

DATE: December 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24534

## **ECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nichole, Noel, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 65-year-old naturalized citizen of the U.S., who immigrated from Israel in 1967. He has been a U.S. citizen since 1973. He held a security clearance for 31 years and worked for defense contractors for 37 years. He is a dual citizen of Israel and traveled to Israel in the past, on an Israeli passport, as was required by that government. Applicant relinquished his Israeli passport and is willing to renounce his Israeli citizenship. Applicant has two children who are dual citizens and reside in the U.S. Applicant's sister and brother-in-law live in Israel. His contacts with them are infrequent. Applicant has not exercised any rights of Israeli citizenship, except complying with the passport requirements. Applicant's preference is for the U.S. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 3, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. Applicant submitted a response to the SOR, dated July 10, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on October 1, 2004. A notice of hearing was issued on October 8, 2004, scheduling the hearing for November 9, 2004. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. They were admitted without objection into the record. The Applicant testified, on his own behalf, and submitted nine documentary exhibits that were marked as Applicant's Exhibits (AE) 1-9. AE 2 was admitted over objection by the government. AE 1 and AE 3-9 were admitted without objection. The transcript was received on November 17, 2004.

## FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 65-year-old man who is employed by a defense contractor as an electrical engineer. He has been employed by different defense contractors for 37 years. He was born in Israel and immigrated to the U.S. in 1967, and became a naturalized citizen in 1973. He is a dual citizen of the U.S. and Israel. Applicant's wife is deceased and his three children were all born in the U.S. Two of his children are dual citizens of the U.S. and Israel, the third is not. Applicant's wife registered the two children as Israeli citizens when they were children. All three children live in the U.S., two are single and the other is married to a U.S. citizen and has two children. Except for an occasional visit to Israel they have not exercised any citizenship rights in Israel. They have not served in the Israeli military.

Applicant held a secret security clearance starting in approximately 1973, and it was upgraded to a top secret clearance in 1984. He held a top secret clearance for a few years until it was administratively downgraded to secret because his work did not require the higher clearance. He held a security clearance continuously for 31 years. Applicant has lived and worked continuously in the U.S. since immigrating. Applicant has not voted in an Israeli election since becoming a U.S. citizen.

Applicant has accumulated over \$1.5 million dollars in assets that are all in the U.S. His pension plan, savings, investments and home are in the U.S. He lived at the same address for 25 years and plans on retiring in the U.S., to be close to his children, grandchildren and wife's grave. Applicant's wife opened a bank account in Israel to facilitate a transfer of funds that she had received from an inheritance in Israel. Applicant was the joint owner. After his wife died in 2002, the account remained dormant because the balance was only \$225.00. When Applicant's security clearance became an issue, he closed the account and transferred the balance to his U.S. account. Applicant owns a share in an apartment in Israel he inherited from his wife. She and her brother inherited it from their mother. Applicant is unclear as to the status of the apartment because his brother-in-law has not kept it in repair for the past 13 years.

Applicant traveled back to Israel to visit family and since he immigrated. He does not have friends in Israel that he keeps in contact with. Applicant's sister resides in Israel. He speaks with his sister approximately once every 1-2 months and receives an occasional email. Their communications involve family updates. She is a divorced school teacher who is not politically active and does not work for the Israeli government. Applicant's deceased wife's brother lives in Israel and is a retired accountant from a private company. Applicant speaks to him approximately once or twice a year, and their communications involve family updates.

Applicant maintains his dual citizenship with the United States and Israel. He renewed his Israeli passport on June 24, 2003. Applicant kept his Israeli passport until October 2004 when he turned it into the Israeli Embassy, advising them he was required to do so to retain a security clearance. He was unaware of the requirement that he not have a foreign passport. He no longer possesses an Israeli passport. Applicant only used his Israeli passport when traveling to Israel. As a dual national, Applicant is required by Israeli law to use his Israeli passport when traveling to Israel. Applicant used his U.S. passport for all other trips that required one. Applicant is willing to renounce his Israeli citizenship, but would like to keep it for cultural pride and a respect for his Jewish heritage. His preference of citizenship is with the U.S. He maintains when he swore his oath of allegiance to the U.S. he renounced his allegiance to any foreign country. He has visited Israel approximately eight times since immigrating and will likely continue to visit approximately every four years.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</sup> 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.

## CONCLUSION

Under 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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Under Guideline C, a security risk may exist 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 interest of the United States.

The State of Israel is a parliamentary democracy with a modern economy. It is an ally and conducts trade with the U.S. The following information about Israel was provided in AE 3 and GE 4. Israeli citizens naturalized in the U.S. retain their Israeli citizenship. Children born in the U.S. to Israeli parents usually acquire both U.S. and Israeli nationality at birth. Industrial espionage and foreign economic collection by foreign governments, corporations, and individuals is a continuing threat to the national security of the U.S. Israel ranks third on a list of the most active collectors.

Based on the facts established here, Guideline B, DC 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 or present in, a foreign country*, must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant. DC 1 applies in this case because Applicant's two children are dual citizens of Israel and the United States, but reside in the United States. His sister and brother-in-law are citizens and residents of Israel, and he previously maintained a bank account in Israel and has a shared interest in an apartment there.

Guideline B, MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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*, and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*, also apply here.

Applicant's two children who are dual citizens with Israel, because their mother registered them with Israel when they were small children. They were born, live and work in the United States and have not exercised any interests or have any connections other than by birth with Israel. Applicant's sister is a school teacher with no political or governmental ties. She is not involved in any government activities. Applicant's brother-in-law is a retired accountant. He lives off of his savings, severance package, an inheritance and he freelances in real estate. He is not dependent on the government for any financial support. Neither relative works in any defense related field or provides support or work for any related industries. I find the testimony presented was credible and that neither relative is a foreign agent for Israel, nor are they in a position to be exploited by Israel. Applicant's contacts with his sister and brother-in-law are infrequent and their communications are about family. Applicant's financial interests are insignificant in relation to his overall financial status. Israel is a country that the United States has close diplomatic relations with. It is not a country hostile to the U. S. I find Applicant has successfully mitigating the security concerns outlined in the SOR under Guideline B and MC 1 and MC 3 apply in this case.

Based on the facts established here,, Guideline C, DC 1: *The exercise of dual citizenship*, and DC 2: *Possession and /or use of a foreign passport*, apply in this case. Applicant is a dual citizen of the U.S. and Israel. Since becoming a naturalized citizen he continued to maintain and use an Israeli passport when traveling to Israel. MC 1: *Dual citizenship is based on solely on parents' citizenship or birth in a foreign country*, and MC 4: *Individual has expressed a willingness to renounce dual citizenship*, apply in this case. As a dual national Applicant was required to enter Israel with an Israeli passport. Upon learning of the requirement that he not have a foreign passport, Applicant relinquished his Israeli passport to the Israeli government. There is no evidence of any other act demonstrating the exercise of dual citizenship. Applicant expressed a willingness to renounce his dual citizenship. He maintains his dual citizenship strictly for cultural reasons and a respect for his Jewish heritage. Applicant has been a U.S. naturalized citizen since 1973. His children were born and live in the U.S., all of his assets, which are substantial are in the U.S., as are his grandchildren and his deceased wife is buried in the U.S. Applicant has maintained and used an Israeli passport in the past, when traveling to Israel as is required by their government. However, regarding all of his other international travels he used his U.S. passport. Applicant has worked for defense contractors for 37 years, and held a security clearance for 31 years. The evidence shows Applicant's only preference is for the United States. Therefore, I find Applicant has successfully met his burden to mitigate the security concerns outline in Guideline C of the SOR.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence, including Applicant's credibility in this case, and considered him under the "whole person" concept. I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guidelines B and C are decided for Applicant.

### **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 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

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. 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. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. 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 and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.