

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-05033

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's family ties to Israel pose an unacceptable security concern or risk of foreign influence under Guideline B. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information. [\(1\)](#) On September 23, 2005, Applicant answered the SOR (Answer), admitted all allegations, and requested a clearance decision based on the written record without a hearing.

On November 15, 2005, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on November 23, 2005. He acknowledged receipt of the FORM on January 25, 2006, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to her. The case was assigned to me on March 28, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 49-year-old divorced man. His August 2003 security clearance application indicates he was married and divorced two times and has no children. [\(2\)](#) The FORM indicates the last school Applicant attended was vocational school from April 1994 to June 2003, and during that time he took approximately eight extension classes. The file does not contain any further information about the level of Applicant's education or degrees earned, if any. Since August

2003, he has been employed as a software engineer for a defense contractor. He seeks a security clearance in conjunction with his present duties.

Applicant's parents were born in Mexico. His father is deceased. His mother is a citizen of Mexico⁽³⁾ and resides in Israel. During Applicant's father's working life, he was employed by an organization that posted him and his family to Lebanon, which is where Applicant was born. At some point, Applicant immigrated to Israel where he was living at the time he immigrated to the U.S. In 1977, he came to the U.S. under a student visa. Shortly after arriving in the U.S., he applied for U.S. citizenship and became a naturalized U.S. citizen in January 1989. He does not claim dual citizenship with any other country and has possessed a U.S. passport since at least April 1998.

Applicant's mother, brother, sister, and uncle are resident citizens of Israel. Applicant's mother is 86 years old and retired. Applicant maintains telephone contact with his mother, brother, and sister approximately twice a month. He maintains telephone contact with his uncle approximately four times a year. Applicant has one other sister, who lives in New Zealand.⁽⁴⁾ He maintains telephone contact with her approximately once a month to once every two months.⁽⁵⁾ The record does not contain any employment information, or past government affiliation, if any, regarding Applicant's immediate family members residing in Israel or New Zealand.

Applicant has visited his relatives in Israel four times in 1995, 1998, 1999, 2004. Applicant stated his family has no contacts with foreign governments.⁽⁶⁾ Applicant's mother is elderly, and his sister and brother in Israel are handicapped and depend on social security benefits for income. To augment their income, Applicant sends his family members approximately \$1,500.00 per year to help them maintain their household and to pay the family attorney handling a real estate matter.⁽⁷⁾

Applicant inherited and owns a 1/12 interest in a parcel of real property in Jerusalem, Israel. The property was originally owned by Applicant's grandfather. It consists of a house, and land that takes up approximately two city blocks.

Applicant estimates his share is worth \$300,000.00.⁽⁸⁾ Applicant has retained the services of an attorney seeking compensation from the municipal government of Jerusalem after they built a road through the middle of the family property.

Israel is a modern, well developed country that is embroiled in conflict with its Arab neighbors. Although the U.S. generally maintains a positive relationship with Israel, recent tension has developed over Israel's sale of sensitive security equipment and technology to various countries, especially China. Additionally, at least two espionage-related cases against the U.S. have been reported.⁽⁹⁾

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the granting or denial of access to classified information. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁽¹⁰⁾ and the whole person concept.⁽¹¹⁾ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽¹²⁾ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁽¹³⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility 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 carries a heavy burden of persuasion.⁽¹⁴⁾

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 to ensure 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 to classified information in favor of protecting national security.⁽¹⁵⁾

CONCLUSIONS

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

In every security clearance case an applicant's ties or connections to any foreign country require careful examination.⁽¹⁶⁾ Notwithstanding, the mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying. The language of the foreign influence guideline does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country.⁽¹⁷⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern or risk.⁽¹⁸⁾

The government established a prima facie case under Guideline B through Applicant's admissions, and evidence submitted. Applicant has close ties of affection or obligation with his mother, brother, sister, and uncle who are resident citizens Israel.⁽¹⁹⁾ The strength of his relationship is demonstrated, to a certain extent, by his frequent telephone contacts with his family, the financial support he provides his family, and his four family visits to Israel. The fact that Applicant has close ties of affection to persons who are either citizens or residents of Israel is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure by a foreign country.⁽²⁰⁾ Foreign Influence Disqualifying Condition (DC) 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,* applies.

Noteworthy are Applicant's real estate holdings in Israel. According to his own estimate, he believes his 1/12 portion of the land he owns has an approximate value of \$300,000.00. Furthermore, he has retained an Israeli attorney to assist him in securing compensation from the municipal government of Jerusalem for building a road through the middle of his family's lot. DC 8: *A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence* applies.

Israel and the U.S. seem to have a friendly, cooperative relationship as demonstrated by their diplomatic status, the foreign assistance provided to Israel, and continued cooperation between the two countries, and the fact that they have worked together in issues of importance to the U.S. On balance, the security concerns raised by Israel are less than those raised by a country hostile to the U.S. Nevertheless, the concerns still exist, because even friendly countries have interests that are contrary to the national interest of the U.S.⁽²¹⁾

It was the Applicant's responsibility to refute, extenuate, or mitigate the government's foreign influence concerns raised by his family ties and ownership of property in Israel. The record is silent as to whether any of Applicant's Israeli family members are agents of a foreign power⁽²²⁾ or employed by or connected to a foreign government or in positions where they are likely to be exploited by a foreign power. The lack of information concerning Applicant's relatives, and his failure to demonstrate that his family members are not in a position to be exploited, by either coercive or non-coercive means, by a foreign government in a way that could force him to choose between loyalty to those relatives and loyalty to the U.S., and his failure to demonstrate his foreign financial interests are minimal and not sufficient to affect his

security responsibilities precludes a finding that any of the Guideline B mitigating conditions apply. [\(23\)](#)

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in this case, including Applicant's statement, his family ties to foreign nationals, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has not mitigated the security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST APPLICANT

Subparagraph 1.a - 1.e.: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. FORM, Item 4.
3. The record offers little or no evidence regarding what connection Applicant's mother, a retired 86 year old woman living in Israel, has with Mexico other than her being born there. Her limited connection to Mexico appears to have little probative value in determining Applicant's security eligibility.
4. Foreign influence concerns regarding Applicant's sister living in New Zealand were not alleged in the SOR.
5. FORM, Item 5.
6. FORM, Item 5.
7. *Id.*
8. *Id.*, and FORM, Item 6.
9. FORM, Item 7.
10. Directive, Section 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.
11. Directive, E2.2.1. ". . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ."

12. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

13. ISCR Case No. 98-0761 (December 27, 1999) at p. 2 (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 (April 3, 2006) p. 3 (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

14. *Id.* at 528, 531.

15. *See Egan*; Directive E2.2.2.

16. ISCR Case No. 97-0699 (November 24, 1998) at p. 3 (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").

17. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

18. *Id.*

19. *See* ISCR Case No. 03-24144 (December 6, 2005) at p. 5 (As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.); ISCR Case No. 03-04343 (December 20, 2005) at p. 4 (There is a rebuttable presumption that contacts with immediate family members are not casual.).

20. ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

21. In this regard, I considered evidence submitted by the government pertaining to Israel. *See* FORM, Items 7, 8, and 9.

22. *See* ISCR Case No. 03-10954 (March 8, 2006) at p. 4 (An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigation Condition 1.)

23. ISCR Case No. 02-04455 (March 7, 2006) at p.2 (The issues is not merely whether Applicant's family can influence him, but whether Applicant has presented evidence showing his family is not in a position to be exploited by a foreign power in a coercive or noncoercive manner.).