

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09912

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Warren J. Borish, Esquire,

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SYNOPSIS

Applicant mitigated security concerns over foreign influence. His mother, a citizen of the U.S. and Israel, now lives in the U.S. While his sibling and niece in Israel are dual citizens of the U.S. and Israel and reside in Israel, Applicant has limited contact with them. Based on regular security briefings, Applicant assures he would contact his security officials if any pressure were attempted. Given his long history of responsible conduct at work, all his supervisors and the military site manager highly recommend Applicant continue to maintain the security clearance he has held since 1985 without any infractions. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on October 6, 2004. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on October 20, 2004; also, he advised he was represented by counsel and requested a hearing.

After Department Counsel stated the case was ready to proceed in February 15, 2005, the case was assigned to me on February 17, 2005. On April 19, 2005, DOHA issued a Notice of Hearing and set this case to be heard on May 9, 2005, in a city near where Applicant lives and works. At the hearing the government presented five exhibits (Exhibits 1-5) which were admitted into evidence without objection. Department Counsel's request that administrative notice be taken of the information contained in Exhibits I - VI was granted; Applicant's counsel did not object to AN I, II, III, IV, and VI. He did object to AN V, but I overrule his objection. (AN I-VI; TR 15-22)

Applicant's counsel offered one exhibit for administrative notice (AN VII) that was accepted without objection; he called Applicant and five other individuals as witnesses. The transcript (TR) was received on May 19, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 44 years old, has worked for a defense contractor (Employer #1) in State #1 since March 1985. Applicant initially was granted a Secret clearance in February 1986 after he completed a Personnel Security Questionnaire in March 1985. In January 2001 he completed a Security Clearance Application (Standard Form 86). (Answer; Exhibits 1, 4; TR 99-103) He regularly participates in training on security-related issues. (TR 103)

Since Applicant was born in Israel of an American father, Applicant became a naturalized U.S. citizen in October 1973. Applicant and his wife married in 1995. They have two children born in 1996 and 1998. (Exhibit 1; TR 107) He and his wife separated in 2001 and were divorced in February 2002. He and his wife have joint legal custody of the children. (Answer; TR 139)

Foreign Influence

Applicant's mother and father met in Israel when they were visiting there after World War II. Born in Belgium, his mother was orphaned in World War II when both her parents were killed in the war. Born in the U.S., his father was a U.S. Navy veteran from World War II. They married and had two sons in Israel, but the family moved to the U.S. in 1962. (TR 104-105)

Since September 1962 Applicant has continuously lived in the U.S. and never returned to Israel. (Exhibits 1, 4; TR 104, 112) In 1985 he disclosed in his Personnel Security Questionnaire that he was born in Israel, that both his parents lived in the U.S., and that his mother was born in Belgium. He was interviewed about his background as part of a security investigation in 1985, but the Statement reflects no questions were raised about his ties to Israel. (Exhibits 4, 5) In his 2000 Security Clearance Application (SF 86), he disclosed his mother and brother lived in Israel. He provided additional details about his relatives in answer to two sets of Interrogatories submitted to DOHA.

Applicant's mother is a dual citizen of Israel and the U.S. who currently resides in the U.S. in Applicant's home. His mother and father had a small business in the U.S. for 26 years. Her only communications with the government of Israel was contacting the consulate to get information to visit Israel to see her other son and his family who lived there. She renewed her Israeli passport to enter Israel to visit her son who lives in Israel. After her husband died, she resided in Israel from 1998 until 2002 when she returned to the U.S. She paid U.S. taxes while she lived in Israel. Her last visit to Israel was in October 2004. She has no financial interests in Israel. (SOR 1.a.) (Answer; Exhibits 1, 2, 3; TR 106, 110-112; 130-135, 137)

Applicant's brother who is 48 is a dual citizen of Israel and the U.S. Since 1998 he has resided in Israel and works for a privately held corporation as a sales manager. From 1998 to 2001 Applicant had no contact with his brother. That changed after Applicant's divorce. In 2004 he reported he contacts his brother four times a month by phone or e-mail; he characterizes the relationship as his having only casual and infrequent contacts with his brother to discuss family business. In 2005 he spoke with his brother three or four times. He last saw his brother in 2004 for a brief lunch when his brother visited the U.S. Applicant attests that his brother has never been contacted, requested or threatened by anyone from the state of Israel. He does not know what financial interests his brother has in Israel. As the brother served four years in the U.S. military, Applicant credibly maintains his brother "has never and would never try to influence, coerce or threaten" Applicant to be disloyal to the oath he took when he was given his security clearance. (SOR 1.b.) (Answer; Exhibits 1, 2; TR 106-110, 123-130, 136)

Applicant maintains contact with his brother over family matters. His brother does not try to influence his voting or financial decisions. (SOR 1.c.) (Answer)

Applicant's niece is a dual citizen of Israel and the U.S. who currently resides in Israel and is a member of the Israel military as military service is mandatory in Israel. She has one more year to serve. When she finishes her service, she will attend college as her older sister does. Applicant no longer has direct contact with his nieces. In June 2004

Applicant reported he contacted his niece who serves in the Israeli Army two times a month by e-mail. Applicant considers it unlikely that the Israel government would pressure a private in the Israeli army to try to access information. He has never had any conversation with this niece about her military service or his job. (SOR 1.d.) (Answer; Exhibit 2; TR 113-116, 123; 127-128; 135)

Applicant has had a security clearance for 19 years and has never had one incident or mark on his security clearance record. He would promptly report any and all contacts from any foreign or domestic person that wished to learn anything that he might know or any information that he might be able to obtain. He took an oath in 1985 to protect the classified information that he has access to and takes that oath serious. He would never jeopardize the U.S., his family, his career, or his beliefs for any person or group. His security training courses have informed him to notify security personnel if he were ever contacted by someone from a foreign government. (Answer; TR 103-104; 117-119)

Applicant explained that his corporation has a "partnership relationship" with the State of Israel. He noted that Congress has approved multiple military programs where the U.S. and Israel work together. (TR 120-123; AN VII)

Israel is one of the most active collectors of economic espionage. (AN V at 15) However, given Applicant's extensive ties to the U.S., I conclude it is unlikely he would succumb if any of these relatives were pressured by the government in Israel. He credibly established that if someone were pressuring his family, he would not "surrender to that kind of pressure. . . ." Applicant established he would choose his loyalty to the United States over loyalty to his mother, his sibling, or his niece in Israel.

References

A commander (CDR) who is currently in the military testified he has been the officer in charge of the site where Applicant works for two and a half years. The CDR has almost daily, personal contact with him and has been Applicant's supervisor for the entire period. As it is a government-owned/contractor-operated facility, the military and the contractor have a partnership for day-to-day operations at the site. Because the CRD is in charge of the site, the CDR decides whether or not to grant access to the building for both military and contractor personnel. Applicant currently has a security clearance which he needs to implement changes in the system. He reported that Applicant's reputation at the site is as a "very hard worker." Applicant is often "overwhelmed, but is very conscientious, very detailed, very concerned that the work he's doing is done on time. So, very trustworthy." He assesses Applicant as loyal and reliable. He has never questioned Applicant's handling of security-sensitive information or materials. The commander is aware that Applicant's mother lives with Applicant. When he learned that Applicant had family in Israel, including a niece in the Israeli military, that information caused CDR no concern over Applicant's trustworthiness or reliability. If he had any doubts, CDR could have Applicant removed from the facility. The CDR believed that Applicant would never succumb to pressure from the Israeli military. Indeed, Applicant, like other employees in the facility, takes security compliance training every six months or annually. (TR 25-30; 30-36) The CDR testified on re-cross that he attends government compliance⁽²⁾ training. If a contractor employee would report a threat, the CDR would learn of it as he is the site manager. Applicant has never made such a report and has never had a security violation. Based on the totality of his understanding of Applicant's family ties in Israel, the CDR maintains his confidence in Applicant and continues to grant him access to the site. (TR 92-94; 94-97)

Mr. R, the contractor's site manager who has been with the company for almost four years, has managed the site for over one year and has a Secret clearance. Applicant works for a manager who reports to the site manager; however the site manager has daily contact with him. Applicant's reputation is exceptional; Applicant is very dedicated. Also, Applicant has been "very proactive in his work and very honest in keeping" the manager informed of all situations. This manager assesses Applicant as being honest and truthful. When he learned of Applicant's family in Israel, the manager had no concerns over Applicant as he has conducted himself with honesty and integrity and has been very reliable and dedicated in his work. Applicant has never had a security violation. (TR 37-42; 42-50)

Mr S, who is a manager for the defense contractor and who is also a captain the in Navy Reserve, supervised Applicant from 1991 to 1995 and has known him for over ten years. Mr. R, who is the site manager, reports to Mr. S. Mr. S, who is Applicant's third-level supervisor, testified that Applicant is viewed as an honest individual and a hard-working person; he always tries to do "the right thing." He views Applicant as having a lot of integrity and being very reliable; he

would rate him in the top 25 percent of employees in his capacity. After he learned that Applicant has family in Israel, he concluded that relationship would have no impact on his performance nor reliability in protecting and safeguarding classified material as he has confidence in Applicant despite the higher risk. Applicant has never had any security violations. Mr. S has a Secret clearance and has attended briefings on DoD security policy in the area of foreign influence. Mr. S knows that security policy requires individuals to report any attempts to solicit information inappropriately. Mr. S is confident that Applicant would comply with those requirements if such an event were to occur. (TR 51-55; 56-66)

Mr. C, who was the contractor's site manager and Applicant's second-level supervisor from 1998 to January 2004, testified that during that period he saw Applicant on a daily basis. Mr. C served 33 years with the U.S. Navy and nine years with the contractor and has a Secret clearance. Mr. C has himself taken annual security briefings and is aware of the DoD policy on foreign influence. He has never questioned Applicant's integrity or loyalty to the U.S. even knowing that Applicant has family in Israel. Applicant took annual compliance training and Mr. C is confident that should Applicant ever be improperly approached he would immediately report it. He promoted Applicant twice based on his performance on the job. Applicant never had a security violation. (TR 68-72; 73-77)

Mr. N, who has worked for the contractor for 31 years, has been at the site since 1987 as manager of facility operations and has a Secret clearance. He has been Applicant's direct supervisor since November 2002. He reported that Applicant's reputation is that he meets the highest standards of integrity. He assessed Applicant as being a junior engineer who is given senior engineering challenges on a daily basis and performs quite well. He recommended him for a promotion in 2004 because of his performance. Applicant has expertise that helps him do extremely complicated and difficult tasks. Mr. N interacts with Applicant 12 to 15 times a day as Applicant's office is close to his. Applicant has taken his annual security compliance training where he has been advised about what to do if he were ever approached inappropriately for classified information. Mr. N has confidence in Applicant based on his character and performance; thus, Mr. N does not have security concerns over his family in Israel. (TR 78-85; 86-90)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

The concern: 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Because of Applicant's family ties in Israel, the government⁽³⁾ raised foreign influence concerns under disqualifying conditions (DC): E2.A2.1.2. 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's mother is a dual citizen of the U.S. and Israel and lives in the U.S., his brother is a dual citizens of the U.S. and Israel who resides in Israel, and his nieces are dual citizens of the U.S. and Israel and resides in Israel. One niece now serves in the Israeli military.

While I have seriously considered these security concerns and the document submitted for administrative notice which raises security concerns over Israel's extensive industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽⁴⁾

the Government's security concerns over possible foreign influence.

Also, in evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given his strong ties to the U.S. and his limited contact with Israel since he became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of his immediate family are in the U.S., and his financial ties are exclusively to the U.S. First of all, Applicant has been a naturalized U.S. citizen for over thirty years and has not returned to Israel since he left in 1962. Second, Applicant has had a security clearance since March 1985 and has had no reported security incidents. While he has contact with his brother and his family in Israel, that contact is limited. During 2005 he spoke to his brother three or four times and has never visited his brother and family in Israel. He no longer has contact with his nieces. As the brother served four years in the U.S. military, Applicant asserts his brother "has never and would never try to influence, coerce or threaten" Applicant to be disloyal to the oath he took when he was given his clearance. His mother visits Israel but has not lived there since 2002. Even when she lived in Israel near her son who had returned to Israel, she continued to pay her U.S. taxes. Applicant's brother is in the private sector and has no ties to the government of Israel. While his niece serves in the Israeli military, he has limited contact with her.

Significant these family ties in Israel have not raised any security concerns with the individuals who know Applicant best at the classified site where he works. The military site manger (CDR) and four corporate managers (Mr. R, S, C, and N) who have supervised Applicant and have close knowledge of his performance and character testified extensively on why they continue to have confidence in Applicant based on his consistently high performance and his excellent character. All recommended without hesitation that he continue to have access to classified information:

The Commander (CDR) described Applicant's reputation as a "very hard worker." Applicant is "very trustworthy." He has never questioned Applicant's handling of security-sensitive information or materials. The CDR is aware that Applicant's mother lives with Applicant. Based on his knowledge of the Applicant's performance and character, the CDR had no security concerns when he learned that Applicant had family in Israel, including a niece in the Israeli military. The CDR had confidence in Applicant's overall trustworthiness and reliability. If he had any doubts, the CDR has the authority to bar Applicant from the facility. Based on the totality of his understanding of Applicant, the CDR continues to have confidence in him and continues to grant him access to the site.

Mr. N, who has been Applicant's direct supervisor since November 2002, described Applicant's reputation as meeting the highest standards of integrity. Applicant is a junior engineer who is given and meets senior engineering challenges. Applicant has taken his annual security compliance training where he has been advised about what to do if he were every approached inappropriately for classified information. Mr. N has confidence in Applicant based on his character

and performance; thus, Mr. N does not have security concerns over Applicant's family in Israel.

Mr. R, the contractor's site manager for over one year portrayed Applicant's reputation as exceptional; Applicant is honest and truthful. When he learned of Applicant's family in Israel, the manager had no concerns over Applicant as he has conducted himself with honesty and integrity and has been very reliable and dedicated in his work.

Mr S, who supervised Applicant from 1991 to 1995 and has known him for over ten years and who is Applicant's third-level supervisor, testified that Applicant is viewed as an honest and hard-working person; Applicant has integrity and is reliable. After he learned that Applicant has family in Israel, he concluded that relationship would have no impact on Applicant's performance nor reliability in protecting and safeguarding classified material as he has confidence in Applicant despite the higher risk. Applicant has never had any security violations. Mr. S is confident that Applicant would comply with security requirements to report any attempts to solicit information inappropriately.

Mr. C, who was the contractor's site manager and Applicant's second-level supervisor from 1998 to January 2004, testified that during that period he saw Applicant on a daily basis. Mr. C served 33 years with the U.S. Navy and nine years with the contractor and has a Secret clearance. Mr. C has himself taken annual security briefings and is aware of the DoD policy on foreign influence. He has never questioned Applicant's integrity or loyalty to the U.S. even knowing that Applicant has family in Israel. Applicant took annual compliance training and Mr. C is confident that should Applicant ever be improperly approached he would immediately report it. He promoted Applicant twice based on his performance on the job. Applicant never had a security violation.

Given his long history of responsible conduct with his employer as attested to by his managers and the government site manager, it is unlikely that he could be exploited by coercive or non-coercive means by the government in Israel in a way that could force Applicant to choose between loyalty to his mother, his sibling, and his niece and his loyalty to the United States. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).

2. On cross-examination the CDR testified he knew nothing about an incident where a DoD employee at the Pentagon had passed classified information to Israel. The CDR has the authority to bar an individual from the site and has done so when two individuals, one a contractor employee and one a government employee, left a classified document unsecured for a third time. (TR 92-96)

3. ". . . Department Counsel is not required to prove that there is a clear and present danger or imminent threat to classified information before access to classified information is denied or revoked. Nor does Department Counsel have to prove that a particular foreign country is targeting a particular applicant before access to classified information is denied or revoked." See Appeal Board Decision and Reversal Order, ISCR Case No. 02-24267 (May 24, 2005) at 6.

4. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. 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 loyalty to the person(s) involved and the United States; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.