

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant was born in Israel and is a naturalized U.S. citizen. His mother, sister and brother are citizens of and reside in Israel. His wife and three children are dual citizens of the United States and Israel residing in the United States. Applicant renewed and traveled on an Israeli passport after becoming a United States citizen. He has mitigated the foreign influence and foreign preference security concerns. The Government did not establish a security concern under Guideline E. Clearance is granted.

CASENO: 04-06114.h1

DATE: 03/31/2006

DATE: March 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06114

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

## **FOR APPLICANT**

Steven R. Freeman, Esq.

### **SYNOPSIS**

Applicant was born in Israel and is a naturalized U.S. citizen. His mother, sister and brother are citizens of and reside in Israel. His wife and three children are dual citizens of the United States and Israel residing in the United States. Applicant renewed and traveled on an Israeli passport after becoming a United States citizen. He has mitigated the foreign influence and foreign preference security concerns. The Government did not establish a security concern under Guideline E. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B, Foreign Influence; Guideline C, Foreign Preference; and Guideline E, Personal Conduct.

In a sworn statement signed March 3, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another Administrative Judge on July 21, 2005. The case was transferred to me on December 12, 2005. The hearing was initially scheduled for January 27, 2005. Applicant's counsel asked for a delay until February 8, 2006, which was granted. The hearing occurred on February 8, 2006. The government had one witness and submitted seven exhibits that were marked as Government Exhibits (Gov Ex) 1-7. The exhibits were admitted into the record without objection. The government requested that administrative notice be taken on nine documents. The documents were marked as roman numerals I - IX. Applicant testified on his own behalf and submitted three exhibits which were marked as Applicant Exhibits (AE) A-C. The record was held open until February 22, 2006. No additional documents were received. DOHA received the hearing transcript (Tr.) on February 17, 2006.

### **FINDINGS OF FACT**

In his SOR response, under Guideline B, Applicant denies allegation 1.b but admits all remaining allegations. Under

Guideline C, he admits allegations 1.a and 1.d and denies allegations 1.b and 1.c. Under Guideline E, he admits allegation 3.a. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 47-year-old federal system engineer for a defense contractor.<sup>(2)</sup> He has a security clearance. He has worked for his current employer since November 16, 1998.<sup>(3)</sup> His security clearance background check is a periodic reinvestigation.

Applicant has been married since April 8, 1984.<sup>(4)</sup> His wife was born in the United States but is a dual citizen of the United States and Israel.<sup>(5)</sup> They have three children.<sup>(6)</sup> Their oldest son was born in Israel and is a dual citizen. The two younger children, a boy and a girl, were born in the United States and are United States citizens. Applicant has not registered the two younger children as Israeli citizens.<sup>(7)</sup> Israel treats children born in the United States to Israeli parents as dual nationals with both United States and Israeli citizenship.<sup>(8)</sup>

Applicant was born and raised in Israel.<sup>(9)</sup> He attended college in Israel. From 1976 to 1979, he served his mandatory three-year service in the Israeli military as an infantry soldier.<sup>(10)</sup> He met his wife in Israel. Before moving to the United States he was a computer system administrator for a university.<sup>(11)</sup> He and his wife moved to the United States in 1987.<sup>(12)</sup> He became a United States citizen on December 14, 1990.<sup>(13)</sup>

Applicant's mother, brother and sister are citizens of and reside in Israel.<sup>(14)</sup> His mother is 76 years old and owns a store which sells staple books and toys.<sup>(15)</sup> His sister works as a supervisor for a kindergarten. Her husband is an accountant.<sup>(16)</sup> His brother works as a technician in a computer chip factory. His brother's wife is also employed as a technician in the same factory.<sup>(17)</sup> No members of his family have positions with a foreign power. His siblings each served mandatory military service as required by Israeli law when they were younger.<sup>(18)</sup>

Applicant telephones his relatives in Israel about every two to three months.<sup>(19)</sup> Since moving to the United States, he traveled to Israel to visit family members on three occasions. In 1987, he traveled to Israel to attend his father's funeral.<sup>(20)</sup> In August 2001, he traveled to Israel to attend his brother's wedding.<sup>(21)</sup> In 2004, he took his wife and children to Israel to visit family. It was the first time his two younger children had traveled to Israel. His oldest son had not been in Israel since he was 2 1/2 years-old.<sup>(22)</sup> His family members have visited him in the United States. His mother has visited three times since 1987. Her last visit was in 2000. His sister visited him in 1999. His brother lived and worked in the United States for about a year and half.<sup>(23)</sup> He was working for the same company he currently works with in Israel.

Applicant obtained a United States passport when he became a naturalized citizen. (24) In August 2001, he renewed his Israeli passport. He renewed his Israeli passport because he understood this was the only way he could travel to Israel. (25) He asked his security officer prior to renewing his Israeli passport. (26) The passport expired in 2002. (27) He destroyed it. (28) He did not learn of the security concern about possessing a foreign passport until he was sent interrogatories from the Defense Office of Hearings and Appeals in April 2004. (29) The August 16, 2000, memorandum signed by the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence which clarified the application of the foreign preference guideline with respect to the possession and use of foreign passports was attached to the interrogatories.

In 2004, he used his United States passport when he traveled to Israel. (30) He does not intend to renew his Israeli passport. He intends to travel on his United States passport in the future. (31) He is willing to renounce his Israeli citizenship. (32) He has no financial interests in Israel. (33)

Applicant works in a closed area. Sometimes during his lunch period, he read Israeli newspapers on the Internet. The articles are in Hebrew. He finds it easier to read in Hebrew. He occasionally printed certain articles or cartoons onto the unclassified printer within the work area. In January 2004, the Facility Security Officer (FSO) told him to stop printing foreign printed material on the printer in the closed area. She told him it was a bad security practice. (34) Applicant was not aware that there was anything wrong with printing foreign printed material on the unclassified computer in the closed area. He did not try to hide his activity. When the FSO first told him not to print foreign printed material on the printer in the closed area he asked his supervisor for advice. His supervisor told him to print the material on the printer that is outside of the closed area. (35)

The printer that was located outside of the closed area was not Applicant's default printer since he only used it on occasion to print articles that were written in Hebrew. On several occasions when he printed articles that were written in Hebrew, he forgot to reroute his printer to the printer outside the closed area. (36) In April 2004, it was brought to the FSO's attention that Applicant had printed foreign printed material on the unclassified computer in the closed area. She spoke to his immediate supervisor of the incident. His immediate supervisor advised him not to print articles in Hebrew on the unclassified printer in the closed area. (37) The FSO also submitted a suspicious incident report to the Defense Security Service. (38)

Applicant inadvertently printed an article in Hebrew to the unclassified computer in the closed area on at least two more occasions. (39) The FSO discovered several articles printed in Hebrew on the unclassified computer in the closed area and brought them to the attention of Applicant's supervisor. In January 2005, his supervisor told him that under no circumstances should he print documents written in Hebrew in the closed area anymore. (40) His supervisor warned him that if he had any future incidents that he would be taken off the classified program and it would look unfavorably on his record and career. (41) He stopped printing articles in Hebrew and eventually stopped looking at web-sites at work that had materials in a foreign language. (42)

At the hearing, Applicant provided translations of the documents printed in Hebrew which the FSO had confiscated. Each of the documents were printed from the web-site of an Israeli newspaper. One document was a cartoon. One article was about a stock. Another article was about the lack of popularity of Apple's acIntosh computer in Israel. (43)

The FSO testified that she believed printing foreign printed material in a closed area is a bad security practice.<sup>(44)</sup> Her concern was that she could not confirm what was being printed.<sup>(45)</sup> The National Industrial Security Program Operating Manual (NISPOM) has no rule pertaining to printing foreign material in a closed area.<sup>(46)</sup> She indicated that her company had no specific prohibition against printing foreign material in a closed area.<sup>(47)</sup>

Applicant has worked on classified projects since 1989.<sup>(48)</sup> He was granted special permission to work on a classified project prior to becoming a United States citizen.<sup>(49)</sup> His first manager who hired him to work at his current place of employment has provided a letter indicating Applicant has been an excellent employee. He has no reason to question his loyalty to the United States. He indicates he has consistently shown the dedication and skills of a first rate employee.<sup>(50)</sup> From 1997 to 1998, Applicant had his own consulting business. His wife was granted a TOP SECRET clearance since she was a senior partner in the business.<sup>(51)</sup>

## **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."<sup>(52)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B - Foreign Influence: 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 foreign countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.(Directive ¶ E2.A2.1.1.)

Guideline C - Foreign Preference: 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. (Directive ¶ E2.A3.1.1.)

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (Directive ¶ E2.A5.1.1.)

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

On August 16, 2000, the Assistant Secretary of Defense, Command, Control Communications, and Intelligence (ASD/C3I) issued a memorandum to clarify, Guideline C, Foreign Preference, relative to cases involving possession and/or use of a foreign passport. "The possession and use of a foreign passport in preference to a United States passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." [\(53\)](#)

"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." [\(54\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(55\)](#) An administrative judge should consider the following factors: (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 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. [\(56\)](#)

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. [\(57\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. [\(58\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(59\)](#) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [\(60\)](#)

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 a determination as to the loyalty of

the applicant. <sup>(61)</sup> It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B, Foreign Influence; Guideline C, Foreign Preference; and Guideline E, Personal Conduct.

### **Guideline B - Foreign Influence**

Under the foreign influence concern, a potentially disqualifying condition is raised. The Government has established that Applicant has immediate relatives who are citizens of and reside in a foreign country. His mother, brother and sister reside are citizens of and reside in Israel. As such, Foreign Influence Disqualifying Condition (FI DC) 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*) applies.

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1: (*A determination that immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates) 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 the loyalty to the person(s) involved and the United States*) is applicable to this case. Applicant's wife and three children, although dual citizens of the United States and Israel, reside with him in the United States. I find they are not agents of a foreign power and are not in a position to be exploited by a foreign power.

The record evidence and the testimony at the hearing established that Applicant's mother, brother and sister are not agents of a foreign power. Applicant also has the burden to meet the second prong of FI MC 1 which is whether his relatives living in Israel would be in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his relatives and the United States.

In analyzing whether a foreign relative is in a position of vulnerability it is necessary to assess the nature of the foreign countries involved. Israel is a parliamentary democracy dependent on the United States' continued recognition and financial support. <sup>(62)</sup> While Israel is an ally of the United States, there have been difficulties in U.S./Israeli relations over the Palestinian conflict and Israel's efforts to secure U.S. economic and proprietary information, especially involving military systems. <sup>(63)</sup> The United States remains committed to Israel's security. <sup>(64)</sup> Although Israel is



vulnerable to terrorist attacks,<sup>(65)</sup> they have dealt with terrorism for a long time. In the past, the United States has looked at Israel as model for how to take firm measures to prevent terrorism.<sup>(66)</sup>

Although the risk of undue foreign influence cannot be completely ruled out as long as Applicant's mother and siblings are citizens of and reside in a foreign country, his substantial ties to and preference for the United States lead me to conclude he can be trusted to place his obligation to the United States government ahead of any sense of obligation to his family members residing in Israel. His wife and children reside with him in the United States. All of his financial assets are in the United States. Since moving to the United States in 1987, he has traveled to Israel only three times. He has kept his security office informed of his travel each time. He has a demonstrated track record of protecting our nation's secrets. He has worked on classified projects for the United States since 1989. His mother and two siblings were citizens of and resided in Israel during his previous security clearance background investigations. There have been no significant changes regarding his mother and two siblings' status in this current periodic reinvestigation. I find Applicant has mitigated the Foreign Influence concern.

### **Guideline C - Foreign Preference**

The Government established its case under the Foreign Preference concern. Applicant is a dual citizen of the United States and Israel. The Government has also shown Applicant renewed his Israeli passport after becoming a United States citizen and that he used his Israeli passport in August 2001. As such, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1: (*The exercise of dual citizenship*) applies as well as FP DC E2.A3.1.2.2: (*Possession and/or use of a foreign passport*).

Since Applicant served mandatory military service from 1976 to 1979 in the Israeli Army FP DC E2.A3.1.2.3 (*Military service or willingness to bear arms for a foreign country*) applies. However, his foreign military service occurred prior to Applicant becoming a US citizen. Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g., foreign military service occurred before obtaining United States citizenship)*) applies to this allegation.

FP MC E2.A3.1.3.1: (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies since Applicant acquired his foreign citizenship by birth. FP MC E2.A3.1.3.4: (*Individual has expressed a willingness to renounce dual citizenship*) applies since he is willing to renounce his Israeli citizenship.

Although there is some concern that Applicant applied for and used an Israeli passport after becoming a United States citizen, he was not fully aware of the security concerns related to possessing and traveling on a foreign passport. He consulted his security office each time he traveled to Israel. He decided to renew and travel on his Israeli passport in 2001 because he heard that Israel required it. His passport has since expired. He destroyed the passport. I find his



testimony credible. In April 2004, he became aware of the security concern regarding possession and use of a foreign passport. The ASD/C3I memorandum requires individuals to surrender their foreign passport or obtain official approval for its use from the appropriate agency of the United States government. Since Applicant destroyed his passport, he no longer has a passport to surrender. The ASD/C3I memorandum does not apply to his situation.

Applicant does not intend to renew his Israeli passport and intends to only travel on his United States passport in the future. In 2004, he traveled on his US passport during his trip to Israel. Applicant has mitigated the foreign preference security concern.

### **Guideline E - Personal Conduct**

I find that the Government has not established a concern under Guideline E, Personal Conduct. Although the FSO was concerned about Applicant printing foreign material in a closed work area, there is no NISPOM provision or company security policy dealing with the printing of foreign material in closed areas. The documents were printed on an unclassified computer. Applicant did not try to hide his actions. He was not aware he was doing anything wrong.

Applicant did not understand the significance of the issue until he was told by his supervisor in January 2005 that he would be removed from the classified program he was working on if he continued to print foreign printed matter in the closed area. Since being counseled by his supervisor that his actions could have serious consequences to his career, he has stopped reading and printing foreign material at work. I find for the Applicant under Guideline E.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth 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

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a For Applicant

### **DECISION**

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

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended.
2. Tr. at 135.
3. Gov Ex 1, question 6.
4. Tr. at 95.
5. Tr. at 69; Gov Ex 1.
6. Tr. at 70.
7. Tr. at 73.
8. Admin Not II, p.7 , Dual Nationality.
9. Tr. at 76.
10. Tr. at 77.
11. Tr. at 96.
12. Tr. at 96.
13. Tr. at 98.
14. Tr. at 73.
15. Tr. at 74.
16. Tr. at 74; Gov Ex 4, p.3.
17. *Id.*
18. Tr. at 75.
19. *Id.*
20. Tr. at 98.
21. Tr. at 99.
22. *Id.*
23. Tr. at 137-138.
24. Tr. at 79.
25. Tr. at 78-79.
26. Tr. at 81.

27. Gov Ex 1, question 15.
28. Tr. at 130.
29. Tr. at 84; Gov Ex 4.
30. Tr. at 82.
31. Tr. at 86.
32. Tr. at 76.
33. Tr. at 139.
34. Tr. at 35-37; 87-88.
35. Tr. at 87-88.
36. Tr. at 88-89.
37. Tr. at 37-44, 89-90, ; Gov Ex 5; Gov Ex 6.
38. Gov Ex 5. (It should be noted that the FSO also concluded it was suspicious that Applicant was the only cleared employee to indicate he did not want to be contacted by the Defense Security Service during the annual security inspection. Applicant explained during the hearing that he was working a project that had a deadline the week after the security inspection. He asked not to be interviewed due to his heavy work load. *See* Tr. at 113-116).
39. Tr. at 90.
40. *Id.*
41. Gov Ex 6.
42. Tr. at 52; 90-91.
43. AE A; *see also* Gov Ex 5.
44. Tr. at 37.
45. Tr. at 48.
46. Tr. at 56.
47. Tr. at 56.
48. Tr. at 100 - 109; AE C.
49. Tr. at 100 - 102.
50. AE B; *see also* Tr. at 110-111.
51. Tr. at 69-70.
52. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
53. ASD/C3I Memorandum, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline," dated August 16, 2000.

54. Directive, ¶ E2.2.1.

55. *Id.*

56. *Id.*

57. Directive ¶ E3.1.14.

58. Directive, ¶ E3.1.15.

59. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. Dec 19, 2002).

60. Directive ¶ E2.2.2.

61. Exec. Ord. 10865, § 7.

62. Admin Not IV; Admin Not VI.

63. Admin Not VI.

64. *Id.*

65. Admin Not I.

66. Admin Not VI.