

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has renounced his Israeli citizenship and returned his Israeli passport to the proper authorities in compliance with the *Money emorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000) (Government Exhibit 7). The Applicant is not subject to coercion concerning his relatives who are still in Israel. Mitigation is shown. Clearance is granted.

CASENO: 04-06489.h1

DATE: 01/27/2006

DATE: January 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06489

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esquire

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SYNOPSIS

The Applicant has renounced his Israeli citizenship and returned his Israeli passport to the proper authorities in compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000) (Government Exhibit 7). The Applicant is not subject to coercion concerning his relatives who are still in Israel. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 15, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 6, 2005, and requested a hearing. The case was received by the undersigned on July 13, 2005, and a Notice of Hearing was issued on August 2, 2005.

A hearing was held on August 26, 2005, at which the Government presented seven documentary exhibits. Testimony was taken from the Applicant, who also submitted 30 exhibits. The transcript was received on September 6, 2005.

FINDINGS OF FACT

The Applicant is 65, divorced and has a Master of Science degree in Electrical Engineering. He is employed by a defense contractor as a Program Manager, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

The Applicant was born in Israel in 1940. He left Israel for the United States to attend school in 1965. In 1971, the Applicant married a native born American citizen and he has three children. They were divorced in 2001. The Applicant became a naturalized American citizen in 1976. He has worked for the same company or its predecessor since 1975 and has held a security clearance almost continually since 1981.

Paragraph 1 (Guideline C: Foreign Preference). The Government alleges in this paragraph that the Applicant has engaged in actions which show a preference for another country (Israel) over the United States. The Applicant admitted the factual allegations of subparagraphs 1.a. through 1.c. Those admissions are deemed findings of fact.

The Applicant obtained an Israeli passport in 2002. This passport was valid until March 2007. (Applicant's Exhibit A at 8-24.) As a person who was born in Israel the Applicant was required by the Israeli government to have an Israeli passport in order to enter or leave Israel. (Government Exhibit 3 at 7.)

The Applicant states that he obtained the Israeli passport in order to travel easily to Israel to visit his family. Using that passport, the Applicant traveled to Israel in 2002 to attend the Bar Mitzvah of an American born relative. (Transcript at 33-35..)

When the Applicant received the SOR in April 2005, he took immediate action to resolve the Government's concerns. The Applicant sent his Israeli passport to the local Israeli Consulate in May 2005. (Applicant's Exhibit A at 1 and Applicant's Exhibit B.) At the same time, the Applicant filed the paperwork with the Consulate to renounce his Israeli citizenship. (Applicant's Exhibit A at 2-7.) (See, Transcript at 47.)

The Applicant understands the difficulty in traveling to Israel without an Israeli passport and is comfortable with his decision. He states, "[That's] the price that I have to pay if I want to be a U.S. citizen as far as the security regulations. You know, this security regulation is no different than any other security regulation. I cannot select and choose which security regulations I support and which ones I don't support." (Transcript at 51-52.)

Paragraph 2 (Guideline B: Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure. The Applicant admitted subparagraphs 1.a. and 1.b. Those admissions are deemed findings of fact.

1.a. The Applicant has three surviving siblings, two brothers and one sister. One brother is a naturalized American citizen, who worked many years in the American defense industry and had a security clearance. (Applicant's Exhibit U.)

The Applicant's other brother lives in Israel. The Applicant has not spoken to, or seen, this brother since 1992. The break in communication occurred over the disposition of his mother's estate. The Applicant has no intention of contacting this brother in the future. (Transcript at 25, 39-40.)

The Applicant has one sister, who is retired and lives in Israel. His sister calls him about once or twice a month. In answer to a question as to how often he has seen his sister since he moved to the United States the Applicant says, "I would say about maybe four or six times. She - - you know, she came to the children's Bar Mitzvah here, and she came to my daughter's wedding last year." (Transcript at 28.)

1.b. The Applicant traveled to Israel in 2002, as described above. However, he used both his American and Israeli passports upon entering Israel. Each passport has an entry stamp from Israel for this trip. (Applicant's Exhibit A at 12, 29.)

The Applicant understands his security responsibilities. He does not believe his family would be approached by a foreign power, but he does not believe he would be vulnerable to coercion if such an approach were made.

Mitigation.

The Applicant's exhibits show that he has been a valued member of his company for many years. (Applicant's Exhibits D, O, P and Q.) During his 30 years in the defense industry, he has been involved in, or helped manage, programs that have been extremely important to the national security of the United States. (Applicant's Exhibit C.) He has many close family, personal and financial ties to the United States. (Applicant's Exhibits E, F, G, H, I, J, K, L, M, N and T.)

The Security Manager of the Applicant's employer submitted a statement. In that statement he says, "[The Applicant] demonstrates a steadfast willingness to support the security requirements imposed by contract or government regulation." (Applicant's Exhibit V.)

Current and former co-workers of the Applicant, all senior managers, submitted laudatory statements on his behalf. He is described as "conscientious" (Applicant's Exhibit R), "honest and trustworthy" (Applicant's Exhibit W at 2), and a person with "tremendous personal ethics" (Applicant's Exhibit Z at 2). A Product Director, who has known the Applicant during his entire time with his employer, states, "Based on my nearly forty year career in the Defense Industry and my over twenty-five years of experience with [the Applicant], I have absolutely no hesitation in fully recommending that [the Applicant] maintain his clearance." (Applicant's Exhibit S at 2.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress

- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or shown a preference for a foreign country that demonstrates poor judgment, untrustworthiness or unreliability on the

Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant was a dual citizen of Israel and the United States, that he had a valid Israeli passport, and that he traveled to Israel using that passport (Guideline C); and the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. Turning to Guideline C, the Applicant has taken concrete steps to renounce his Israeli citizenship, and he returned his Israeli passport to the appropriate authorities. It is particularly noteworthy that the Applicant took these actions as soon as he was apprised of the government's concerns. This action brings him within the requirements of the *Money Memorandum* (Government Exhibit 7.).

Disqualifying Condition E2.A3.1.2.1. applies, (*Possession and/or use of a foreign passport*). However, under the particular facts of this case, Mitigating Conditions E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) also apply. Paragraph 1 is found for the Applicant.

Regarding Guideline B, the Applicant has two family members remaining in Israel. The Applicant understands the necessity to return his Israeli passport, and is content with his decision to take that action. The Applicant openly discussed making this difficult, but in his opinion necessary, decision. None of his family members who are still living in Israel are agents of the Israeli government. As described above, the Applicant has not contacted his brother in over 12 years and has sporadic contact with his sister. While it is difficult to describe any family relationship as "casual and infrequent," this one is. Under the particular circumstances of this case, the contacts between the Applicant and his remaining relatives in Israel are not of a closeness to affect his security worthiness. It is also worth pointing out that the Applicant's last trip to Israel in 2002 was to attend the Bar Mitzvah of an American relative, and that he used both his American and Israeli passports for entrance into Israel.

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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: E2.A2.1.3.1. (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) 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 loyalty to the person(s) involved and the United States*) and E2A2.1.3.3. (*Contact and correspondence with foreign citizens is casual and infrequent*).

I have carefully considered the evidence of record, especially the fact that the Applicant is from Israel. The evidence shows that the Applicant is a patriotic American citizen. He is knowledgeable about security and has taken steps to reduce his vulnerability. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and alleged foreign preference. He is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: 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 the Applicant.

Wilford H. Ross

Administrative Judge