

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, an Israeli born, former dual citizen of Israel and the United States, has fulfilled the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, (Money Memorandum) by returning his Israeli passport to the Israeli Government. Additionally, he has renounced his Israeli citizenship. Neither Applicant's wife and children, who are dual United States and Israeli citizens, nor his family members, who are citizens and residents of Israel, are in a position to be exploited by Israel in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

CASENO: 03-18806.h1

DATE: 04/27/2005

DATE: April 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18806

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, an Israeli born, former dual citizen of Israel and the United States, has fulfilled the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, (Money Memorandum) by returning his Israeli passport to the Israeli Government. Additionally, he has renounced his Israeli citizenship. Neither Applicant's wife and children, who are dual United States and Israeli citizens, nor his family members, who are citizens and residents of Israel, are in a position to be exploited by Israel in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted. **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to 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), issued a Statement of Reasons (SOR), dated December 15, 2004, to the Applicant which 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on Foreign Preference (Guideline C) related to his exercise of dual citizenship with the United States and Israel and Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant, acting *pro se*, filed a notarized response, dated December 27, 2004, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On January 31, 2005, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated March 3, 2005, a hearing was held on March 23, 2005.

At the hearing, Department Counsel offered 10 documentary exhibits (Exhibits 1 - 10) and no witnesses were called.

Applicant offered two documentary exhibits (Exhibits A and B) and offered his own testimony. The transcript (Tr) was received on April 4, 2005.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. The SOR contains one allegation, 1.a., under Guideline C, and seven allegations, 2.a. through 2.g., under Guideline B. Applicant admitted all of the SOR allegations except 1.a.. Those admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the documents, and upon due consideration of that evidence, I make the additional Findings of Fact:

Applicant is 56 years old and is employed as a Senior Software Engineer by a United States defense contractor, which seeks a security clearance on his behalf.

Applicant was born in Israel. He moved to the United States in 1976, and became a United States citizen in 1987. He is married and has two children. He received a Master of Science Degree in Control Systems in 1981 and a Juris Doctor Degree in 1997, both from United States universities.

Applicant's mother and sister both live in the United States (Tr 41 and 42).

#### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Despite the fact that Applicant became a United States citizen in 1987, he continued to possess an Israeli passport as of April 2004, which was not scheduled to expire until June 25, 2005. Applicant used this passport to enter and exit Israel (Exhibit 5).

In April 2004, Applicant sent to the Israeli Consulate Office a letter in which he renounced his Israeli citizenship, which was accepted in Israel in June 2004 (Exhibits 6 and 7). He also revoked his Israeli passport (Tr at 43-44).

### **Paragraph 2 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's wife was born in Israel. She now resides in the United States and is a dual citizen of Israel and the United States. Applicant and his wife have two children. They were born in Israel and are dual citizens of Israel and the United States. They reside in the United States.

Applicant's brother, father-in-law, and two sisters-in-law are residents and citizens of Israel. None of these family members belong to, participate in, or are active with any national government agency of Israel (Tr at 37-39). Applicant speaks to his brother two times a year and rarely with his in-laws.

He traveled to Israel in 2000 and 2002, once for company business and the other trip for a family wedding (Tr at 40).

Applicant introduced a number of letters of appreciation and recognition that he has received from 1985 to 2003, through his employment (Exhibit A). Additionally, Applicant introduced a number of documents to show his longevity and strong attachment to the United States. Among these were: a marriage certificate to establish he has been married to the same woman since 1970, a Grant Deed showing that he has owned his home in the U.S. since 1978, and company records indicating that he has worked for the same United States company since 1981. He also introduced records to

show that he has fulfilled his jury duty commitments and has been a regular blood donor to the American Red Cross (Exhibit B).

Finally, Applicant testified of his love of the United States and the Constitution (Tr at 34).

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

## **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

## **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:

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

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's decision to continue to use an Israeli passport after becoming a United States citizen raises serious Foreign Preference (Guideline C) concerns. At the time the SOR was issued, Disqualifying Condition DC (E2.A3.1.2.1.), the exercise of dual citizenship could be argued to apply because he retained his Israeli passport, and DC (E2.A3.1.2.2.), possession and/or use of a foreign passport, applied. However, Applicant has subsequently revoked his Israeli passport. Neither the Money memorandum nor DC (E2.A3.1.2.2.) now applies in this case. Mitigating Condition (MC) (E2.A3.1.3.4.), an individual has expressed a willingness to renounce his dual citizenship, is applicable, as Applicant has renounced his Israeli citizenship.

## **(Guideline B - Foreign Influence)**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. The evidence of a wife and children, who are dual citizens of Israel and the United States, and the existence of immediate family members, who are citizens and residents of Israel comes within DC (E2.A2.1.2.1.), an immediate family members, or persons to whom the individual has close ties of affection or obligation, are citizens of, or resident or present in, a foreign country. Based on the nature of the overall record and the totality of the evidence, including the lack of government involvement of Applicant's family members and Applicant's long and powerful attachment to the United States, I have determined that his wife and children in the United States and his family members in Israel do not constitute an unacceptable security risk, and MC (E2.A2.1.3.1.), a determination that the immediate family members, 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 involved and the United States, applies. MC (E2.A2.1.3.3.) also applies because Applicant's contacts with his foreign relatives in Israel is casual and infrequent.

After considering all of the evidence of record on this issue, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would reject it, and would report the incident to the proper authorities.

### **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 APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2. a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Martin H. Mogul**

**Administrative Judge**