DATE: December 8, 2005

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 04-09168

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has minimal contact with his half sister who is an Israeli citizen living in Bulgaria. Applicant has surrendered his Israeli passport. His property in Israel is of minimal value. The record evidence is sufficient to mitigate or extenuate the negative security implications about foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On November 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding[(1)] it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 16, 2004, Applicant answered the SOR and requested a hearing. On June 13, 2005, I was assigned the case. On June 22, 2005, a Notice of Hearing was issued scheduling the hearing which was held on June 29, 2005. On July 14, 2005, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record, without objection, as Applicant's Exhibit (App Ex) E.

FINDINGS OF FACT

In his response to the SOR, Applicant admits to the following: he held dual citizenship with Israel and the U.S.; he renewed his Israeli passport in June 2001; he used both his U.S. and Israeli passports when he entered and exited Israel in 2001 and 2002; from 1971 to 1975 he served in the Israeli Army; he traveled to Israel eleven times between 2001 and 2004. All of these trips were work related to a U.S. government contract. He also admits he owns two apartments in Israel that he has been trying to sell for some time. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 51-year-old electronics engineer who has worked for a defense contractor since April 2001, and is seeking to obtain a security clearance.

Applicant was born in Israel and moved to the U.S. in 1986. He came to the U.S. to attend college. While living in Israel, he was required to serve in the Israeli military. As an enlisted member he served three years unpaid and, since he had finished high school, one year paid in a technical field. He was an instructor on the Sherman tank (Tr. 62). Following his initial service, he was required to perform 60 days reserve duty each year. All of his service was mandatory. His military service does not entitle him to any type of pension or retirement.

Applicant's half sister was born in Bulgaria. She is 12 years older than Applicant and is an Israeli citizen. He first met his sister in 1978, when he was 25. Prior to that time, he was unaware of her existance. He last called her one time following the death of her husband. In the last year, he has talked with her twice. At one time, his half sister resided in Israel, but now lives in Bulgaria. He currently has no relatives residing in Israel. His parents are deceased. On December 14, 1992, Applicant became a naturalized U.S. citizen. From 1994 to 1999, he attended university in the U.S. obtaining a bachelor and master degrees in electrical engineering.

Applicant owes two apartments in Israel which Applicant believes he would be fortunate to sell for $100,000 (Tr. 48). The properties are in a poor, mixed neighborhood of Israelis, Arabs, and Muslims (Tr. 35). The area is run down, has crime, and is not clean. A friend living on the second floor of one of the properties manages the property. The $280 monthly rent received goes to pay upkeep on the apartments. Applicant lived in one apartment, which is approximately 100 years old, and the other apartment was his parent's apartment and is approximately 60 to 70 years old. Applicant has been attempting to sell the property since 1997, but had problems obtaining title. At one time, the government was a one-third owner of the property. Applicant purchased the government's interest in the apartments and was waiting to receive title. He purchased the government's interest so the property would be easier to sell. Following a government renovation of the property, a $116,000 lien was placed on that apartment previously owned by his parents. Applicant has asked a law office to sell his one property for $100,000 and the other for $25,000. In July 2005, the law firm informed him that no prospective buyers were interested in either property at the prices listed.

In 1995, Applicant traveled to Israel because his parents were ill. He traveled to Israel twice in 1997 to attempt to sell the property. Applicant has no plans to return to Israel. Since being hired in 2001, Applicant has made 12 trips to Israel. He traveled there once in 2001, five times in 2002, twice in 2003, three times in 2004, and once in 2005. All of this travel to Israel since 2001, has been as part of his work on a U.S. government-related contract. After being hired at this current job, Applicant was told he would have to travel to Israel as part of his job. He informed his supervisor that he did not know if his Israeli passport was valid and so it was renewed. On December 14, 2004, Applicant surrendered his Israeli passport and started the process of renouncing his Israeli citizenship. After submitting his paperwork, he was informed he would have to make his children Israeli citizens before he could renounce his citizenship. He was old that once his children were Israeli citizens all of them could renounces their citizenship together (Tr. 41). He asked that his application be processed and said his children could do what they think in right when the time comes. His children are U.S. citizens, not dual citizens.

In March 2005, on his last trip to Israel, he traveled only on his U.S. passport and when leaving Israel, he showed the Israeli boarder control officials a copy of his application to renounce his Israeli citizenship. The boarder control officials had to call the minister of interior to verify the documents had been submitted. He was told he could leave, but the next time he came to Israel he would need to have both his U.S. and Israeli passport.

Applicant owes a home in the U.S. worth approximately $166,000 on which he has an $98,000 mortgage. He also owns a rental home worth $220,000 which has an $86,000 mortgage. He has $52,000 in his 401(k) retirement plan from prior employment and $77,600 in his company retirement plan with his current employer. He and his wife have 150 $100 U.S. saving bonds. Applicant is not eligible to receive the equivalent of Social Security in Israel (Tr. 37). Applicant loves the U.S. and will live here the rest of his life (Tr. 38) and finds the U.S. easier and fairer than Israel.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security

clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[(2)]

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment , reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the United States. Security concerns over the Applicant's possible foreign preference arise from his dual Israeli and U.S. citizenship. Disqualifying Condition (DC) 1 (E2.A3.1.2.1. *The exercise of dual citizenship.*) applies. The Applicant possessed an Israeli passport after becoming a U.S. citizen. Therefore, DC 2 (E2.A3.1.2.2. *Possession and/or use of a foreign passport.*) applies.

With his current job, he was told he would be traveling to Israel as part of a U.S. government contract. Applicant told his employer he did not know if his Israel passport was valid and took steps to renew it. After becoming a naturalized citizen in 1992, he presented both his U.S. and Israeli passports when he entered or exited Israel except in March 2005 when he had already surrendered his Israeli passport.

In December 2004, Applicant surrendered his passport and started the process to renounce his Israeli citizenship. The surrender of the passport and initiating the renunciation of his foreign citizenship show a willingness[(3)] to renounce dual citizenship. Mitigating Condition (MC) 4 (E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.) applies. I find for the Applicant as to SOR subparagraphs 1.a, 1.b, 1.c, and 1.d.

Thirty years ago in 1975, Applicant completed four years of mandatory military service with the Israeli military. This service occurred 17 years before Applicant became a naturalized U.S. citizen. MC 2 (E2.A3.1.3.2. *Indicators of possible*

foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship) applies. I find for Applicant as to SOR 1.d and as to foreign preference concerns.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, 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 also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure. The Government established Applicant's half sister is an Israeli citizen living in Bulgaria. DC 1 (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. The government has also established Applicant owes two properties in Israel.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.[(4)] An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

Applicant has a half sister who he first met when he was 25 years old. Even though his half sister is an Israeli citizen living in Bulgaria, his ties of affection are not strong. During the last year he has talked with her twice, once following the death of her husband. With such limited contact and no contact with her while he was growing up, MC 1 (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.*) applies. I find for Applicant as to SOR 2.a.

In December 1992, Applicant became a U.S. citizen. In 1995, he traveled to Israel to visit his ill parents and visited Israel twice in 1997. There is no prohibition against U.S. citizens traveling to Israel. After 2001, he has traveled to Israel twelve times as part of his job. His job involved his work with a defense contractor that was in compliance with a contact between the U.S. and Israel. His travel to Israel does not pose a security concern. I find for Applicant as to SOR 2.b.

Applicant has two apartments in Israel. He owned one of the apartments and inherited the other from his parents. Since 1997, he has been attempting to sell the apartments. He employed a law firm in Israel to help him sell the property. There are no buyers interested in paying $100,000 for his parent's apartment or $25,000 on his apartment. What was his parent's apartment is subject to a $116,000 lien. Even if he were able to sell it for his asking price, a $16,000 deficit would exist on the property.

Considering the lien, his equity in property is less than $10,000, if he could get his asking prices on the properties. This fails to establish DC 8(E2.A2.1.2.8. *A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.*) The property in Israel is not a substantial financial interest. Applicant's substantial financial interest is in the U.S. where he has more than $200,000 equity in two houses, $50,000 in a 401(k) plan from a former employer, and more than $77,000 in his retirement plan with his current employer, and 150 U.S. saving bonds. C5 (E2.A2.1.3.5. *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies. A possible $9,000 interest in Israeli property is minimal compared to financial interests of more than $325,000 in the U.S. I find for Applicant as to 2.c.

After weighting the record evidence as a whole, it is my determination that the facts and circumstances show Applicant's ties to Israel do not pose an unacceptable risk or concern of foreign influence.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age

and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline C (Foreign Preference): 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 B (Foreign Influence): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For 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. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry,* as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

3. MC 4 only requires a "willingness to renounce" and does not require an applicant to actually renounce his foreign citizenship. Although actual renunciation is a stronger finding then mere willingness to do so.

4. ISCR Case No. 98-0419 (April 30, 1999) at p.5.