

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: This 61-year-old Chief Engineer was born in Israel in 1943, came to the United States (U.S.) in 1969, and became a U.S. citizen in 1979. He has surrendered his Israeli passport and renounced his Israeli citizenship. He is married, and has two grown children and three grandchildren. He has worked for major defense contractors for 25 years, and has assets of close to \$3 million. There is no record of any security-related problems. His 95-year-old mother and two sisters still reside in Israel, but Applicant makes a strong case that he would never do anything to harm U.S. security interests. Mitigation has been established. Clearance is granted.

CASENO: 03-25294.h1

DATE: 06/16/2005

DATE: June 16, 2005

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In Re:

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SSN:-----

Applicant for Security Clearance

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CR Case No. 03-25294

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

Phillip Carter, Esquire

McKenna Long & Aldridge

**SYNOPSIS**

This 61-year-old Chief Engineer was born in Israel in 1943, came to the United States (U.S.) in 1969, obtained a graduate degree, and became a U.S. citizen in 1979. He has surrendered his Israeli passport and renounced his Israeli citizenship. He is married, and has two grown children and three grandchildren. He has worked for major defense contractors for 25 years, and has assets of between \$2 million and \$3 million. There is no record of his having any security-related problems. His 95-year-old mother and two sisters still reside in Israel, but Applicant made a strong case that he would never do anything to harm U.S. security interests. Mitigation has been established. Clearance is granted.

**STATEMENT OF THE CASE**

On January 10, 2005, 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 January 25, 2005, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on February 25, 2005. A Notice of Hearing was issued on April 4, 2005, setting the hearing for May 3, 2005. At the hearing, the Government offered seven exhibits (Government's Exhibits (GX) 1 - 7). Applicant testified, and offered 22 exhibits (Applicant's Exhibit (AX) A - V). All exhibits were admitted without objection. The transcript was received on May 18, 2005.

## FINDINGS OF FACT

This 61-year-old Program Manager/Chief Engineer (AX V and Tr at 26)) was born in Israel in 1943, came to the U.S. in 1969, to continue his studies (Tr at 31) and became a U.S. citizen in 1979. He holds a valid U.S. passport valid as of September 1995. He holds a Master's Degree from a major U.S. university (Tr at 26). He has three grandchildren (Tr at 29). The November 8, 2004 SOR contains four allegations under Guideline C (Foreign Preference), 1.a. - 1.d., and six allegations under Guideline B (Foreign Influence), 2.a - 2.f. In his January 25, 2005 Response to the SOR, Applicant *admits* allegations 1.b., 1.c., 1.d., 2.a., 2.b., 2.d., 2.e., and 2.f. He *denies* allegations 1.a. and 2.c. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

### Guideline C (Foreign Preference)

#### Applicant:

1.a. - has exercise dual citizenship with Israel but no longer does so.

1.b. - renewed his Israeli passport on June 30, 1994, after becoming a naturalized U.S. citizen in June 1979. The passport has now been surrendered.

1.c. - used his Israeli passport instead of his U.S. passport to enter and exit Israel in 1996, 1997, 1998, 2000, 2001, and 2002. This was because he also had Israeli citizenship and, under that country's law, had to enter and leave Israel using an Israeli passport (Tr at 42-44 and GX 6). He has used his U.S. passport for all other purposes, including while entering leaving other countries on his way to, and after leaving, Israel. The problem has now been resolved by his renunciation of his Israeli citizenship, as a result of which he can use his U.S. passport for all purposes. Some of this travel has been, at last in part, on company business involving joint U.S.-Israel projects. He has always notified his company's security office before and after each trip (Tr at 45 - 47). Applicant did not realize his holding Israeli citizenship and an Israeli passport was a problem until receiving the SOR in this case, after which he took corrective action (Tr at 47 - 49).

1.d. - as of July 2003, when he interviewed by an agent of the Defense Security Service (DSS), possessed an Israeli passport that was issued in June 1994 and renewed in August 1999. As of that time, the Israeli passport was still valid (until June 2004), and Applicant intended to maintain his Israeli passport. Upon reflection, he has resolved this concern by surrendering his Israeli passport and renouncing his Israeli citizenship.

#### Guideline B (Foreign Influence)

2.a. - Applicant's mother and sister are citizens of Israel and currently reside in that country.

They moved to Israel from northeastern Europe after World War II to make a better life. His father is deceased and his mother is now 95 and in good, but frail, health (Tr at 49). She was a housewife all her life and never worked for the government. His sister is 69 and is a retired schoolteacher.

2.b. - Applicant two sisters-in-law are citizens and residents of Israel. One sister-in-law is 57 and a teacher. The other sister is a teacher and an accountant. Neither has ever worked for the government.

Applicant's wife is his primary source of moral and emotional support (Tr at 57). There are nieces and nephews, but Applicant is not close to any of them. He has never been asked by any family member to do anything improper and he strongly and credibly avers he would immediately report any such contact to his security officer. In the past he attended international conferences where someone asked him about sensitive matters, and he reported it (Tr at 55)

2.c. - Applicant no longer sends money to his mother. He sent the money as a gift until he discovered she was not using it to buy anything for herself, so he stopped (Tr at 58).

2.d. - Applicant inherited approximately \$25,000 from his father-in-law's estate in Israel.

2.e. - Applicant had a bank account in Israel, but it is now closed (Tr at 58. 59).

2.f. Applicant traveled to Israel in 1996, 1997, 1998, 2000, 2001, and 2002, on business and/or to visit his mother. I do not find any current security significance.

Applicant has submitted a number of letters of recommendations. Based on these letters, I find that Applicant is a

"forthright person of high integrity. He is security conscious, about both classified and proprietary material. I have a good working relationship with him and have always had the support I need from him with respect to security. I have no question about his character or his patriotism" (AX O - from his company's security manager). Applicant is "one of the most ethical people I have ever met" and has always been a "stickler for security rules" (AX P - from a work colleague who has held a security clearance since 1997). Applicant is "adamant about the protection of [the company's] intellectual property, including proprietary information and other data" (AX Q -from another work colleague). Applicant "has an exemplary character" and dedication to the United States (AX R - work colleague). Other letters are equally complimentary (AX S, AX T, and AX U). Applicant has had annual training in handling classified information and material over the years (Tr at 40).

## POLICIES

Each adjudicative decision must also 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.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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 financial judgment and conduct.

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. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## **CONCLUSIONS**

Applicant is 61 years old. He was born in Israel in 1943, came to the U.S. in 1969, and became a U.S. citizen in 1979. His wife was also born in Israel, in 1944. They were married in Israel in 1965 and she emigrated with him to the United States. She is a naturalized U.S. citizen. They have two grown children (both of whom are U.S. citizens and reside in the United States) and three grandchildren, all U.S. citizens and residents. Applicant has worked in the defense field for "close to 25 years," without any apparent problems of any kind (Tr at 37).

Applicant has taken steps to resolve the following concerns stated in the SOR.

#### 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 United States.

1.a., 1.b., 1.c., and 1.d. - Applicant has renounced his Israeli citizenship and surrendered his Israeli passport, as of March 2005 (AX C, AX D, AX E, AX F, AX N (dated April 26, 2005)).

1.e. - Applicant no longer has a bank account in Israel. He closed the account on January 25, 2005 and had the funds transferred to a bank in the United States (AX A, AX B).

Disqualifying Condition (DC) - (1).- the exercise of dual citizenship and 2. -possession and/or use of a foreign passport.

Mitigating Conditions (MC) -(1). dual citizenship is based solely on parents' citizenship or birth in a foreign country; and MC (4). individual has expressed a willingness to renounce dual citizenship (actually has renounced).

#### Guideline B (Foreign Influence)

The Concern: A security risk may exist when [members of ]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk ((Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002): The Government has not suggested that Israel should be considered a "hostile" country. However, I do take official notice that Israel is listed by the U.S. government as being among the most active intelligence gatherers in the U.S. (GX 2). Appeal Board guidance

states that: "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Disqualifying Condition - (1) an immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions - (1) - a determination that the immediate family members . . . would not constitute an unacceptable security risk; and MC (5) - foreign financial interest are minimal and not sufficient to affect the individual's security responsibilities.

The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have considered the totality of the record, including the presence of relatives in Israel.

I find significant mitigation in Applicant's long history in the United States and his contributions to the national defense. He has received a number of certificates of appreciation from his company (AX L). He has considerable assets in the United States (AX G - his home in an up scale area); his company pension of more than \$237,000.00 (AX H); an IRA portfolio worth more than \$748,000.00 (AX I); equity in his company of about \$981,000.00 (AX J); and a yearly salary of about \$175,000.00 (Tr at 59 and AX K).

On balance, I conclude the in-laws are not agents of a foreign government and are not likely to be asked to apply pressure on Applicant. Even more importantly, I conclude that Applicant has made himself a part of the American dream and nothing he has done or said suggests there is a risk he would violate his obligations to his adopted country. I have considered that the other country is Israel but, considering his deep ties to the United States, and his long and valued contributions to the national defense effort, I conclude Applicant has demonstrated that he is not vulnerable to improper pressure from any source. I conclude he can be relied upon to protect U.S. security interests.



## **FORMAL FINDINGS**

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

Guideline C (Foreign Preference 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

Guideline B Foreign Influence)

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

Subparagraph 2.f. 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**