DATE: November 22, 2004

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-23745

ECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's spouse, an Israeli citizen, is a permanent U.S. resident and has applied for U.S. citizenship. The spouse's parents and brother are Israeli citizens and residents. They are all in the entertainment business and have no connection to the Israeli government. Applicant's friend, an Israeli citizen, is a permanent U.S. resident who has applied for U.S. citizenship. Security concerns based on foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On May 14, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline B (Foreign Influence) of the Directive. It alleged three concerns: Applicant's spouse is an Israeli citizen residing in the U.S.; Applicant maintains regular contact with her mother-in-law, father-in-law, and brother-in-law, who are all citizens and residents of Israel; and Applicant has a close friend who is an Israeli citizen residing in the U.S.

Applicant answered the SOR in writing on June 14, 2004. She admitted the allegations, offered explanations, and requested a hearing. The case was assigned to me on August 20, 2004. On September 1, 2004, DOHA issued a notice of hearing setting the case for October 7, 2004. Applicant appeared as scheduled. DOHA received the transcript (Tr.) on October 26, 2004.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 36-year-old training specialist for a defense contractor. She has worked for her present employer since November 1997. Among her supervisors and colleagues, she is regarded as patriotic, very capable, customer-oriented, honest, and ethical. She has never held a security clearance.

Applicant is a native-born U.S. citizen. She married a native-born Israeli citizen on August 2, 1996. Her spouse came to the U.S. in 1990, is a permanent resident, and has applied for U.S. citizenship. He is a real estate broker, and he also works in his father's entertainment business. He served his mandatory service in the Israeli military, but he has no other connection with the Israeli government. He regards the U.S. as his home and has no interest in U.S.-Israeli dual citizenship. They have two daughters, who are native-born U.S. citizens.

Applicant's father-in-law and mother-in-law are citizens and residents of Israel. Her father owns a multinational entertainment company and is well known in Israel as a music producer and song writer. He has no connection with the Israeli government. He owns a house in the U.S., which Applicant and her family occupy. He and his wife visit Applicant's family frequently. He and his wife are considering moving to the U.S. in the future and becoming permanent residents, in order to spend more time with their grandchildren.

Applicant's brother-in-law also is a citizen and resident of Israel. He works as an entertainer. He served his mandatory military service in the Israeli military, but he has no other connection to the Israeli government.

Applicant and her spouse do not own any property in Israel or have any bank accounts or items of value in Israel. Applicant and her children have never visited Israel.

Applicant's friend referred to in the SOR ¶ 1.c. is an Israeli citizen who came to the U.S. in 1991 on a student visa. He obtained bachelor's and master's degrees in the U.S. and became a permanent resident in April 2001. He is employed as a software engineer for a private company. He believes that his future is in the U.S., and he does not intend to return to Israel. He is a permanent U.S. resident, owns property in the U.S., and intends to become a U.S. citizen.

Israel is a democracy and a strong ally of the U.S. On the other hand, Israel also is one of the eight most active collectors of defense, medical, economic, and computer information in the world. (National Counterintelligence Center, Annual Report to Congress, 2000 at 15, admitted as Government Exhibit 2, p. 15)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n 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." Directive ¶ E2.A2.1.2.1.

Applicant's spouse is an Israeli citizen. Applicant and her spouse's parents, who are citizens and residents of Israel, have mutual close ties of affection. Thus, I conclude that DC 1 is established.

In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters) . . . 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government has produced substantial evidence to establish DC 1, the burden has shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries that are hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Israel is friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, even friendly nations can have profound disagreements with the United States over matters that they view as important to their vital interests or national security. Finally we know that even friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of

coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's spouse clearly is not an agent of a foreign power. His family, home, and business are in the U.S. His allegiance is to the U.S. The only possibility of exploitation would be through his mother, father, and brother, but they are all in the entertainment business, with no connection to the Israeli government and no connection with industries subject to industrial espionage. The likelihood that Applicant's spouse, his parents, or his brother would be subject to coercion or exploitation is very remote. I conclude that DC 1 is mitigated with respect to Applicant's spouse, mother-in-law, father-in-law, and brother-in-law.

Applicant's friend is a permanent resident of the U.S. and on the way to becoming a citizen. The sole basis for security concern is his Israeli citizenship. His interests, obligations, and future are in the U.S. He works in an industry that is vulnerable to industrial espionage, but the likelihood of him being exploited is not made greater or lesser by his Israeli citizenship. I conclude that DC 1 is mitigated with respect to Applicant's friend.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Paragraph 1.a.: For Applicant

Paragraph 1.b.: For Applicant

Paragraph 1.c.: For 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 a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge