

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is 60 years old, an engineer for a U.S. defense contractor, and married with children born in the U.S. Applicant was born in Israel, worked for the Israeli defense industry and defense ministry, fought in two wars as a member of the Israeli Army, and has family living in Israel. Applicant has an Israeli passport obtained and used for travel after he became a U.S. citizen in 1995. Applicant has not surrendered his Israeli passport, and wants to keep it so he can retain his monthly stipend from the Israeli government for his war injuries, and to retain any future health and retirement benefits from Israel. Applicant has not mitigated the foreign influence and foreign preference security concerns. Clearance is denied.

CASENO: 04-00894.h1

DATE: 05/12/2005

DATE: May 12, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00894

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 60 years old, an engineer for a U.S. defense contractor, and married with children born in the U.S. Applicant was born in Israel, worked for the Israeli defense industry and defense ministry, fought in two wars as a member of the Israeli Army, and has family living in Israel. Applicant has an Israeli passport obtained and used for travel after he became a U.S. citizen in 1995. Applicant has not surrendered his Israeli passport, and wants to keep it so he can retain his monthly stipend from the Israeli government for his war injuries, and to retain any future health and retirement benefits from Israel. Applicant has not mitigated the foreign influence and foreign preference security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 15, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on January 11, 2005. He elected to have his case decided on the written record in lieu of a hearing. On February 8, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM)⁽²⁾ was provided to the Applicant, and he was given opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on February 15, 2005. Applicant did not file a response to the FORM by the March 16, 2005, due date. The case was assigned to me on April 13, 2005.

FINDINGS OF FACT

Applicant's admissions to all the SOR allegations in his Answer are incorporated here as findings of fact. After a

complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 60 years old, married with children, and was born in Israel. He emigrated to the U.S. in 1984. He became a naturalized U.S. citizen in 1995, but considers himself a dual citizen of the U.S. and Israel. In 1998 he obtained an Israeli passport that expired on March 30, 2003. Applicant served in the Israeli armed forces as a tank commander, fighting in the 1967 and 1973 wars Israel had with its neighboring countries. Applicant was wounded in the 1973 war, and receives \$100 monthly from the Israeli government as compensation. Applicant is an engineer who worked for the Israeli defense industry from 1978 to 1984, and for the Israeli Defense Ministry from 1976 to 1978. For the past 20 years Applicant has worked as an engineer for a U.S. defense contractor. (Exhibits 4-7)

Applicant's mother and two sisters are citizens of and resident in Israel. One sister is a citizen of Israel and lives in Australia. His son is living temporarily in Israel. Applicant contacts his mother every other week, his son weekly, one sister he contacts every other week, another sister monthly, and the sister in Australia he contacts twice yearly. (Exhibits 4, 5, 7)

Applicant has not surrendered his Israeli passport in accordance with the "Money Memo" of August 16, 2000, clarifying application of the Foreign Preference Adjudicative Guideline (Guideline C). Applicant wants to seek official approval for the retention of his Israeli passport in accordance with the "Money Memo" so he can keep his medical and retirement benefits with the Israeli government resulting from his wounds in the 1973 Israeli-Arab War. Applicant used his Israeli passport to travel to Israel in 1996, 1998, and 1999. (Exhibits 5-8)

Based on official notice taken of documents submitted with the file, Israel is an active collector of industrial information and economic data from the U.S. that it uses in its various industries. This information is collected through various means that the 2000 Report to Congress by the National Counterintelligence Center and the Defense Security Service 2004 Report on Technology Collection Trends in the U.S. Defense Industry summarize. (Exhibits 9 and 10)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 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 condition 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 other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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 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 relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

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. E2.A3.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant is an engineer who has strong ties of affection to family in Israel, and an economic interest in his continued connection to Israel. My application of Disqualifying Conditions (DC) and itigating Conditions (MC) for the respective security guidelines B and C are set forth in the following paragraphs.

Regarding Guideline B, DC 1 (An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country) and DC 8 (A substantial financial interest in a country that could make the individual vulnerable to foreign influence) apply. Applicant's mother, son, and sisters live in Israel. His son is a U.S. citizen and in Israel temporarily, but is in a position to be coerced or pressured to place Applicant in a position to be coerced. One sister, also a citizen of Israel, lives in Australia. Of equal importance is the \$100 monthly stipend Applicant receives from the Israeli government. It is of some importance to Applicant to retain that stipend, as he stated in his answers to the interrogatories in Exhibit 7.

Reading the MC under this guideline, I do not find any that apply to these facts. MC 1 cannot be applied because Applicant has not met his burden of showing both parts of that MC are satisfied by his evidence. His contact with his mother, son, and sisters are frequent and not casual, so MC 3 does not apply. His monthly stipend is of such importance to him that MC 5 cannot apply. Therefore, I conclude this foreign influence security concern against Applicant.

Considering Guideline C, DC 1 (The exercise of dual citizenship), DC 2 (possession and use of a foreign passport), DC 3 (Military service or a willingness to bear arms for a foreign country), DC 4 (Accepting educational, medical or other benefits, such as retirement and social welfare, from a foreign country), DC 6 (Using foreign citizenship to protect financial or business interests in another country) apply. Applicant has an Israeli passport, although it expired in 2003, that Applicant is reluctant to surrender because he states in his interrogatory answers that the Israeli consulate told him he would lose his medical stipend and retirement benefits, and Applicant wants to keep them. Applicant stated he wanted approval from the U.S. government to retain and use his Israeli passport. The "Money Memo" states security clearance will be denied or revoked unless the foreign passport is surrendered or official approval is given for its retention. Applicant has accomplished neither of these requirements for a security clearance.

The MC applicable here are MC 1 (Dual citizenship is based solely on parent's citizenship or birth in a foreign country) and MC 2 (Indicators of possible foreign preference such as military service occurred before obtaining U.S. citizenship). However, neither MC is sufficient to outweigh and overcome the possession and use of the Israeli passport and the Applicant's clearly expressed desire to retain the passport and his monthly stipend from the Israeli government. The "Money Memo" is clear in its prohibition of a security clearance under facts like those in this case. Therefore, I conclude this foreign preference security concern against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. The Government submitted 10 exhibits in support of the SOR.