

KEYWORD: Foreign Influence

DIGEST: Applicant's parents and sister were born in Israel, immigrated to the United States, and became United States citizens almost 20 years ago. Applicant was born in the in the United States. His parents reside in the United States. His sister has resided in Israel since February 2004. Applicant established his sister in Israel is not a security concern since he would not chose between his allegiance to her over his allegiance to the United States. Clearance is granted.

CASENO: 04-04137.h1

DATE: 12/13/2005

DATE: December 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04137

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Alex M. Laughlin, Esq.

Rebecca L. Saitta, Esq.

SYNOPSIS

Applicant's parents and sister were born in Israel, immigrated to the United States, and became United States citizens almost 20 years ago. Applicant was born in the in the United States. His parents reside in the United States. His sister has resided in Israel since February 2004. Applicant established his sister in Israel is not a security concern since he would not chose between his allegiance to her over his allegiance to the United States. Clearance is granted.

STATEMENT OF THE CASE

On March 31, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on April 4, 2005. The SOR alleged security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on May 11, 2005. He admitted all of the allegations under Guideline B with explanation. ⁽¹⁾ He requested a hearing before an administrative judge and the request was received by DOHA on May 12, 2005. Department Counsel was prepared to proceed with the case on September 19, 2005, and the case was assigned to me on September 20, 2005. A notice of hearing was issued on October 20, 2005, and I convened the hearing on November 10, 2005. Three government exhibits, five court exhibits for administrative notice, eight Applicant exhibits, the testimony of one Applicant witness and the testimony of the Applicant were received during the hearing. DOHA received the transcript on December 1, 2005.

FINDINGS OF FACT

Applicant is a 25-year-old information technology specialist employed by a government contractor for almost three years. He received a prestigious award when graduating from high school at a private academy.⁽²⁾ He received a dual major bachelor's degree in computer science in 2002.⁽³⁾ Applicant was awarded an interim security clearance in late 2002. Applicant is considered a valuable asset by his employer, and has no security violations while holding his interim clearance.⁽⁴⁾ The managers of the government agency Applicant supports consider his work performance superb and a valuable asset to the agency. His interim security clearance was revoked, and his contribution to the agency has been missed during the security clearance process.⁽⁵⁾

Applicant's parents and sister were born in Israel and immigrated to the United States over 28 years ago. All three became naturalized United States citizens in January 1987.⁽⁶⁾ Applicant's parents are both college professors at a United States university. His parents are considered by Israel to be Israeli citizens since they were born in Israel. They both served in the Israeli military under compulsory service before coming to the United States. They have both United States and Israel passports.⁽⁷⁾ As Israeli citizens, they are required by Israeli law to have an Israeli passport to enter Israel.

Applicant has only a United States passport. He traveled to Israel only once, in 1995, at age 15 with his mother. He had difficulty entering Israel because he did not have an Israeli passport. He does not speak Hebrew and had difficulty communicating with his relatives in Israel because they do not speak English. Applicant has not served in the Israeli military.⁽⁸⁾ Applicant has never exercised any rights to Israeli citizenship.⁽⁹⁾ Applicant admits he has relatives, i.e., grandparents, aunts, uncles, and cousins in Israel. However, he has not seen most of them since his visit to Israel in 1995, and he may speak to them telephonically every few years. He has no sense of family connection with his relatives.⁽¹⁰⁾

Applicant's sister is a United States citizen but now resides in Israel. She left Israel with her parents to immigrate to the United States when she was seven years old. She is considered by Israel to be an Israeli citizen. She left home to attend school when Applicant was 11 years old, and they did not have a sibling relationship while he was growing up. Applicant's sister was educated in the United States and is a medical doctor. She returned to Israel in February 2004 to be with and care for her maternal grandmother. She is employed in Israel, but Applicant is not sure who her employer is. He believes she is employed in the medical field. He knows she does not work for the Israeli government, and that she has not served in the Israeli military. Applicant does not consider that he and his sister are close siblings. They talk about six times a year and exchange about three e-mails in the same time frame. His sister does consult Applicant and seeks his advice on several personal matters.⁽¹¹⁾ However, Applicant's friend testified that he considers them as close as any siblings.⁽¹²⁾

Israel is a strategic partner of the United States with a close and supportive relationship. Both countries are working on establishing a peace process in the middle East, although each country may have some different concepts of how to achieve that peace. The countries are considered allies but there is no mutual defense agreement. The United States provides substantial foreign aid to Israel. There have been cases of espionage by persons in the United States on behalf of Israel. Israel is listed by the United States as inadequately and ineffectively protective of intellectual property rights. Israel is also considered by the United States as one of the most active collectors of economic and technology information. There is no evidence that Israel engages in coercive or non-coercive actions against its citizens to obtain intelligent data.⁽¹³⁾

POLICIES

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."⁽¹⁴⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁵⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁶⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.⁽¹⁷⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to

the loyalty of the applicant.⁽¹⁸⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁹⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²¹⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽²²⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²³⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign Influence: A security concern exists when an individual's immediate family, 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 or financial interests in other countries are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government established its case under Guideline B. Applicant's sister in Israel brings the matter under Foreign Influence Disqualifying Condition E2.A2.1.2.1 (*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*). An immediate family

member includes spouse, father, mother, sons, daughters, brothers, and sisters. ⁽²⁴⁾ Applicant's mother and father are not a security concern because they are citizens of the United States and reside in the United States. The fact Israel considers them dual citizens does not make them a security concern under Guideline B. Applicant's sister, however, is an immediate family member residing in a foreign country. There is information that Applicant has other relatives in Israel. However, the information also shows he has no ties of affection or obligation to them. The information presented by Applicant shows he met these relatives only a few times, has difficulty communicating with them, hardly knows them, and has no sense of family towards them. I conclude Applicant does not have close ties of affection or obligation to any relative in Israel, except his sister. I conclude the disqualifying condition has been established only as to Applicant's sister in Israel.

The Foreign Influence Mitigating Conditions that must be evaluated concerning the sister are E2.A2.1.3.1 (*a determination that the immediate family member(s) 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(s) involved and the United States*), and E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*). While there was conflicting information concerning the closeness of Applicant's relationship with his sister, I conclude that it is close enough and his contacts with her are frequent enough as not to be casual or infrequent. Mitigating Condition E2.A2.1.3.3 does not apply. Applicant's sister is a medical doctor and is believed to be working for a private corporation. She is not an agent of a foreign power since she is not employed by Israel and not engaged in intelligence activities. ⁽²⁵⁾ There may be a possibility, no matter how slim, the sister can be exploited by a foreign power. She is a United States citizen and does have the protection of the United States by that fact. If exploited, the exploitation must be such to force Applicant to choose between his loyalty to his sister and his loyalty to the United States. Applicant has little if any connection to Israel. Applicant has established that his relationship with his sister is not a close family relationship. As a family, they do not enjoy a close family relationship. Applicant and his sister did not grow up together sharing many family experiences, since she left home in his formative years. He does not agree with her reasons for moving to Israel, and he does not have the connection to Israel his sister has since he was not born in Israel like her. Applicant has established that his relationship with his sister would not force him to choose loyalty or allegiance to her over loyalty or allegiance to the United States if she were exploited by a foreign power for intelligence gathering purposes. I conclude Applicant has met his burden to mitigate the security concern for his sister's residence in Israel.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. Applicant, in effect, admitted allegation 1.d. in the SOR but amended the date from 1997 to 1995.
2. Tr. 23; Tr. 43-45; Applicant Exhibit E (Letter from Headmaster, dated Oct. 12, 2005).
3. Tr. 27.
4. Tr. 42; Appellant Exhibit D, (Letter from security manager, dated Nov. 3, 2005).
5. Tr. 36-41; Appellant Exhibits A - C (Letters of recommendation/commendation, dated Apr. 12, 2005, Oct. 25, 2005, and Nov. 3, 2005).
6. Government Exhibit 3 (Certificates of citizenship, dated Jan. 13, 1987).
7. Tr. 27.
8. Tr. 46-47; Tr. 50-66; Applicant Exhibit F (Letter from mother, dated Oct. 14, 2005); Appellant Exhibit G (Letter from father, dated Oct. 14, 2005).

9. Tr. 22
10. Government Exhibit 2 (Applicant's statement, dated Feb. 9, 2004) at 2-3.
11. Tr. 65-77; Appellant Exhibit H (Letter from sister, dated Jun. 24, 2005).
12. Tr. 99-110.
13. Administrative notice, Court Exhibits 1-5 (State Department documents on Israel, dated 2004 and April. June 2005); Appellant Exhibit G , Congressional Research Service, Israel: Background and Relations with the United States, dated, Jul. 25, 2005).
14. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
15. Directive ¶ E2.2.1.
16. *Id.*
17. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
18. *See* Exec. Or. 10865 § 7.
19. Directive ¶ E3.1.14.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
22. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
23. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
24. Directive E2.A2.1.3.1.
25. *See*, 50 U.S.C. § 435 and 438.