

DATE: December 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-23190

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Alyza Lewin, Esq.

Nathan Lewin, Esq.

SYNOPSIS

Applicant emigrated to Israel in 1985, and lived there until his return to the U.S. in 1991. During his Israeli residency, he held a passport, and worked for the Israeli government. After moving back to the U.S., he continued to use his Israeli passport until its expiration in 1996, and failed to disclose it, as required, on a security clearance application completed in 2002. He renounced his Israeli citizenship in 2003, and the security clearance application omission was unintentional. He continues, however, to have significant familial contacts and property interests in Israel. Applicant has mitigated the foreign preference and personal conduct security concern, but has not mitigated the foreign influence security concern. Clearance is denied.

STATEMENT OF THE CASE

On May 14, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. 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. The SOR alleged a security concern under Guideline C for foreign preference, Guideline B for foreign influence, and Guideline E for personal conduct. Applicant answered the SOR on June 29, 2004, and requested a hearing.

The case was assigned to me on August 4, 2006 after having been transferred from another administrative judge. A notice of hearing was issued on August 9, 2006, and the hearing was held as scheduled on August 31, 2006. During the hearing, I received five government exhibits, eight Applicant exhibits, and the testimony of two Applicant witnesses. Also, Department Counsel asked that I take administrative notice of the information contained in seven additional exhibits. I marked them as Exhibits 6-12, and took administrative notice of the information contained in all of them except Exhibit 7. The transcript (Tr.) was received on September 8, 2006.

At the conclusion of the hearing, I left the record open to enable the parties to submit written, instead of oral, closing arguments. I received Department Counsel's closing argument on September 29, 2005, Applicant's closing argument on October 3, 2006, and Department Counsel's rebuttal closing argument on October 5, 2006.

EVIDENTIARY AND PROCEDURAL RULINGS

On August 30, 2006, the day before the hearing, Department Counsel filed a Motion in Limine to exclude the testimony of a rabbi whose testimony was proffered by Applicant's counsel to, among other things, explain why the dedication of an adherent to the ultra-Orthodox Jewish faith is not synonymous with a political preference for the country of Israel. I denied the motion, and allowed the rabbi to testify.

On November 7, 2006, Applicant's counsel filed a motion for the case to be adjudicated using the revised Adjudicative Guidelines. ⁽¹⁾ The motion is denied.

FINDINGS OF FACT

I have incorporated all of Applicant's admissions into the findings of fact. In addition, I make the following findings.

Applicant is a 67-year-old married man with four adult children, who is the president of an aeronautical engineering firm that he owns with his wife. He was born and raised in the U.S. Shortly after earning a bachelor of science degree in physics in 1961, he began working as a rocket scientist for the U.S. government's space program. During the entire 24-year period he worked in this capacity, he possessed a security clearance. ⁽²⁾

Applicant and his wife are adherents of the ultra-Orthodox Jewish faith. ⁽³⁾ They have been married for 45 years. In 1985, they emigrated to Israel with their youngest son to enhance their spiritual growth, and to fulfill what they considered to be a religious obligation. ⁽⁴⁾ At the time, their daughter, the oldest child, was married and living in the U.S. Their oldest son, a rabbinical scholar, was already living in Israel, and their second oldest son was in college in the U.S. When he graduated, he emigrated to Israel to join his family and engage in rabbinical studies at the university where his oldest brother was enrolled.

When Applicant emigrated to Israel, he began working for Israeli Aircraft Industries (IAI), a state-owned company. ⁽⁵⁾ As a precondition for employment, he had to obtain Israeli citizenship. ⁽⁶⁾ Throughout his residence in Israel, Applicant retained his U.S. citizenship. ⁽⁷⁾ While living in Israel, Applicant received health insurance coverage through the country's national health insurance program. ⁽⁸⁾

In 1986, Applicant obtained an Israeli passport. He used it for entering and exiting Israel for 10 years until its expiration in 1996. ⁽⁹⁾

In 1991, Applicant and his wife moved back to the U.S. They started their company at that time. In 1996, they were both granted clearances in order to execute a government contract project. ⁽¹⁰⁾ They held them without any problems until the project was completed in 1999.

In September 2003, Applicant renounced his Israeli citizenship. ⁽¹¹⁾ He no longer is in possession of the expired passport. ⁽¹²⁾

Currently, Applicant's sons continue to live in Israel and engage in rabbinical studies. His oldest son is a resident alien of Israel. ⁽¹³⁾ He is married and has 10 children. ⁽¹⁴⁾ His wife is a self-employed graphic illustrator. ⁽¹⁵⁾ She is a resident alien of Israel, also. ⁽¹⁶⁾ All of their children are U.S. citizens. Applicant's second oldest son is married, and has six children. Both he and his wife are dual U.S./Israeli citizens. His wife is a psychologist. Applicant's youngest son is married, and has no children. Both he and his wife are dual U.S./Israeli citizens. ⁽¹⁷⁾ His wife teaches at an Orthodox Jewish seminary for young ladies. His sons communicate with him approximately once per week. ⁽¹⁸⁾

None of Applicant's sons earn much money. He assists them by providing approximately \$6,000 per month in financial support, collectively. [\(19\)](#)

Applicant and his wife own an apartment in Israel, worth approximately \$250,000, that generates approximately \$800 per month in rental income. They maintain a checking account in Israel to cover routine property management expenses. It seldom has a balance of more than \$500. Applicant considers it a religious obligation to own property in Israel. [\(20\)](#) Their remaining assets are located in the U.S., and are worth approximately \$600,000.

Applicant and his wife travel to Israel approximately twice a year, staying approximately two weeks each visit. [\(21\)](#) They do so, both to visit their family members, and to fulfill what they consider to be a religious obligation. When visiting Israel, they live in their apartment.

Applicant and his wife are friends with a major in the Israeli military who lives and works in the U.S. [\(22\)](#)

Approximately once per month when he is in their home town for business, he stays overnight at their home. [\(23\)](#) They extend this hospitality to him because of a religious obligation to

provide a place to eat for fellow practitioners of Orthodox Judaism who adhere to the same strict dietary laws.

In August 2002, Applicant electronically submitted a security clearance application. He answered "no" to Question 15 (*In the past 7 years, have you had an active passport that was issued by a foreign government?*). [\(24\)](#) His Israeli passport expired six years and three months before the SF 86 was submitted. Applicant's wife, as the person who handles all of the administrative tasks of their business, completed his SF 86. He did not double check any of her answers before submitting it. [\(25\)](#)

On September 5, 2003, Applicant was interviewed by a Defense Security Services Agent. He brought his U.S. and Israeli passport to the interview, and the agent copied them. [\(26\)](#) Both passports contained date-stamped documentation of all the times he used them in the past. During the interview, he told the agent that he has used his U.S. passport exclusively when traveling to Israel since approximately 1992. [\(27\)](#) SOR subparagraph 3.b. alleges that he used the Israeli passport to travel to Israel "from 1992 to April 1996." [\(28\)](#) Upon carefully reviewing the copy of Applicant's Israeli passport attached to Government Exhibit 3, I found legible evidence of only one trip, in March 1994, to Israel with the Israeli passport since 1992. [\(29\)](#)

The U.S. and Israel have developed a close friendship over the years, "based on common democratic values, religious affinities, and security interests." [\(30\)](#) Moreover, Israel is the largest recipient of U.S. foreign aid in the world. [\(31\)](#) There have been, however, some publicly documented cases of individuals prosecuted and convicted of spying against the U.S. for Israel. [\(32\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information and mitigating conditions (MC) that may be considered in deciding whether to grant an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied along with the factors set forth in the Adjudicative Process provision in Section E2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in

making a meaningful decision. 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.

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

Foreign Preference: - Guideline C: 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.

Foreign Influence - Guideline B: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The pertinent disqualifying and mitigating conditions are discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest" ⁽³³⁾ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Foreign Preference

Applicant exercised dual citizenship with Israel by living there for six years, availing himself of its social welfare benefits, and retaining an Israeli passport for several years after moving back to the U.S. DC 1, ⁽³⁴⁾ DC 2, ⁽³⁵⁾ and DC 4,

(36) apply.

Applicant moved to Israel because of a sense of profound dedication to the region as the birthplace of his faith, rather than any nationalistic, secular preference for the country. He returned to the U.S. in 1991, and has been living here since that time. Moreover, his Israeli passport expired in 1996, and he no longer is in possession of it. He renounced his citizenship in 2003.

I have considered all of the mitigating conditions, and conclude that the only one that is either relevant or applicable is MC 4. (37) He exceeded the requirement of this mitigating condition by renouncing his Israeli citizenship. In light of the length of time he has been back in the U.S., and the applicability of MC 4, I conclude Applicant has mitigated the foreign preference security concern.

Foreign Influence

Although Applicant no longer lives in Israel and has renounced his Israeli citizenship, he continues to have a substantial property interest in Israel. Also, several immediate family members live in Israel, and a major in the Israeli military spends the night at his home once per month. DC 1, (38) DC 2, (39) DC 6 (40) and DC 8 (41) apply.

None of the mitigating conditions apply to the frequent, overnight houseguest. As a major in the Israeli military, he is an agent of a foreign power. Applicant's sense of fellowship to other practitioners of his faith, though admirable, creates an unacceptable vulnerability to coercion under these circumstances.

Although Applicant's immediate family members are not agents of a foreign power, they are vulnerable to coercion as residents and/or citizens of Israel. Whether the Israeli government has attempted to exploit these relationships in the past, is not dispositive. Similarly, a consideration of what Applicant would do under such a future, hypothetical scenario is not dispositive, either. The application of C 1 (42) "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather, hinges on the concept that he should not be placed in a position where he is forced to make such a choice." (43) Upon analyzing these close relationships with family members in Israel, in tandem with his property interest in Israel, I conclude Applicant has not mitigated the foreign influence security concern.

Personal Conduct

Applicant's omission regarding his possession of an Israeli passport from his 2002 SF 86, and his 2003 misstatement to a DSS investigator regarding whether he used it to travel to Israel after 1992 trigger the issue of whether DC 2 (44) applies. The passport had nearly expired by the time he completed the SF 86. Applicant's explanation for omitting it was credible. I conclude the omission of the Israeli passport from the SF 86 was neither material nor intentional.

Throughout the security clearance adjudication process, Applicant has been forthcoming with respect to his frequent trips to Israel. Also, the Israeli passport that he provided to the DSS agent during the interview contained date-stamped documentation of all the times he used it. I conclude Applicant did not intend to conceal the 1994 trip to Israel, using his Israeli passport, from the investigator.

DC 2 does not apply, and there is no personal conduct security concern.

Whole Person Concept

Applicant is a person of integrity who is highly devoted to his job, his family, and his faith. Positive attributes in some circumstances, however, can generate security concerns just as readily as negative ones. In this case, Applicant's vigorous devotion to his faith, which compels him to own property in Israel, visit Israel twice a year, and periodically host a major in the Israeli military with similar religious convictions, in tandem with his affection for his sons, who live in Israel, generate security concerns under Guideline B, foreign influence, and Guideline C, foreign preference.

Applicant successfully demonstrated through his testimony and the testimony of the rabbi, that devotion to the tenets of

ultra-Orthodox Judaism does not, alone, generate a preference for the nation of Israel. Other potentially disqualifying acts of foreign preference, such as his obtaining Israeli citizenship, living in Israel for six years, and possessing an Israeli passport through its expiration in 1996, have been mitigated by time.

Conversely, Applicant's vulnerability to foreign influence remains a security concern. I was not persuaded that his sons' employment as rabbinical scholars would make them less vulnerable to coercion or exploitation than other Israeli residents. Moreover, although he was a credible witness, credibility determinations are not substitutes for record evidence. [\(45\)](#)

The government granted Applicant a security clearance in 1996. The facts regarding his relatives in Israel and his contacts with them are substantially unchanged since that time. Although this weighs in his favor, it is outweighed by the continuing potential for coercion or exploitation posed by his strong ties of affection for these family members in Israel, his frequent trips to Israel, and his property interest in Israel. Upon balancing the applicable disqualifying and mitigation conditions along with the whole person concept, I conclude that Applicant mitigated the foreign preference security concern, but has not mitigated the foreign influence security concern. Clearance is denied.

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-Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2-Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Paragraph 3-Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For 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.

Marc E. Curry

Administrative Judge

1. Memorandum for Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff, General Counsel of the Department of Defense, Inspector General of the Department of Defense, Director, Administration and Management, Directors of the Defense Agencies, Directors of the DoD Field Activities, from Stephen A. Cambone, Assistant Secretary of Defense, Command, Communications, and Intelligence, dated August 30, 2006.

2. Tr. 32.

3. Exhibit 3, Signed, Sworn Statement dated September 5, 2003, at 1.

4. Tr. 35; Answer, dated June 29, 2004, at 2.

5. Tr. 83.

6. Exhibit 5, Signed, Sworn Statement, dated July 8, 1991, at 1.

7. *Id.*

8. Tr. 84.

9. Answer, dated June 29, 2004, at 4.

10. Exhibit C, Letter from Defense Investigative Services to Applicant, dated April 2, 1996.

11. Exhibit A, Confirmation for the Waiver of Israeli Citizenship, dated September 18, 2003, at 1.

12. Tr. 64.

13. Tr. 88.

14. *Id.*

15. Tr. 90.

16. Tr. 88.

17. Tr. 89.

18. Tr. 97.

19. Tr. 93.

20. Tr. 43.

21. Tr. 97.

22. Tr. 94. Applicant's relationship to the major in the Israeli military was not alleged in the SOR. This issue was fairly raised during the hearing, and Applicant did not object.

23. *Id.*

24. Exhibit 2, SF-86 electronically submitted August 7, 2002, at 6.

25. Tr. 73, 75, 78.
26. Exhibit 3, Signed, Sworn Statement, dated September 5, 2003, attachments 2 and 3, at 3-15.
27. *Id.* at 1.
28. SOR dated May 14, 2004, at 3.
29. *Id.* at 12.
30. Exhibit 8, Congressional Research Service Report for Congress: *Israel: Background and Relations with the United States*, dated June 14, 2006.
31. *Id.* at 16.
32. *Id.* at 19, 21-22.
33. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
34. The exercise of dual citizenship.
35. Possession and/or use of a foreign passport.
36. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country.
37. Individual has expressed a willingness to renounce dual citizenship.
38. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.
39. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.
40. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.
41. A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.
42. 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.
43. ISCR Case No. 03-15205 (App. Bd. January 21, 2005) at 3.
44. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.
45. ISCR Case No. 02-29403 (App. Bd. December 14, 2004) at 6.