DATE: July 19, 2005

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-10979

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Mark F. Riley, Esq.

SYNOPSIS

Applicant, a U.S. native, automatically acquired Israeli citizenship in 1971 when he was living and working in Israel. After serving six months of compulsory service in the Israel Defense Force, he returned to the U.S. permanently in 1973. Since the 1980s, he has traveled to Israel to visit his spouse's family on several occasions, using his Israeli passport in preference to his U.S. passport until January 2003. The foreign preference concerns are mitigated by his surrender of his Israeli passport and filing for renunciation of Israeli citizenship in January 2005. The foreign influence concerns presented by the Israeli citizenship and residency of his two brothers-in-law and their families and Applicant's travels to Israel for family reasons are outweighed by his significant ties to the U.S. and reputation for personal integrity and trustworthiness. Clearance is granted.

STATEMENT OF THE CASE

On May 6, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed 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. (1) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign preference (Guideline C) and foreign influence (Guideline B).

On July 2, 2004, Applicant executed an Answer to the SOR and requested a hearing should his explanations be insufficient to resolve his case favorably. The case was assigned to me on February 1, 2005, and I convened a hearing on February 18, 2005. At the hearing, the government's case consisted of five exhibits as well as the testimony of a retired Defense Security Service (DSS) special agent. (2) Fifteen Applicant exhibits were admitted and testimony was taken from Applicant, a coworker, and a neighbor on Applicant's behalf. At the government's request, I agreed to take administrative notice of a Defense Personnel Security Research Center document, *Espionage by the Numbers: A Statistical Overview*, the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic*

Collection and Industrial Espionage for 2000, two Congressional Research Service issue briefs for Congress titled *Israeli-United States Relations* (updated November 9, 2004) and *Intelligence Issues for Congress* (updated December 9, 2004), and three U.S. State Department publications: *Consular Information Sheet-Israel, the West Bank and Gaza* (January 26, 2005), *Background Note: Israel*, dated September 2004, and *Travel Warning-Israel, the West Bank and Gaza* (November 26, 2004, information current as of January 26, 2005).

FINDINGS OF FACT

DOHA alleged foreign preference concerns related to the exercise of dual citizenship (Israel and U.S.), acquisition of Israeli citizenship in 1971 as a U.S. native-born citizen, possession of an Israeli passport issued April 1996 and scheduled to expire in April 2006, use of this Israeli passport in preference to his U.S. passport to enter Israel on trips to Israel from April 1996 to March 2002, and past service in the Israeli army from November 1972 to April 1973 where he was granted a top secret security clearance. Foreign influence concerns were also alleged because his spouse has two siblings and their families who are Israeli resident citizens, and Applicant traveled to Israel seven times between April 1996 and March 2002.

Applicant admitted exercising dual citizenship through January 2003, and using his foreign passport through January 2003 based on the advice provided to him by the U.S. State Department. He indicated he formally renounced his Israeli citizenship and surrendered his foreign passport on July 1, 2004. Concerning his foreign military service, Applicant admitted he served at the rank of private in the Israeli army from November 1972 to April 1973, where his duties were to drive junior officers. Applicant admitted the Israeli citizenship and residency of his brothers-in-law and their families and his trips to Israel, but denied these foreign ties posed a risk of undue foreign influence. Applicant's admissions are incorporated as findings of fact. After thorough consideration of the evidence of record, I make the additional findings:

Applicant is a 61-year-old technical director for a defense contractor's space systems and electronics division. He holds a secret security clearance for his duties directing the development of payload electronics for national security space satellites. He has held a DoD security clearance at the level of secret or top secret since 1979 with no reported violations of security regulations, practices or procedures.

Applicant was born and raised in the U.S. After graduating from college in June 1966 having majored in chemistry and psychology, Applicant volunteered for the U.S. Peace Corps. While stationed in Nigeria, he was seriously injured in a motorcycle accident in May 1968 and airlifted for treatment to a U.S. military hospital where it was determined he had hepatitis. Following a period of recuperation in the U.S. he spent March 1969 traveling in Europe. Wanting to master the Hebrew language, he enrolled in a language school in Israel in April 1969. From September 1969 to May 1971, he lived in a kibbutz where he taught English in a high school. As required by law, he became a resident of Israel to gain employment. In about 1971, he received a letter from Israeli authorities notifying him that he had been granted Israeli citizenship automatically under Israel's Law of Return. Applicant consulted with U.S. Embassy officials about this grant of foreign citizenship and was advised that it did not affect his U.S. citizenship since he had not applied for it and had not renounced his U.S. citizenship.

In May 1971, he moved to a large Israeli city. After spending the summer with his parents in the U.S., he returned to Israel that September where he began working for an Israeli branch of a U.S. communications and electronics corporation, writing proposals in English for communications and automation equipment. While at the company, Applicant met his future spouse, an Israeli native. Applicant was also drafted into the Israel Defense Force. He reported his conscription to the U.S. Embassy and was told to follow the laws of the country in which he was residing. Due to his age, Applicant served on active duty for only six months, from November 1972 to April 1973. A private in the army, he was assigned as a driver in the research and development section at his artillery unit's headquarters, but was also asked to translate from Hebrew into English at least one document containing the research results of the Israeli artillery unit. As a result of that translation, he was submitted for an Israeli top secret security clearance, but it was not approved until after he had been discharged from active duty into the reserves and had permanently relocated to the U.S.

In late June 1973, Applicant and his spouse married in Israel. After a month, they left Israel for the U.S. where Applicant began graduate studies in September. In October 1973, Applicant was notified by the Israeli Consulate in the U.S. to report for military service with his former unit in Israel. Applicant elected to not return to Israel. For sometime

thereafter, when in Israel for family visits, he had to obtain permission from the Israeli army to exit the country.

Applicant and his spouse had two sons, born in the U.S. in November 1973 and April 1975, respectively. Applicant supported the family for the first year by teaching at a Hebrew school and then by working for an ice cream company in its local restaurants. In March 1977, he began working in the technical industry, working on proposals for space payload equipment. After his employer ceased operations, Applicant was recruited by a defense contractor for a systems engineer position in June 1979, and was granted a secret-level security clearance.[(3)]

In about 1982, Applicant and his spouse started taking their sons to Israel to visit her parents and two brothers. As an Israeli citizen, Applicant was required to enter and exit Israel on an Israeli passport.[(4)] Applicant presented his Israeli passport on most trips to Israel from February 1982 to January 2003, entering Israel on his U.S. passport on only a few occasions when his Israeli passport had expired, or he had forgotten it. Travel to countries other than Israel has been on his U.S. passport.

In October 1982, Applicant applied for a clearance upgrade to top secret for his duties with the defense contractor. On his Personnel Security Questionnaire (DD Form 49) executed on October 21, 1982, Applicant listed his military service in Israel from November 1972 to April 1973, and the Israeli residency and citizenship of his parents-in-law and brothers-in-law.

On January 17, 1983, Applicant was interviewed by a Defense Security Service (then Defense Investigative Service) special agent. Applicant discussed his ties to Israel, including his past residency and military service there. He denied any further military obligation to Israel, and maintained his loyalty was to the U.S. Applicant described his ties to Israel "had to do with health reasons, cultural enrichment, and educational refinement of his language capabilities." In October 1983, Applicant was granted his top secret security clearance.

In January 1989, Applicant started working for his current employer as a product line manager, staying on at the company through subsequent mergers/acquisitions.[(5)] His top secret clearance was transferred to this new employment. On a Personnel Security Questionnaire (DD Form 49) completed on arch 9, 1989, Applicant listed his dual citizenship with Israel "by Law of Return" and the U.S. by birth, the Israeli citizenship of his spouse, and his foreign travel, including trips to Israel in February 1982, April 1983, April 1984, and December 1987 to see family members. After a couple of years at the company, he became the director of digital processing for advanced technology and his clearance was downgraded to secret as he no longer needed access to top secret information.

In February 1992, Applicant's spouse became a naturalized U.S. citizen. In April 1996, Applicant and his spouse traveled to Israel as her father was undergoing cancer surgery. During his two-week stay, Applicant renewed his Israeli passport for another five years (to April 2001) so that he would be able to travel to Israel in the future. Applicant entered and exited Israel on that new passport during a trip in late February/early March 1997 to attend a memorial service for his mother-in-law who had died the previous month. Two weeks after he returned to the U.S., Applicant went back to Israel as his father-in-law underwent a second surgery. In May 1997, Applicant traveled to Israel for his father-in-law's funeral. In March 1998, Applicant renewed his U.S. passport, which is valid to early March 2008. In late December 1998, Applicant and his spouse went to Israel to celebrate her brother's 50th birthday. Applicant presented his Israeli passport to enter and exit Israel and his U.S. passport to exit and enter the U.S. as required by law.

In June/July 2000, Applicant and his spouse attended the Bat Mitzvah of a niece (her youngest brother's daughter) in Israel. In mid-March 2002, Applicant accompanied a Jewish friend who was dying of cancer to Israel. During their two weeks there, Applicant acted as a tour guide for this friend and friend's spouse. Applicant also briefly visited his brothers-in-laws and their families, as well as some friends. While in Israel, Applicant had his Israeli passport extended to April 2006.

Needing a top secret security clearance for his duties on a new project, Applicant executed a security clearance application (SF 86) on October 20, 2002. Applicant disclosed his and his spouse's dual citizenship with Israel and the U.S., his service in the Israeli army in 1972/73, his foreign travel, including trips to Israel for pleasure in 1996, 1997, 1998, 2000, and 2002, and his possession of an Israeli passport valid to April 2006.

In December 2002, Applicant went to Israel to attend the Bar Mitzvah of a nephew. Applicant presented his Israeli passport to enter and exit Israel as required by Israeli law.

On February 19, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS) concerning his Israeli citizenship, his service in the Israeli military, and his possession of an Israeli passport. Asserting that his primary allegiance is to the U.S., Applicant related he had no further military obligation to Israel, owned no property in Israel, had no financial interests in Israel, and never voted in Israel. He was "obligated" to renew his Israeli passport because Israel requires the use of its passport to enter and exit the country. Applicant expressed a willingness to surrender his Israeli passport and citizenship if required, adding that it would be disappointing to him not be able to visit his family in Israel. Applicant was not informed that he would be barred from holding a security clearance if he held a foreign passport.

Applicant traveled to Israel in October 2003 to attend the wedding of a niece (the eldest daughter of the older of his spouse's two brothers). Applicant entered and exited Israel on his U.S. passport because he had forgotten to bring his Israeli passport. Applicant was admonished by Israeli immigration officials that it was improper to enter Israel on his U.S. passport, but no action was taken against him.

With the issuance of the SOR in May 2004, Applicant was apprised of the DoD requirement that a foreign passport be surrendered or official approval be obtained for its use.[(6)] On July 1, 2004, with the assistance of his legal counsel, Applicant submitted his Israeli passport to the Israeli Embassy "for disposal," notifying the Israeli authority that he was voluntarily renouncing his Israeli citizenship. On July 13, 2004, the Israeli Embassy returned Applicant's Israeli passport to his counsel, and requested that he contact them. Advised by Israeli consular officials authorities that he would have to formally apply to renounce his Israeli citizenship in order to surrender his foreign passport, Applicant went in person to the Israeli Embassy to turn in his completed application of citizenship renunciation only to be told that it would have to be submitted to the Israel Consulate in his local area. While Applicant was attempting to comply with DoD requirements to surrender his foreign passport, he traveled to Israel with his spouse twice on his U.S. passport, in October 2004 and again in late December 2004, to attend the weddings of the sons of a childhood friend of his spouse. On January 14, 2005, Applicant went to the Israeli Consulate with his U.S. and Israeli passports and submitted his Israeli passport and a completed application for his renunciation of Israeli citizenship. Applicant indicated he could not have Israeli citizenship as a condition of his employment, but his spouse was not requesting to renounce her Israeli citizenship as she had no reason to. The Consulate submitted his application to the Israeli Ministry of Interior for action, which he was advised could take six to eight months.

Applicant and his spouse have lived in their present residence since June 1983, on which he owes about $150,000 in mortgage debt. Applicant is involved in his community. He has held elective office in their small town, having served five terms on the local school board and three terms as a member of the budget committee where he is currently chairman. The town moderator, also an elected official, confirms Applicant has handled his budget committee duties responsibly. Applicant has in the past coached in a local youth soccer league. He is an active member of his synagogue. Applicant owns no property in Israel, nor does he have any financial assets in Israel. He has approximately $700,000 in retirement/mutual fund/stock assets in the U.S. His spouse receives less than $1,000 US from her parents' estate in Israel, which is controlled by her brothers in Israel.

Applicant's mother, siblings, and sons are U.S. resident citizens. His father is deceased. His spouse's two brothers are resident citizens of Israel. The older of the two lives with his family in a kibbutz. Currently unemployed due to a disability, he had been employed as an export manager for an olive factory. His spouse works for a travel agency. As of July 2004, one of their four children, a 19-year-old daughter, was completing her compulsory military service in the Israeli Defense Force. Applicant and his spouse visit her brother and his family when they travel to Israel. Her brother visits them in the U.S. once every several years, usually on special occasions. Applicant's spouse converses with her brother by telephone about once weekly. Applicant speaks with his brother-in-law occasionally. The younger of her brothers is a mechanical engineer who designs and builds oil refineries. His spouse is a social worker specializing in drug rehabilitation at a local prison in Israel. They have three children who are still minors. Applicant and his spouse visit her brother and his family when they are in Israel. In 2000, her brother and his family visited them in the U.S. Applicant corresponds by electronic mail with this brother-in-law once a month and converses with him by telephone on special occasions, two or three times yearly.

Applicant has some distant cousins, all elderly, who reside in Israel. He keeps in touch with one cousin who is 84 years old and a retired graphic designer, telephoning her two to three times yearly. He sees some of his grandmother's brother's grandchildren on occasion when he is in Israel. None of these distant relatives works for the Israeli government. Applicant has become friendly with his spouse's childhood friend who works in urban redevelopment in Israel.

Applicant has held a security clearance since at least 1979 and has not violated security regulations. He is aware of, and is willing to abide by, his obligation to report his foreign travel as well as any improper foreign contacts to his employer's facility security officer. Applicant has a reputation at work for being extremely reliable, a hard worker, very trustworthy. The company's director of programs, from whom Applicant takes direction in the space business area, recommends Applicant for a position of trust. In the event undue pressure was to be placed on Applicant through his Israeli relatives, he believes Applicant would immediately inform security and management.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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.

After a thorough consideration of the record evidence, the following adjudication guidelines are pertinent to an evaluation of Applicant's suitability for continued access:

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. (E2.A3.1.1.)

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 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. (E2.A2.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines C and B:

Born and raised in the U.S., Applicant acquired Israeli citizenship in 1971 automatically under that nation's Law of Return when he changed his status from tourist to resident so that he could gain employment in Israel. As a dual citizen of Israel and the U.S. living in Israel, Applicant was advised by the U.S. Embassy that he was required to comply with

the laws of his state of residency, which included his conscription into the Israeli Defense Force and use of an Israeli passport to enter and exit Israel. From November 1972 to April 1973, Applicant served on active duty as a driver for an artillery unit where he was also tasked, albeit unofficially, with translating from Hebrew into English at least one document that was sufficiently sensitive in nature for the Israeli military to submit him for a security clearance. He also applied for and obtained an Israeli passport in about 1973. While status as a dual national is not necessarily indicative of a foreign preference,[(7)] and Applicant did not apply for his Israeli citizenship, he actively exercised his foreign citizenship by performing military service for Israel and by obtaining and using an Israeli passport, with limited exception in preference to his U.S. passport when traveling to Israel as recently as January 2003. Disqualifying conditions E2.A3.1.2.1. *The exercise of dual citizenship*, E2.A3.1.2.2. *Possession and/or use of a foreign passport*, and E2.A2.1.2.3. *Military service or a willingness to bear arms for a foreign country*, apply.

Applicant submits in mitigation of both his foreign military service and use of Israeli passport that he had no choice but to comply with these obligations of his foreign citizenship. As reported by the U.S. State Department, Israeli citizens, including dual nationals, are subject to Israeli laws requiring service in Israel's armed forces, and a failure to serve absent deferment or exemption may subject one to criminal penalties. The DOHA Appeal Board has held that the willingness to bear arms for a country "is strong evidence of a profound, deeply personal commitment to the interests and welfare of that country." *See* ISCR Case No. 00-0317, decided March 29, 2002. Certainly, where service is conscripted rather than voluntary, there may not be the same level of commitment. In Applicant's favor, he sought the advice of U.S. Embassy officials before reporting for duty and was told he had no alternative except perhaps to take the first flight out with no guarantee he would be permitted to exit the country. Fear of the consequences if he did not fulfill his mandatory military service undoubtedly was a major factor in his decision to report. His military service at age 28, some 32 years ago, does not raise the same level of concern as recent conduct indicative of foreign preference, *i.e.*, Applicant's subsequent compliance with the Israeli passport requirement.

As clarified by the ASDC3I in August 2000, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the United States.[(8)] Shortly after he was discharged from active duty, Applicant married an Israeli native and in Summer 1973, they relocated to the U.S. permanently where they have since raised two sons, established firm roots in their local community, and Applicant has contributed to the Nation's defense. Despite this conduct consistent with his U.S. citizenship, Applicant renewed his Israeli passport when in Israeli in 1996 and 2002. Necessity is not a mitigating factor.

When interviewed by a DSS agent in February 2003, Applicant expressed a willingness to renounce his foreign citizenship and relinquish his foreign passport if required. He took no action until he received the SOR, but his delay is due to his failure to understand he would have to surrender the foreign passport to retain his clearance. He testified credibly, uncontested by the government, that the DSS agent asked him if he would be willing to turn in his foreign passport, but she did not specifically inform him of the DoD requirement to either surrender it or obtain official U.S. government approval for its use. On being provided with the ASDC3I policy clarification of August 2000, Applicant sent his Israeli passport to the Israeli Embassy in July 2004, declaring at that time that he "freely and voluntarily" renounced his Israeli citizenship. While his actions at that time were not sufficient to revoke his foreign citizenship, they demonstrate his willingness to comply with DoD requirements. In January 2005, he turned in his foreign passport in person to the Israeli Embassy along with his completed application to renounce his Israeli citizenship, only to be told that he would have to turn it into the Israeli Consulate in his local area, which he has done. An expressed willingness to renounce foreign citizenship is mitigating of foreign preference concerns (*see* MC E.2.A3.1.3.4.).

Applicant has effectively alleviated the concerns underlying the possession and/or use of a foreign passport (doubts about primary allegiance and the risk of unverifiable travel) and his now dated military service for Israel. Pending the completion of his formal application to renounce Israeli citizenship, Applicant twice traveled to Israel for weddings (in October and December 2004) on his U.S. passport. There is no risk of travel on his Israeli passport where his Israeli passport has been surrendered to the Israeli Consulate. While he intends to travel to Israel in the future to see his spouse's family members, Applicant has expressed a willingness to refrain from further travel to Israel if required to maintain his clearance (Tr. 80). Applicant's preference is clearly for the U.S., where he grew up as a child and has made his home and career for the past 32 years. Favorable findings are returned with respect to ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.e. of the SOR as there is little risk, if any, that he will act in preference to Israel (or any other foreign nation for that matter) in the future.

Guideline B, foreign influence, concerns 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 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Applicant's two sons are U.S. resident citizens, as are his mother and siblings. However, Applicant's spouse is a dual citizen of the U.S. and Israel, and her two brothers and their families remain resident citizens of Israel. The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties, to a foreign country and the possible effect they may have on applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, November 21, 2002).

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. While in-law ties are not generally as strong as the bonds with one's own immediate family members, there are exceptions. Applicant's spouse has weekly telephone contact with the elder of her two brothers. Although Applicant speaks with him only occasionally, Applicant attended this brother-in-law's birthday celebration in Israel in 1998 and returned for the Bat Mitzvah of his brother-in-law's youngest daughter in 2000. In October 2003, Applicant went to Israel for the wedding of an older daughter. Applicant corresponds with his spouse's other brother by electronic mail once monthly, and traveled to Israel for a family Bar Mitzvah in December 2002. Applicant has developed personal bonds with these in-laws, as evidenced by his candid admission that he would be disappointed if he could no longer travel to Israel to see them. Disqualifying conditions 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.A2.1.2.2., *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*, apply in evaluating Applicant's security suitability.

The foreign influence concerns raised by the foreign citizenship and/or foreign residency of family members to whom one is bound by ties of affection or obligation may be mitigated where it can be determined that the relatives 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 (*see* MC E2.A2.1.3.1.). Applicant's brothers-in-law and their spouses are not agents of a foreign power and are not affiliated with the Israeli intelligence or security service. One brother-in law is no longer working due to a disability. He had worked as an export manager for an olive factory. His wife is employed by a travel agency. As of July 2004, one niece was fulfilling her compulsory military service in the Israeli army, but she was apparently no longer in the military as of Applicant's hearing.[(9)] The younger of his spouse's two brothers had served as an officer in an Israeli armor unit, but that was 25 years ago. He is a mechanical engineer who designs and builds oil refineries. His spouse is a social worker who works in drug rehabilitation at a prison.

Applicant still has the burden of demonstrating that these Israeli relatives are not in positions where they are likely to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and noncoercive means of influence being brought to bear on, or through, family members subject to the laws of a foreign nation, whether or not physically within the foreign jurisdiction. Countries that have good relations with the U.S. and respect the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses and hostility to the U.S., although the particular circumstances of each case must be taken into account. Israel is a parliamentary democracy dependent on U.S. continued recognition and financial support. Despite difficulties in U.S./Israeli relations over Palestinian and other issues, and Israeli efforts to secure U.S. economic and proprietary information, especially involving military systems, the U.S. remains committed to Israel's security, and Israel does not have a history of pressuring its citizens. There is nothing about Applicant's in-laws situations that increase their exposure or place them at a heightened risk of foreign influence.

Albeit unlikely, the risk of undue foreign influence cannot be completely ruled out as long as these foreign relatives are within the physical reach of Israeli authorities and subject to Israeli laws. Applicant has indicated that in the event of

any undue pressure or influence being brought to bear on a family member, he would immediately report the contacts to the appropriate authorities. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0511(December 19, 2000). While Applicant has not been tested in this regard, 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 (*see* E2.2.1.). The government entrusted him with classified information aware of his former military service to Israel and his dual citizenship. He was granted a secret clearance in 1979, upgraded to top secret in 1983 (later downgraded when he no longer needed that level of access), when his ties to Israel were much stronger than they are at present, and he has not violated that trust. He has since established firm roots in his community, where he has been active in local government and raised two children. The risks of undue foreign influence are considerably less with his spouse's naturalization in the U.S. and the deaths of her parents. In light of the entire record here, I am persuaded that Applicant can be counted on to continue to fulfill his security responsibilities, including reporting any attempts by foreign entities to gain influence through his Israeli relatives. SOR ¶¶ 2.a. and 2.b. are resolved in Applicant's favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

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

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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. The testimony of the government's witness was taken by telephone on agreement of the parties.

3. Applicant indicated on his October 1982 DD Form 49 that his secret-level clearance was issued by DISCO on "6/15/69." Applicant's clearance was likely granted in June 1979, as he started working for a defense contractor in June 1979, and was a tourist in Israel in 1969. Applicant testified that he may well have held his first clearance in 1977. (Tr. 102)

4. The U.S. State Department's Bureau of Consular Affairs reports that Israeli citizens, including dual nationals, must enter and depart Israel on their Israeli passports. *See Consular Information Sheet Israel, the West Bank and Gaza*, dated January 26, 2005. Applicant testified he first obtained his Israeli passport in 1973 (Tr. 69).

5. On his latest security clearance application (Ex. 4), his employment starting date is listed as January 1988. The correct starting date is January 1989 (see Answer; Ex. 3).

6. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

7. Dual citizenship is recognized by the United States. While the U.S. Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.

8. *Supra, n.*6.

9. When asked on direct examination as to the occupational pursuits of this brother-in-law's four children, Applicant responded, "the older boy is going to college, the next girl, I think is a cosmetician or training to be, the one girl is basically home waiting to go to college and the younger one is in high school." (Tr. 72)