

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24150

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign preference, possession of a valid foreign passport, and his foreign influence, including foreign family members, have been mitigated. Applicant has complied with the provisions of the Money Memorandum. Clearance is granted.

STATEMENT OF THE CASE

On May 14, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 18, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2004. A notice of hearing was issued on November 8, 2004, scheduling the hearing for November 23, 2004. At the hearing the Government presented six exhibits. The Applicant called one witness to testify on his behalf. He presented four exhibits and testified on his own behalf. The Applicant also submitted one Post-Hearing Exhibit. The official transcript (Tr.) was received on December 8, 2004.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 54 years of age and holds a Masters Degree in Electrical Engineering. He is employed as a Program Manager for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Israel and the United States. He was born in Romania and moved to Israel with his family in 1962, at the age of eleven. He immediately obtained his Israeli citizenship. After serving in the Israeli Army, the Applicant immigrated to the United States in 1975. He married his wife, a United States citizen, and they have two native born children. The Applicant and his family have resided in the United States since 1975.

In 1980, at the age of twenty-five, the Applicant decided to make the United States his permanent home and he became a naturalized United States citizen. He also applied for his United States passport. (*See* Government Exhibit 4).

The Applicant also possessed an Israeli passport that expired in 2002, and was renewed for the exclusive purpose to travel to and from Israel to visit his seventy-five year old mother who is of poor health. The Applicant used his Israeli passport to enter and exit Israel in 1992, 1993, 1994, 1997 and 1999. His Israeli passport will not expire until 2012. (*See* Government Exhibit 5).

After learning of the provisions of the Money Memorandum, the Applicant decided to renounce his Israeli citizenship and surrender his Israeli passport. The Applicant began the process of renouncing his citizenship by completing the required documentation. He was told that it may take six months for approval. (*See* Applicant's Exhibit A). He is presently awaiting approval from the Israeli Consulate. He also attempted to surrender his Israeli passport to the Israeli Consulate, but they would not accept it until his Israeli citizenship is renounced. As an alternative, the Applicant gave his foreign passport to his company security officer who will in turn surrender it to the Israeli Consulate at the appropriate time. (*See* Applicant's Post-Hearing Exhibit).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's elderly mother is a citizen of and resides in Israel. She is a retired clothing store owner. The Applicant also has cousins and friends who are citizens of and reside in Israel. He contacts his mother by telephone about once a week for about five to ten minutes to check on her health. His limited contact with his cousins involve only birthdays or special occasions. He has lost all contact with his friends in Israel. (Tr. p. 41). There is no evidence in the record that any of his family members or friends in Israel are affiliated in any manner with the Israeli Government.

The Applicant's wife is a United States citizen and they have two children who were born in the United States. (Tr. pp. 38-39).

The Applicant receives no benefits from Israel and never intends to. He owns no property or any other assets in Israel.

Mitigation.

The Applicant's coworker, who at one time was his supervisor, testified that the Applicant has always demonstrated a good work ethic and is considered loyal, honest and of good character. He has full trust and confidence in the Applicant. (Tr. pp. 47-51).

Letters of recommendation from the Applicant's supervisor and employer indicate that the Applicant is a highly talented engineer and a dedicated, conscientious and trustworthy individual. His mastery of the subject through lesson preparation and presentations skills are superior to most. He is extremely well respected by both his colleagues and subordinates. (*See* Applicant's Exhibits C and D).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. 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;

Condition that could mitigate security concerns:

1. 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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of Israel and the United States who possessed an Israeli passport. Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to his company security officer who will in turn surrender it to the Israeli Consulate at the appropriate time. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Mitigating Conditions (1),

Dual citizenship is based solely on parent's citizenship or birth in a foreign country; and (4) Individual has expressed a willingness to renounce dual citizenship apply.

Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. The Applicant, his wife, and two children are United States citizens and have made the United States their home. They have resided in the United States for thirty years. Although the Applicant's mother is an Israeli citizen, residing in Israel, she is elderly and ill and has no connection with the Israeli government. Although he has many cousins in Israel, the Applicant has minimal contact with them and has lost all contact with his friends in Israel. Furthermore, the Applicant's contacts with his foreign relatives are not of a nature to influence his security worthiness. There is no evidence in the record that any of his cousins or friends or other family members any longer have any connection with the Israeli Government, or are in a position to be exploited by the Israeli Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Mitigating Condition (1), *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 the loyalty of the person(s) involved and the United States applies.* Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

1.d.: For the Applicant 1.e.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge