

DATE: October 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15485

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Born in Israel, Applicant, exercised dual citizenship when he possessed and used a foreign passport after obtaining U.S. citizenship in 1988. When he surrendered his foreign passport as required and renounced his Israeli citizenship, he mitigated security concerns. He has had a security clearance since 1987 without incident. He has strong ties in the U.S. and minimal ties abroad. While Applicant's mother, brother and sister live in Israel and Applicant has other family ties with dual citizenship, no one in his family has ties to a foreign government nor seem vulnerable to pressure. Applicant established that if he were ever approached by anyone seeking classified information, he would report such a contact or threat to a responsible security official. 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. Applicant requested an extension to respond which was granted until January 23, 2004. On January 19, 2004, 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 27, 2004. Subsequently on May 5, 2004, DOHA issued a Notice of Hearing and set this case to be heard on May 27, 2004 in a city near where Applicant lives and works. At the hearing the government presented three exhibits (Exhibits 1-3) which were admitted into evidence without objection. As Applicant did not object, I also granted Department Counsel's request that I take administrative notice of the information contained in Exhibits I-V. (TR 16-19)

Applicant presented two exhibits (Exhibits A and B), which were admitted without objection. Applicant also testified in his own behalf. Department Counsel did not object to my leaving the record open until June 10, 2004, so that Applicant could submit additional evidence. Department Counsel was granted until June 15, 2004, to review the evidence and provide his comments. (TR 12-13) However, additional time was requested and granted. Applicant submitted his additional evidence on June 2, 2004 (Exhibit C) and on June 18, 2004 (Exhibit D); Department Counsel had no objection to the admission into evidence of these exhibits. Exhibits C & D were admitted into evidence; and the record closed on June 19, 2004. 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:

Applicant, age 52, was hired at his corporation (Corporation #1) in State #1 in 1985 and has worked there until the present. He was granted a Secret security clearance in September 1987. He was promoted several times and now serves in a senior position. He completed a Security Clearance Application in November 1999. Applicant has a B.S.E.E. degree in June 1978 from a university in State #1 and an MBA from a university in State #1 which was granted in June 1982. (Exhibits 1, 2; TR 13-14, 25-26; 30, 40-41)

#### **Guideline C - Foreign Preference**

Applicant, a citizen of the Israel by his birth there in 1952, first came to the U.S. as a student in June 1976. After he graduated in June 1978 he worked for El-Al Israeli airlines as a security guard. After he got the proper U.S. visa he got a job with Corporation #2 in his field in 1978. He joined Corporation #1 initially in June 1981 and worked there until June 1983 when he returned to Israel to work for Corporation #3 until 1985 when he was recruited by Corporation #1 to return to the U.S. Applicant and his family made a conscious decision in 1985 to live in the U.S. He became a naturalized citizen of the United States in December 1986 and obtained a U.S. passport in January 1987; he renewed his U.S. passport in 1997. (Answer; Exhibits 1, 2, 3; TR 13-14, 25-26; 30-31, 42-45)

Applicant fully disclosed his dual citizenship in his initial Defense Security Service (DSS) interview in February 1987 and again in February 2001. He also disclosed his past military service in the Israeli Air Force from 1972-1976. In 2001 he stated he had no further reserve military obligation<sup>(2)</sup> to the Israeli Air Force. While initially he stated he would bear arms for the U.S. against any country except Israel and in the "unlikely event" of a US/Israeli confrontation he would take no measure to harm the U.S. and would remain neutral, he later revised his views. In January 2004 he declared that in the unlikely event of a war between Israel and the U.S. he would support the US and if required he would bear arms against any country, including Israel. He maintains no contact with members of any foreign government. He unequivocally stated he would report any attempts to attain classified information to the proper U.S. law enforcement authorities. He has no benefits from the State of Israel and has never voted in Israel since he has been a U.S. citizen. (Answer; Exhibits 1, 2, 3; TR 38-39, 41) All of his property and bank accounts are in the U.S. (Answer; TR 14) He has no business relationships with any companies in Israel. (TR 43)

Applicant maintained his Israeli citizenship since he believed initially that once born in Israel he was always a citizen. Because of his birth in Israel he was required to possess an Israel passport to enter or leave the country. (Answer; Exhibits 1, 2; TR 44) He only used his Israeli passport for travel to Israel; otherwise he used his U.S. passport. (TR 28) He believed that both the U.S. and Israel allowed citizens to hold dual citizenship, but stated in January 2004 that should "new regulations be put into effect," he would follow them and give up his Israel citizenship. He had an Israel passport that was to expire in July 2006; he renewed his Israeli passport after becoming a U.S. citizen as required by Israel law and used his Israeli passport to enter and exit Israel. (Answer)

While Applicant received a copy of the DoD policy statement on the need to surrender his foreign passport (the "Money Memorandum"<sup>(3)</sup>) with his Statement of Reasons in November 2003, he did not understand the correct procedures to surrender his Israeli passport until May 2004 when he spoke with Department Counsel in preparation for the hearing. Once he understood the requirement, he declared he would surrender his Israeli passport and renounce his Israeli citizenship to maintain his security clearance: he took initial steps in May 2004 and surrendered his Israeli passport in June 2004. Applicant requested the Consulate General of Israel cancel his Israeli passport in June 2004. He initiated the steps to renounce his Israeli citizenship. The consul provided a letter apprising that Applicant is in the process of renouncing his Israeli citizenship. (TR 15, 27-30; 47-48; Exhibits

C, D)

### **Guideline B - Foreign Influence**

Applicant married his wife in Israel in September 1978. She is a dual citizen of the U.S. and Israel. They have two children who also are dual citizens of the U.S. and Israel: one was born in the U.S. in 1980 and the second was born in Israel in 1984; he became a naturalized U.S. citizen in 1991. As long as his son lives in the U.S. and does not remain in Israel for more than three months per year, he will not have to serve in the Israeli armed forces. (Exhibits 1, 2; TR 13; 26, 36-37, 45-46)

Applicant has traveled to Israel about once a year to visit his family and contacts his mother, brother and sister about twice a month by telephone. His mother previously worked as a secretary in a medical center; she now is 78 years old and not currently employed. His sister is 38 and is employed as a teacher; her husband is self-employed. His brother is 49 and is self-employed. They are citizens of and residents of Israel with no ties to the government. To the best of Applicant's knowledge none of his family members are associates or agents of a foreign power or in a position to be exploited by a foreign power in a way that could force him to chose between loyalty to them and the US. (Answer; Exhibits 1, 2; TR 14, 27; 31-38) Applicant provides no financial support to his family in Israel. (TR 41)

Applicant has maintained his Secret Clearance granted in 1987 for 17 years; and he has never violated or jeopardize any of the guidelines with respect to classified material. He could not perform his work without access to classified information. (Answer; TR 14, 27)

### **References**

A vice-president at Corporation #1 who has known Applicant for 13 years recommended that Applicant's security clearance be granted. This official stated that Applicant has demonstrated excellent character, professionalism, and patriotism. He has been a valuable and dependable employee and is well respected. This official has 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. (Exhibit A)

Another vice-president at Corporation #1 who has known Applicant for 12 years recommended that Applicant's security clearance be granted. He commended Applicant as "a competent technical resource and an individual of the highest principles and integrity." (Exhibit B)

### **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<sup>(4)</sup>;

**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 raised a security concern over any of Appellant's 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. may not have identical interests on 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 to his previous foreign military service. While he at once point expressed reservation about his willingness to bear arms for the U.S. against Israel, he has reconsidered that earlier position and reversed it in a manner that I found credible. With respect to his dual citizenship, Applicant had a

security clearance that he held without incident for 13 years before the Money memorandum was issued in August 16, 2000.

Applicant was notified of the policy with the issuance of his SOR in November 2003. Initially, he was unsure how to proceed to comply with these security requirements. Once Applicant understood the U.S. security concerns over his retaining his foreign citizenship, he expressed his willingness to surrender his passport and began the steps to renounce his Israeli citizenship; in June 2004 he returned his foreign passport to the issuing authority to cancel it. Thus, MC 4 applies because he took required steps to renounce his foreign citizenship. Having turned in his foreign passport to be cancelled complies with the steps required by the Money 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. Additionally, 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. 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. Applicant has lived and worked in this country continuously since 1985 and has had a U.S. security clearance since 1987. All of his financial assets and his immediate family are in the U.S.

Adding to the significance of his own mitigating acts is the high praise for Applicant from two highly placed officials at his corporation who recommend his security clearance be maintained and not revoked because of the excellence of his character and his performance. For example, one vice-president at Corporation #1 recommended that Applicant's security clearance be granted as he has 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.

Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's conduct was not undertaken in such a way as to establish his preference for a foreign country over the U.S. I conclude Guideline C for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 1.a. through 1.h. 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, brother and sister are immediate family members who are citizens of a foreign country and reside in a foreign country. As it is within the realm of possibility that the Israeli government might coerce these family members 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 the presence of family members in Israel may be used to coerce Applicant into acting contrary to U.S. national interests even though Israel has been a long-term ally of the U.S. with substantial annual direct aid. The government also raises concerns over Applicant's wife and children who are dual citizens, even though they reside in the U.S., could present similar risks.

On the other hand no evidence suggests that Applicant's wife and his children who are residents of the U.S. and a dual citizen of the U.S. and Israel are in a position to be exploited by a foreign power. In addition, there is no evidence that Applicant's mother, brother and sister who are residents of and citizens of Israel are agents of the Israeli government and could be pressured by them or be exploited by this foreign power. Applicant's mother is elderly and retired from a non-governmental position; 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. Similarly, neither his sister nor his brother work for the government. 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.

Therefore, I conclude Applicant is not vulnerable to duress merely because of these family ties as he has a long history of responsible conduct having had a security clearance since 1987. It is improbable that any of his family members would create a situation that could result in the compromise of classified information, as 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 a responsible security official. Company officials attest to his long history of responsible conduct in his long tenure with the company.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, 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

Subparagraph 1.g: For the Applicant

Subparagraph 1.h.: 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. In 1987 he had stated to DSS he had an reserve military obligation to Israel until the age of 55; in his Answer he clarified that the reserve obligation was only until he was 45 years of age. (Answer; TR 40)
3. On August 16, 2000, then-Assistant Secretary of Defense for Command, Control, Communications and Intelligence, Arthur L. Money, issued clarifying guidance (the "Money Memo") stating that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport."

4. The "Money Memo" became DoD policy to clarify Guideline C in August 2000 and required "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . . ." The 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."