a resident of the United States. They have two children. The oldest was born in Israel. He moved to the United States when he was three years old. He became a United States citizen, but maintains his Israeli citizenship. He lives in the United States and intends to remain here. Applicant's youngest son was born and raised in the United

States.

Applicant's brother is a citizen and resident of Israel. He has no connection with the Israeli government. Applicant speaks by telephone with his brother an average of once every two to three weeks. His brother has visited applicant in the United States once.

Applicant traveled to Israel in 1998, 2000, and perhaps one additional time. He traveled on an Israeli passport, which he has since surrendered to Israeli authorities. Applicant has also formally renounced his Israeli citizenship (Exhibit A).

Applicant testified that he is "a proud American citizen" who intends to remain in the United States (TR at 9, 25).

Letters from applicant's manager and two other coworkers were admitted into evidence (Exhibits B, C and D). These individuals describe applicant as having high ethical and moral standards, and all recommend him for a position of trust.

### **CONCLUSIONS**

Although applicant and his two children are United States citizens living in the United States, applicant's brother is a citizen and resident of Israel. This fact requires application of Disqualifying Condition 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 of or present in, a foreign country*).

Based on the evidence presented, I conclude that applicant's brother is not an agent of Israel. I further conclude that he is not in a position to be exploited by Israel in a way that could force applicant to choose between loyalty to him and loyalty to the United States. Although it would be naive to think Israel does not conduct economic espionage against the United States, it is highly unlikely that Israel, a democratic ally which is heavily dependent upon the United States for its security, would risk its relationship with the United States by forcing a United States citizen to betray his country. Furthermore, although applicant maintains frequent and regular contact with his brother, based on the evidence presented, including the facts that applicant has lived in this country for approximately 30 years, raised a family here, intends to retire and live here permanently, and formally renounced his Israeli citizenship, I conclude he would not compromise classified information in the unlikely event pressure was applied on him to do so. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(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*) is applicable to this case.

Based on the foregoing, I conclude that applicant's evidence was sufficient to overcome the Government's *prima facie* case under Guideline B.

### **FORMAL FINDINGS**

#### GUIDELINE B: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

Subparagraph 1c: 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.

Joseph Testan

Administrative Judge

