

DATE: November 17, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-03102

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez Jr., Esq., Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Esq.

**SYNOPSIS**

Applicant mitigated foreign influence security concerns raised by his sister and brother being citizen residents of Israel. Since the death of his parents, his contact with his sibling has been limited. He no longer receives Israeli disability compensation and is transferring the small parcel of land he owns in Israel to his sister. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 27 April 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 24 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 29 July 2004. On 28 September 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 6 October 2004.

**FINDINGS OF FACT**

Applicant is a 53-year-old engineer for a defense contractor. He is well respected by his peers and superiors for his hard work and his contributions to the organization's mission.

Applicant was born and raised in Israel. Both of his parents are deceased. He has an older brother and sister who are citizen residents of Israel. His sister is a 65-year-old retired graphic artist. She served two years in the Israeli army. Applicant's brother is in his early 60s and married to a lawyer. Applicant is close to his sister. They speak via telephone one to three times a month. Applicant is not as close to his brother. They speak via telephone once every three months.

Applicant served as a tank commander on active duty in the Israeli Army from 1969-1973 and in the reserves thereafter. During his first reserve duty, Israel was attacked in the Yom Kippur War. Applicant was wounded when an Egyptian

anti-tank missile penetrated his tank. He spent a year in hospital recovering from his injuries. The Israeli government gave him a 1/3 disability rating that entitled him to payment of between \$100 and \$200 a month. The disability payments were deposited in an Israeli bank account to which his sister had access. On 15 September 2004, Applicant sent a letter to the Israeli government requesting his disability benefits be terminated. He closed the Israeli bank account and had the money moved to a U.S. bank.

In 1977, Applicant married a U.S. citizen by birth who was living in Israel. They lived in Israel for two years. Applicant completed his undergraduate degree in 1979, and he and his wife moved to the U.S. to live. Applicant became a naturalized U.S. citizen in 1982. He and his wife have two adult daughters, both born in the U.S. Applicant's wife and his two daughters are dual U.S. Israeli citizens.

During the period 1997-2001, Applicant traveled to Israel every year to visit his family. Usually, he made these trips alone, without other members of his family. His wife accompanied him on his 2001 trip. His children have not been to Israel for over 15 years. Applicant has not returned to Israel since 2001.

Applicant acquired a U.S. passport, but maintained an Israeli passport for travel to Israel. Before DOHA issued the SOR, Applicant renounced his Israeli citizenship and returned his Israeli passport.

Applicant still owns a small parcel of land that was part of the property left to him by his parents. He is in the process of transferring the property to his sister. Because of restrictions on building on the 1/8 acre plot, it does not have significant value.

### 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant has a brother and sister who are citizen residents of Israel (¶ 1.a), receives monthly compensation for injuries he sustained in 1974 while serving in the Israeli Army (¶ 1.b), owns real estate in Israel worth approximately \$40,000 (¶ 1.c), and traveled to Israel to visit family members each year from 1997-2001 (¶ 1.d). A security risk may exist when an applicant's immediate family, or other persons to whom he 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.

The Government established by substantial evidence and Applicant's admissions that members of his immediate family--his brother and sister--are citizen residents of a foreign power--Israel. DC E2.A2.1.2.1. While the mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

Security concerns raised by Applicant's foreign associates may be mitigated when it is determined the associates are not agents of a foreign power and are not 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 involved and loyalty to the U.S. C E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b).

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors, including the character of the government and the status of the country involved. Israel is a parliamentary democracy. Residents of Israel are subject to terrorism by Arab states and organizations. Israel collects military and economic intelligence from the U.S. Nevertheless, there is no evidence Israel coerces or pressures its citizens to seek intelligence from relatives living abroad. I am convinced the siblings are not in a position to be exploited by a foreign power such that Applicant would have to choose between loyalty to the U.S. and loyalty to his siblings. Since the death of his parents, to whom he was very close, Applicant's association with Israel has decreased significantly.

Accepting disability compensation from a foreign government could potentially make an applicant vulnerable to exploitation or pressure from that foreign government. DC E2.A2.1.2.6. Having a substantial financial interest in a foreign country could make an applicant vulnerable to coercion or pressure from the foreign government. DC E2.A2.1.5.8. The evidence demonstrates Applicant has renounced his disability compensation benefit, has closed his Israeli bank account, and is in the process of transferring his small piece of real estate to his sister. Applicant's current financial interests in Israel--the 1/8 acre plot of land--is minimal. With the completion of the transfer of the real estate to his sister, Applicant will have no financial interests in Israel. *See* MC E2.A2.1.3.5.

After carefully considering all of the evidence, including the much more substantial ties Applicant has to the U.S. than to Israel, I conclude Applicant has mitigated the foreign influence security concerns.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 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).