

KEYWORD: Foreign Influence Foreign Preference

DIGEST: This 61-year-old engineer was born in another Middle Eastern country and moved to Israel with his family at age 7. In 1974, he came to the U.S. to continue his studies, began work as an engineer, and has been here ever since. He became a U.S. citizen in 1980, married, and had a daughter. Since becoming a citizen, he has used his U.S. passport for all purposes except for one occasion in 1998, when he had to obtain an Israeli passport to gain entry to that country with his family. The one year passport is long expired. He has had minimal contacts with his family 7for half a century. He has no economic or other ties to Israel and views himself only as an American. There is minimal risk of his being approached by any of them to act improperly. He strongly avers he would report any improper contact. Mitigation has been established. Clearance is granted.

CASENO: 03-18273.h1

DATE: 03/24/2005

DATE: March 24, 2005

---

In Re:

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

Applicant for Security Clearance

---

ISCR Case No. 03-18273

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

## **FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

This 61-year-old engineer was born in another Middle Eastern country and moved to Israel with his family at age 7. In 1974, he came to the U.S. to continue his studies, began work as an engineer, and has been here ever since. He became a U.S. citizen in 1980, married, and had a daughter. Since becoming a citizen, he has used his U.S. passport for all purposes except for one occasion in 1998, when he had to obtain an Israeli passport to gain entry to that country with his family. The one year passport is long expired. He has had minimal contacts with his family for half a century. He has no economic or other ties to Israel and views himself only as an American. There is minimal risk of his being approached by any of them to act improperly. He strongly avers he would report any improper contact. Mitigation has been established. Clearance is granted.

## **STATEMENT OF THE CASE**

On November 16, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 30, 2004, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on January 03, 2005. On January 14, 2005, a Notice of Hearing was issued, setting the hearing for January 31, 2005. At the hearing, the Government did not present any witnesses but offered six exhibits, which were marked for identification as Government Exhibit (GX) 1-6. Applicant testified and offered two exhibits, which were marked as Applicant's Exhibits (AX) A and B. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on February 11, 2005.

## **FINDINGS OF FACT**

Applicant is 61 years old. He was born in Iraq in 1943, and moved to Israel, at age 7, with his family to Israel. He left Israel in 1974 to continue his studies in the United States and has resided here ever since. He became a naturalized U.S. citizen in 1980. He obtained a U.S. passport and last had it renewed it 1992. He married his wife in 1985 and she became a U.S citizen in that year. They have a daughter who is American by birth and who has always resided here. He does not feel close to his relatives in Israel and has minimal contact. He has no financial or other ties to Israel (Tr at 23).

The SOR contains five allegations, 1.a. - 1.e., under Guideline B (Foreign Influence) and three allegations, 2.a. - 2.c., under Guideline C (Foreign Preference). Applicant admits the factual bases of all the allegations and adds explanations. Applicant's admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

### *Guideline B (Foreign Influence)*

1.a. - Applicant's two brothers are citizens of Israel and currently reside in that country;

1.b. - Applicant's four sisters are citizens of Israel and currently reside in that country;

Applicant has had minimal contact with his siblings since they were separated more than 50 years ago, when the family was split up upon arrival and he was sent to live on a kibbutz in another part of Israel. His attempts to reestablish contact with his family were unsuccessful, which was one reason he decided to leave the country and break off any contact (Tr at 18). He did not even learn about the death of his parents until long after the fact, when his wife tried to establish contact with one of Applicant's brothers, about 10 years ago. Applicant has no plans to contact his siblings (GX 2, Tr at 18).

1.c. -Applicant's mother-in-law, father-in-law, sister-in-law, and brother-in-law are citizens of Israel and currently reside in that country. Applicant has only known them for about 15 years,

He has seen them in Israel only once, in 1998, and the contact was minimal (Tr at 17).

1.d. - Applicant traveled to Israel in 1998, his only trip there since leaving 25 years earlier.

1.e. - The information set forth in subparagraph 2.b., below.

#### *Guideline C (Foreign Preference)*

2.a. - Applicant applied for and received an Israeli passport on June 17, 1998, even though he became a naturalized U.S. citizen on April 25, 1980, and he had a valid U.S. passport issued on March 5, 1992;

2.b. - Applicant used his Israeli passport to enter and leave Israel between July 19, 1998 and July 31, 1998. Applicant obtained an Israeli passport when he agreed to visit Israel to visit his wife's parents. Although he considered himself to be only a U.S. citizen, he decided to obtain an Israeli passport so that he could travel with his wife, who already had one. His passport was good for only one year and expired in 1999 (GX 3). He has no intention of ever renewing it and he has notified Israeli authorities of his intention to formally renounce Israeli citizenship (GX 4, AX A and AX B).

Applicant actually had to register his US.-born daughter as an Israeli citizen in 2003, so that he could waive his Israeli citizenship. He believed he had no opinion if he were to accompany his wife and bring her daughter (AX B and Tr at 18, 20). He has now learned he can terminate his Israeli citizenship and has taken the necessary steps to do so (Tr 18-21). Israel approved the revocation as of February 3, 2004.

2.c. - Applicant served in the Israeli Army. That was from 1960 to 1974, when he left Israel for the U.S., and six years before he became an American citizen.

### **POLICIES**

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## **CONCLUSIONS**

As with all DOHA decisions, the facts and circumstances, as applied to the two Guidelines, determine the outcome. The literal language of the eight suballegations are clearly supported by the evidence of record. It is not clear however, that the Government's evidence establishes that Applicant is currently ineligible to hold a security clearance.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk.

The weight of the evidence indicates that Applicant's ties to and connections with Israel are restricted to those with his family members and those of his wife. The evidence also indicates that those ties are casual (i.e., not close emotionally) and infrequent to the point of being almost nonexistent over half a century as to his family and at least 15 years as to his wife's family.

The Government has shown that Israel is considered to an active collector of classified information in the United States (GX 5, GX 6, and GX 7), but those exhibits do not suggest that duress is used as a tool to obtain such information. In context I conclude there is minimal risk that

Applicant's relatives in Israel are likely to be subjected to duress, or that they would respond to any such duress by applying pressure on Applicant. Although the absence of any such undue contacts over the past decades is not evidence it will never occur, it is nonetheless a positive factor that should be considered along with all other evidence.

Guideline C (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.

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

1. the exercise of dual citizenship;
2. possession of a foreign passport;

Conditions that may be mitigating include:

1. dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- d
2. indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining U.S. citizenship.
4. individual has expressed a willingness to renounce that citizenship.

SOR 2.a and 2.b. - Applicant's obtaining of an Israeli passport in 1998, viewed in context, does not suggest a preference for Israel over the United States. As he explains it, he was going at his wife's request to visit her parents and since he was considered by Israel to be one of their citizens as well, he needed an Israeli passport to enter and leave that country. The passport expired after one year and has never been renewed. Finally, Applicant has formally renounced his Israeli citizenship and the renunciation has been approved by the Israeli government.

SOR 2.c. - Disqualifying Condition (DC) 1 and 2 apply as to the 1998 incident in which he obtained an Israeli passport for use on one occasion, and under unusual circumstances. Mitigating Condition (MC) 1 applies in that he obtained his Israeli citizenship as a child because of the actions of his parents in moving to Israel from Iraq. MC 2 applies in that his military service occurred before he emigrated here and became a U.S. citizen. MC 4 applies in that Applicant has renounced his foreign citizenship.

As indicated, his service in the Israeli military occurred long before he became an American citizen, so such service cannot logically be viewed as expressing a preference for Israel over the United States. In addition, Applicant refused both a commission and further service in the Israeli military after emigrating to the U.S. The record suggests a clean emotional break with Israel after Applicant moved to America and became a citizen. His life in the United States over the past 30 years indicates a history of commitment to and an unequivocal preference for, his adopted land. I conclude he would act appropriately to protect classified information and material and report any improper contact from any source.

### **FORMAL FINDINGS**

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

#### Guideline B (Foreign Influence) 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

#### Guideline C (Foreign Preference) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant.

Subparagraph 2.c. 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.

Barry M. Sax  
Administrative Judge