DATE: October 14, 2004

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-11765

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Alexander M. Laughlin, Esquire

SYNOPSIS

Born in Israel, Applicant, exercised dual citizenship when he possessed and used his foreign passport after obtaining U.S. citizenship in 1987. However, he mitigated security concerns over foreign preference when he surrendered his foreign passport as required and renounced his Israeli citizenship. He is an eminent scientist with strong ties in the U.S. He has minimal ties abroad. While Applicant's mother lives in Israel and Applicant has other family ties with dual or foreign citizenship, he established that none have ties to the foreign government nor could be vulnerable to pressure. Further, Applicant credibly established that if he were ever approached by anyone seeking classified information, he would report such a contact or threat to the responsible security official or to the FBI. Applicant has mitigated the security concerns under Guidelines C and B. Clearance is granted.

STATEMENT OF THE CASE

On November 18, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline C (Foreign Preference)and Guideline B (Foreign Influence). The SOR[(1)] informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. On December 22, 2003, Applicant answered the SOR (Answer) and requested a hearing.

The case was assigned to me on April 26, 2004. On April 27, 2004, Applicant advised Department Counsel that he would be available for a hearing on May 26, 2004. Subsequently on May 5, 2004, DOHA issued a Notice of Hearing and set this case to be heard on May 26, 2004 in a city near where Applicant lives and works. Applicant then retained counsel who on May 10, 2004, filed a Motion to Continue and Relocate Venue of Hearing which was denied as good cause was not shown.

At the hearing the government presented two exhibits (Exhibits1 and 2) which were admitted into evidence without objection. (TR 15-16) As Applicant's counsel did not object, I granted Department Counsel's request that I take

administrative notice of the information contained in Exhibits I-V. (TR 12-15) Applicant presented six exhibits (Exhibits A through F), which were admitted without objection. Applicant also testified in his own behalf. DOHA received the transcript (TR) on June 7, 2004.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

In December 2000 Applicant, age 60, was hired as a consultant to a non-profit corporation (Corporation #1) in State #1. He has been a professor at a university in State #2 from 1977 to present. He also is self-employed as the Chief Executive Officer in his own company (Corporation #2) in State #2 from 1997 to present. He completed a Security Clearance Application in February 2001 to work as a consultant for Corporation #1. (Exhibit 1; Exhibits C, D; TR 19-22, 30-35; 90-93)

Guideline C - Foreign Preference

Applicant, a citizen of the Israel by his birth there in 1943, first came to the United States (U.S.) in 1966 for graduate school. He received a Ph.D. in May 1970 from a university in State #1. He then returned to Israel to finish his required military service. During his compulsory military service in Israel, Applicant was the deputy head of a delegation to an armistice commission with Syria and Lebanon from 1962-63; he also worked in the Israel foreign office from 1964-65 sporadically. In 1971 he served in the office of the spokesman of the Israel Defense Force. Overall he worked for the Government of Israel from 1961 to 1971, but he had these assignments before he became a U.S. citizen in 1987. (Answer; Exhibits 1, 2; TR 19-20, 53-58, 79-80) Applicant no longer has any contact with his colleagues from the Israeli military and diplomatic service and is not entitled to benefits from this compulsory military service. (TR 58)

Applicant returned to the U.S. for post-doctoral studies in 1971-73 at a university in State #3. He returned to Israel in 1970 and again in1973 to be a university professor. In 1976 he went to Canada to do research at a university there and in January 1977 he come to the U.S. permanently on a visitor visa. After he became an employee at a state university in State #2, he applied for and was granted permanent residence. He became a naturalized citizen of the United States in January 1987. (Exhibits 1, 2; TR 20-21; 25-26)

Applicant has received many awards based on academic merit, including a Guggenheim award in 1984 for scholars in the arts and sciences. Also, he has published over 100 articles from 1969 to today. One of his papers was designated as "one of the 53 most influential papers in the 20th century" in his field. (Exhibit C; TR 26-29) He has two U.S. patents. (TR 32-33)

Except for travel to Israel, Applicant has traveled exclusively on his U.S. passport. His current U.S. passport was issued in 1998 and expires in June 2008. In a Defense Security Service (DSS) interview in April 2003, Applicant stated he was willing to renounce his Israeli citizenship and relinquish his passport if required to do so for access to classified information. He has no financial interests in Israel and gets no benefits from Israel. He has never voted in Israel. His loyalties lie with the U.S., his adopted country, and the country of citizenship of his children. (Answer; Exhibits 1, 2; TR 52-53, 58-63) Since he became a U.S. citizen, Applicant has never voted in an Israeli election and has no financial interests or benefits from Israel. All of his financial interests are in the U.S. (TR 67-69)

Neither the Corporate #1 security advisor in 2001 nor the DSS agent in 2003 advised Applicant that he must take steps to surrender his Israeli passport as a condition to getting his security clearance. Therefore, he had the impression that he would at some point be asked to surrender his passport. Applicant received a copy of the DoD policy statement on the need to surrender his foreign passport (the "Money Memorandum"[(2)]

) with his Statement of Reasons in November 2003. However, he did not understand the correct procedures until he retained counsel in April 2004 before his security clearance hearing. (TR 63-64, 84-85; 89-90) Once he understood the security requirements, Applicant took immediate steps to renounce his Israeli citizenship in May 2004. (TR 81-82, 85)

Before Applicant began the process to renounce his citizenship in Israel in May 2004, he was required by Israeli law to

use his Israeli passport when traveling to Israel for personal and business reasons. He did so on numerous occasions since 1987, including three times in 2003. His Israeli passport was issued in February 1999 and was to expire in June 2005. Applicant requested the Consulate General of Israel cancel his Israeli passport in May 2004; the consul provided a letter apprising that Applicant is in the process of renouncing his Israeli citizenship and that they cancelled his passport in May 2004. (Exhibits 1, 2; Exhibit F; TR 52-53, 59-60, 63-69; Exhibit I; TR 70-71, 79-81; 86-87)

Guideline B - Foreign Influence

Applicant has been married four times. His first marriage was from 1964-66 in Israel. His second marriage was from 1967 to 1979 in the U.S. to a citizen of Israel. His third marriage from 1972 to 1989 was in the U.S. to a citizen of the U.S., U.K. and Israel. His current marriage took place in 1989 in the U.S. to a dual citizen of the U.S. and Poland; she became a naturalized U. S. Citizen in 1996. She has no property or investments in Poland.

Applicant's wife has two children, ages 28 and 27; her daughter is a citizen of the U.S., France, and Poland; her son is a citizen of France and Poland who lives in the U.S. Applicant's wife and her children have no ties to foreign governments.

Applicant and his wife have two children, ages 15 and 11 who are U.S. citizens. Applicant has two children from a previous marriage, ages 20 and 25. The elder daughter is a dual citizen of the U.S. and Israel; while she was studying for a Ph.D., she spent research time in France in 2003. She now lives in the U.S. His eldest son is U.S. citizen. (Exhibits 1, 2; TR 36-44; 71-73, 78-79; 86)

Applicant has a 92-year-old mother who is a historian who taught at the university and is now retired and lives in Israel. She never worked for the government of Israel. One of her publications was widely read and honored. Applicant offered his views that she would not be in a position to be exploited by a foreign power. She is not financially dependent on Applicant as he gets retirement funds from her husband's pension. Her husband who died in 1974 had worked for the Israeli government; at one point he was attached to General Eisenhower's headquarters and given the rank of colonel in the U.S. Army.

(Exhibits 1, 2; Exhibit E; TR 46-52; 74-78, 82-83; 87-89)

Applicant's wife has parents who live in and are citizens of Poland; both are retired from teaching careers; his father-in-law serves as a dean at a university. They have no current involvement with the government of Poland. They are not financially dependent on Applicant. His wife last visited her parents in 2003. He last visited them in 1995. (TR 44-45; 73-74, 83-84)

Applicant stated that if he were ever approached by anyone seeking information on his classified work, he would report such a contact or threat to the responsible corporate security official or to the FBI. (TR 69)

References

The senior scientist at Corporation #1 recommended that Applicant's security clearance be granted. He has known Applicant for ten years and has worked with him closely on scientific matters since 1998. Applicant has worked for Corporation #1 under this scientist's supervision since January 2001 to present. This official stated that Applicant has demonstrated an excellent work ethic; he has exhibited the highest moral character and integrity. He stated he not observed any conduct or heard Applicant make any statements that would cause him to question Applicant's allegiance to the U.S. or to prefer another government over that of the U.S. He described Applicant as an valuable asset to the United States because of his expertise. (Exhibit D; TR 35-36)

The chair of Applicant's university department provided a letter of reference as he has known Applicant for twenty years. This professor commended Applicant's "excellent work ethic" and observed he is a "highly professional and honest person" who has always exhibited the highest moral character and integrity. He stated that Applicant meticulously performs his duties as a professor and is internationally respected in his field. Applicant has published over 100 articles. The department chair concluded that he had "not observed any conduct or heard him make any statements" that would cause him to question Applicant's allegiance to the U.S. or to prefer another government over that of the U.S.

He described Applicant as an "invaluable asset to the United States"; he highly recommended Applicant be granted a clearance. (Exhibit A; TR 22-23)

The chair of an academic department at another university has known Applicant for thirty years provided a letter of reference and confirmed that Applicant is an internationally respected scientist who has published over 100 scholarly articles. He stated that he had "never observed any conduct or heard him make any statements" that would cause him to question Applicant's allegiance to the U.S. He described Applicant as a "major asset" to the United States" and recommended Applicant be granted a clearance. (Exhibit B; TR 24-25)

POLICIES

The Directive sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

Guideline C - Foreign Preference

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include:

(1) The exercise of dual citizenship;

(2) Possession and/or use of a foreign passport[(3)];

Conditions that could mitigate security concerns include:

(2) Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(4) Individual has expressed a willingness to renounce dual citizenship.

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.

Conditions that could raise a security concern and may be disqualifying include:

(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

Conditions that could mitigate security concerns include:

(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;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

Burden of Proof

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.

CONCLUSIONS

Guideline C (Foreign Preference)

The Government concedes that Applicant is a renown academic, but raised a security concern over any of his acts which indicate a preference for a foreign country over the United States as he may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government established its case that Applicant exercised his Israeli citizenship and continued to possess his foreign passport after he became a naturalized U.S. citizen as he used his Israeli passport exclusively for travel to Israel. Under DC 1 and DC 2 this disqualifying conduct indicated a preference for his status as an Israeli citizen over his status as an U.S citizen. The possession of a foreign passport could allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls which raises concerns when someone has access to U.S. classified information. Further, the Government established through the documents they submitted for administrative notice (ON I-V) that even governments that are allies of the U.S. will not have identical interests of vital matters.

Balanced against security concerns over Applicant's previous disqualifying conduct is the fact that many of the indicators of possible foreign preference (e.g., his foreign military service) occurred before he obtained United States citizenship in 1987. Thus, MC 2 applies. With respect to his dual citizenship, initially, Applicant was unsure how to proceed to comply with the security requirements of the OASDC3I memorandum of August 16, 2000. Neither his corporate security official nor the DSS agent advised him of the required procedures to surrender his passport. Once Applicant understand the U.S. security concerns over his retaining his foreign citizenship, he expressed his willingness to surrender his passport. Finally, he began the steps to renounce his Israeli citizenship in May 2004. At the same time he returned his foreign passport to the issuing authority which cancelled it. Thus, MC 4 applies because he took required steps to renounce his foreign citizenship. His having turned in his foreign passport to be cancelled complies with the steps required by the OASDC3I memorandum of August 16, 2000. While Applicant's surrender of his passport is not alone dispositive of whether he Guideline C should be mitigated, his actions lend credence to his position that he does not prefer interests of another country over those of the U.S.

Adding to the significance of his own mitigating acts is the high praise for Applicant from highly placed scientists. The senior scientist at Corporation #1 recommended that Applicant's security clearance be granted as Applicant has the highest moral character and integrity. He stated he not observed any conduct or heard Applicant make any statements that would cause him to question Applicant's allegiance to the U.S. or to prefer another government over that of the U.S. In addition, the chair of Applicant's university department who has known Applicant for twenty years commended Applicant's "excellent work ethic" and observed he is internationally respected in his field and an "invaluable asset to the United States"; he highly recommended Applicant be granted a clearance. Further, the chair of an academic

department at another distinguished university who has know Applicant for thirty years confirmed that Applicant is an internationally respected scientist who has never made any statements" that would cause him to question Applicant's allegiance to the U.S. He described Applicant as a "major asset" to the United States" and recommended Applicant be granted a clearance.

Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's disqualifying conduct was not undertaken in such a way as to establish his preference for a foreign country over the U.S. Additionally, considering the totality of the evidence, I conclude that there is little, if any, probability Applicant will someday reacquire his Israeli passport and use it instead of his U.S. passport. Applicant has lived and worked in this country continuously since 1977 and has done important scientific work. All of his financial assets and his immediate family are in the U.S. He has demonstrated a strong preference for the U.S. over any other foreign nation by giving up his Israeli citizenship even though he has an elderly mother who remains in Israel. I conclude Guideline C for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 1.a. through 1.f. of the SOR.

Guideline B (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. The government has established that Applicant's mother is an immediate family member who is a citizen of a foreign country and resident in another foreign country. As it is within the realm of possibility that the Israeli government might coerce his mother to leverage Applicant's access to classified information to its benefit, Disqualifying Condition (DC) 1 applies. The government urges that Applicant is at risk of compromising classified information because his mother's presence in Israel may be used to coerce Applicant into acting contrary to U.S. national interests even though Israel is a long-term ally of the U.S. and the presence of his wife's family in Poland could present similar risks.

On the other hand no evidence suggests that Applicant's wife who is a resident of the U.S. and a dual citizen of the U.S. and Poland is an agent of the government of Poland or in a position to be exploited by a foreign power. Neither do her parents who live in Poland or her children who are citizens of Poland but live in the U.S. have any ties to the government of Poland nor in a position to be exploited by a foreign power. In addition, there is no evidence that Applicant's mother who is a resident of and citizen of Israel is an agent of the Israeli government and could be pressured by them or be exploited by this foreign power. Applicant's mother is 92, retired from an academic position, and a highly respected scholar. While he has high regard for his mother, she is not dependent on Applicant for her support. While he has concerns for her, he demonstrated he made the security interests of the U.S. a higher priority when he took steps to renounce his passport and cancel his passport as discussed above. In addition, his eldest daughter is a dual citizen of the U.S. and Israel who lives in the U.S.; while she did graduate work in France, there is no evidence that she is an agent of the Israeli government or in a position to be exploited by a foreign power. While there is no denying the fact of their family ties, their relationship is not such that it might be leveraged by a foreign entity as contemplated by Guideline B. Nor is there any substantial likelihood that they would exercise foreign influence over Applicant.

Merely because of these family ties Applicant is not vulnerable to duress. Given his history of responsible conduct, it is improbable that any of his family members would create a situation that could result in the compromise of classified information. Applicant has had ties to the U.S. over a long period of time; thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Applicant persuasively declared that if he were ever approached by anyone seeking information on his classified work, he would report such a contact or threat to the responsible corporate security official or to the FBI. His long history of responsible conduct in his academic positions as attested to by his references support this conclusion.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. In light of the available information regarding Applicant's and his wife's foreign family ties and their relationship, Mitigating Condition (MC) MC 1 and MC 3 apply. On balance, I resolve Guideline B for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 2.a. through 2.e. of the SOR.

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. Foreign Preference (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

Subparagraph 1.f: For the Applicant

Paragraph 2. Foreign Influence (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

Subparagraph 2.e: 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. On August 16, 2000, then-Assistant Secretary of Defense for Command, Control, Communications and Intelligence, Arthur L. Money, issued clarifying guidance in what has come to be known as the "Money Memo." That guidance stated that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport...".

3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . . ." The DoD August 16, 2000, Policy Clarification Memorandum stated, in 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 mitigation factor addresses the official approval of the United States Government for the possession or use. **** 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 State Government."