

DATE: December 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09632

ECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant has renounced his Israeli and Mexican citizenship, and surrendered his Israeli and Mexican passports 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). His mother, sister and in-laws are citizens of and reside in Mexico. His 77 year old mother was a housewife. He manages her extensive portfolio, which is nearly all in American assets. He has little contact with his sister and in-laws. The Applicant was employed in Israel at an Israeli university while a graduate student, and was employed by an Israeli defense contractor, working on a joint effort with the U.S. Navy. He served four months in the Israeli military before becoming a U.S. citizen. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On June 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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.

Applicant filed an Answer to the SOR on August 10, 2005.

The case was received by the undersigned on September 19, 2005. A notice of hearing was issued on September 26, 2005, and the case was heard on October 7, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 18, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except subparagraphs 1.a. and 1.c., in that he denies exercising his Mexican citizenship and using his Mexican passport

since becoming a U.S. citizen. He also denies subparagraph 1.d., in that he denies exercising his Israeli citizenship.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age, has a Ph.D., and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

The Applicant's father was in a Nazi "extermination camp" at the end of the Second World War (TR at page 52 lines 14~24). His family fled to Mexico, where the Applicant was born (Government Exhibit (GX) 1 at page 1). Once the Applicant received an undergraduate degree in Mexico, he went to Israel to further his education at the age of 23 (TR at page 19 line 21 to page 21 line 1, and at page 49 line 24 to page 50 line 12). After receiving a Master's Degree in Israel, he came to the U.S. to pursue a Ph.D. (TR at page 26 line 22 to page 28 line 4, and at page 49 line 24 to page 50 line 12). He was naturalized as a U.S. citizen in July of 2001 (Applicant's Exhibit (AppX) J).

1.a.~1.f. The Applicant has renounced both his Israeli and Mexican citizenship (TR at page 13 line 12 to page 14 line 14, at page 25 line 9 to page 26 line 17, and AppX W). He has also surrendered his Israeli and Mexican passports in compliance with the *Money Memorandum* (TR at page 47 line 3 to page 48 line 8, at page 49 lines 9~16, at page 55 line 21 to page 56 line 22, GX 11, and AppXs K and L). The Applicant served a total of four months in the Israeli military, during the first half of 1989, before becoming a U.S. citizen in 2001 (TR at page 33 line 9 to page 34 line 20).

Guideline B - Foreign Influence

2.a.~2.h. The Applicant's mother, sister and in-laws are citizens of and reside in Mexico (TR at page 37 lines 2~15, at page 40 line 22 to page 41 line 24, at page 42 lines 5~23, at page 43 line 24 to page 44 line 14 and at page 58 line 21 to page 59 line 10). His 77 year old mother was a housewife (TR at page 40 line 22 to page 41 line 24). He manages her extensive portfolio, which is nearly all in American assets (TR at page 37 line 16 to page 40 line 5, and at page 57 line 13 to page 58 line 20). The Applicant's net worth in the U.S. is \$600,000~\$700,000 (TR at page 44 line 21 to page 47 line 2, and AppXs A~G). The Applicant has little contact with his sister and in-laws (TR at page 42 lines 5~23, and at page 58 line 21 to page 59 line 10). None of the Applicant's foreign relatives have any connection with any foreign government.

The Applicant was employed in Israel at an Israeli university while a graduate student (TR at page 23 line 21 to page 24 line 2). He was also employed by an Israeli defense contractor, working on a joint effort with the U.S. Navy (TR at page 24 line 3 to page 25 line 4, at page 26 lines 18~22, and at page 62 line 5 to page 63 line 4).

Mitigation

Those who supervise and/or work with the Applicant think most highly of him, and would recommend the Applicant to a position of trust (AppXs O~Q).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.

- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests

of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant was a tri-national with Israel and Mexico, and until recently maintained both Israeli and Mexican passports. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This is countered, however, by his compliance with both the last mitigating condition, when he renounced his Israeli and Mexican citizenship; and by his compliance with the *Money Memorandum*, when he surrendered his Israeli and Mexican passports. The Applicant also served in the Israeli army in 1989. The third disqualifying condition is therefore also applicable, "[m]ilitary service . . . for a foreign country." However, the second mitigating condition is applicable here, as this indicator "of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship." Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's mother, sister and in-laws are citizens of and reside in Mexico. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of, or resident or present in, a foreign country." However, the Applicant's foreign relatives not connected with any government, and there is no evidence that thier presence in Mexico can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 51 line 10 to page 52 line 3). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is again shown. Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge