DATE: December 15, 2005

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In Re:

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

Applicant for Security Clearance

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ISCR Case No. 04-09589

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

**FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

**FOR APPLICANT**

***Pro Se***

## SYNOPSIS

This 44-year-old engineer was born in Israel in 1961, came to the U.S in 1986 to complete his college education, married and had children and became a U.S. citizen in 2001. He has parents and a sister who are still citizens of and resident in Israel. They have a close relationship, but they and Applicant understand his fundamental loyalty is to the U.S. and his American family. He convincingly avers he would report any improper contacts, regardless of source. He has no other ties of any significance with Israel. He has surrendered his Israeli passport and renounced his Israeli citizenship. His colleagues ands friends consider him to be a man of integrity and dedication to U.S. interests. Mitigation has been established. Clearance is granted.

## STATEMENT OF THE CASE

On May 20, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On June 17, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on August 10, 2005. A Notice of Hearing was issued on August 23, 2005, setting the hearing for September 12, 2005. At the hearing, the Government introduced eight exhibits (Government's Exhibits (GX) 1 - 8). Applicant testified, called four other witnesses and introduced 12 exhibits (Applicant's Exhibits (AX) A - L). Applicant also submitted three timely post hearing exhibits

(AX M, AX N, and AX O). Without objection, all exhibits were admitted into evidence as marked. The transcript was received by DOHA on September 30, 2005.

## FINDINGS OF FACT

Applicant is a 44-year-old engineer for a defense contractor. The SOR contains five allegations, 1.a. - 1.e., under Guideline B (Foreign Influence). In his response, Applicant *admits* allegation 1.a and 1.b., with explanations, and *denies* allegations 1.c., 1.d., and 1.e. All specific admissions are accepted as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's parents are citizens of Israel;

1.b. - Applicant's sister is a citizen of Israel;

1.c. - One of Applicant's cousins is a citizen of Israel;

1.d. - Applicant maintained a bank account in Israel. A disability pension of $50 per month from his period of service in the Israeli military was deposited into this account;

1.e. - Applicant traveled to Israel in at least 1992, 1995, 1996, and 2000.

## POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## CONCLUSIONS

Applicant was born in Israel in 1961, came to the U.S. in 1986 (age 25), obtained a college education, met his American wife, and has 8 and 11 year old children. He became an American citizen in 2000. He received a U.S. passport that same year. He renounced his Israeli citizenship as soon as he learned of its security significance (GX 3). His Israeli passport had already expired and had never been renewed. Other than his service in the Israeli Navy from 1979-1982, he has had no connections with the Israeli government. He has no financial or other ties to Israel outside of his family members there (Id.).

The SOR states concerns under only Guideline B (Foreign Influence).[(1)] Based on this fact, and the totality of the record, I find no substantive concerns based on anything Applicant has said or done. It is a clearly a case based on the preliminary risk assessment that Applicant's family members might ask him to reveal U.S. classified information and that he might "be potentially vulnerable to coercion, exploitation, or pressure" and reveal such classified information.

An analysis under Guideline B focuses on two major aspects: (1) what the relatives might ask Applicant to do and (2) how Applicant might respond. Considering that all of the evidence about the relatives comes from Applicant's own words, which I find to be open and candid, there is no evidence of record that the relatives are agents of the Israeli government or intelligence agencies, that they have been approached by agents of the same, that they have ever asked Applicant to act improperly, or even that they might do so in the future. Obviously, the fact that no improper contacts have been made in the past doesn't mean it can't or won't happen in the future, but it is evidence that must be considered along with the rest of the record.

The bulk of the evidence comes Applicant himself, what kind of person he is, and how he relates to his adopted country vis-a-vis his relatives and his country of origin. Applicant has submitted letters of recommendation from individuals who have known him for some time and view him favorably (*see*, AX K, "integrity and dedication to [the company] and the USA"). Applicant has spent considerable time explaining how he views his feelings about and relationship with the United States (AX M, AX O). He credible avers he would have no problem placing his obligations to this country above that of his family.

The foreign country involved is Israel, which although a close ally of the United States, is recognized as actively involved in information gathering in the U.S. (GX 5, GX 6, GX 7, and GX 8). There is no suggestion in the literature suggesting the use of threats or intimidation in such cases. In retrospect, I conclude that in the absence of specific evidence to the contrary, Applicant's relatives in Israel are not agents of that government or in a position to become the "subject of duress" (Guideline B -Foreign Influence - Preface)

The most important question is how Applicant might respond, specifically whether there is a risk that he might feel forced to choose and then to make a choice that is against U.S. security interests. Even when a young refugee in Israel from Iraq, he admired the United States (Tr at 34) His father was a Captain in the Israeli Merchant Marine and the young Applicant sailed with his father and leaned to "cherish American values" before his father's retirement in 1986 (*Id*.). His parents are financially independent and do not need his help. His sister lives near his parents, works as a schoolteacher, and is also financially independent (Tr at 39). The cousin is now living in Nigeria. Applicant rarely speaks to him (Tr at 39, 40)

Applicant is aware of hypothetical possibilities involving Israel, but his "preference will be to my country, the United States, my wife and my kids and my friends" (Tr at 36). He knows "his parents would expect him to remain strong and not be vulnerable. They would expect me to make the correct decision and let U.S. authorities handle the situation" (Tr at 37, 37).

1.d. - The account in Israel has been closed (AX B, AX C, AX D, and AX M). Applicant no longer receives the pension that had been deposited into this account.

1.e. - In context, I do not find Applicant's cited travel to Israel to be of current security clearance significance (Tr at 40-44).

Applicant and his wife have a joint income of about $150,000. Their home in the U.S. is worth about $1,000,000 (Tr at

44) and their net worth is about $1.5 million (Tr at 86). They have no property interests in Israel (Tr at 56).

Applicant called four witnesses, two colleagues from work, a friend, and his father-in-law. Uniformly, they know about his background and family in Israel, think highly of his work ethic, and consider him to be reliable and trustworthy and a man of good character (Tr at 72- 86).

Based on the totality of the record, I conclude there is little possibility that his relatives in Israel would ask him to act improperly. I also conclude there is minimal chance that he would feel he had to choose between his loyalty to his family and to the United States. He convincingly avers he would always act on behalf of U.S. security interests (Tr at 94).

Disqualifying Condition (1) applies since Applicant does have family members in Israel. However, Mitigating Condition (1) also applies since the evidence suggest that the family's presence in Israel is not an unacceptable risk, considering Applicant's character and his deep ties to this country.

All of the evidence comes from Applicant's own statements and writings, except for the letter of recommendation and his four witnesses. I find Applicant to be a person of character and integrity. He indicates no reservations about his loyalty to the United States. The record of his life and work demonstrates significant contributions to the national welfare. He is well respected by those who know him best, some of whom hold security clearances themselves, have known Applicant for long periods of time, are familiar with his work ethic, and recommend him wholeheartedly. In summary, the overall record shows Applicant to be a man of integrity and responsibility and one who understands his obligations to his adopted country. Nothing in the evidence suggests otherwise. I conclude he has the judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

## FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. 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 Applicant.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**

1. I note that a sensitive U.S. Government agency previously found that Applicant had not "mitigate[d] the government's concerns under DCID guidelines pertaining to foreign preference and foreign influence" (GX 4. Letter of June 27, 2003). The former concerns are not repeated in the SOR in the present case.