

KEYWORD: Foreign Preference

DIGEST: Applicant is an engineer for a defense contractor. He was born in Israel. His mother was a United States citizen, and his father an Israeli citizen. He has dual United States and Israeli citizenship by birth. He has current Israeli and United States passports. He uses the Israeli passport to travel to Israel, and the United States passport for all other travel. Applicant's use and possession of the Israeli passport is an exercise of dual citizenship and violates a DoD memorandum. Clearance is denied.

CASENO: 04-10917.h1

DATE: 02/03/2006

DATE: February 3, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10917

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an engineer for a defense contractor. He was born in Israel. His mother was a United States citizen, and his father an Israeli citizen. He has dual United States and Israeli citizenship by birth. He has current Israeli and United States passports. He uses the Israeli passport to travel to Israel, and the United States passport for all other travel. Applicant's use and possession of the Israeli passport is an exercise of dual citizenship and violates a DoD memorandum. Clearance is denied.

STATEMENT OF THE CASE

On July 7, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 14, 2005. The SOR alleges security concerns under Guideline C (Foreign Preference) of the Directive.

Applicant answered the SOR in writing on July 17, 2005. He admitted all the allegations under Guideline C, but provided an explanation for his actions. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on August 20, 2005. Applicant received a complete file of relevant material (FORM) on September 26, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due October 27, 2005. As of November 14, 2005, he had not responded. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact.

Applicant is a 30-year-old electrical engineer who has worked for a defense contractor for over five years. He was born in Israel, the son of a United States citizen mother and an Israeli citizen father. He has dual citizenship with the United States and Israel because of the citizenship of his parents. (1) Applicant mostly lived in Israel for his first 11 years, but traveled to the United States each summer to stay with his grandparents, and another 18 months living in the United States while his father was on a sabbatical. He came to the United States permanently in 1986, and attended public schools in the United States from grade 5 through college. He has bachelor and master degrees in electrical engineering. (2)

Applicant has an Israeli passport first issued in the United States at an Israeli Consulate on June 29, 1999. It was renewed on April 11, 2004, with an expiration date of June 28, 2009. (3) Applicant also has a United States passport. (4) Applicant used his Israeli passport for entering Israel in 1999 and 2004, but his United States passport at all other times. Israel requires its citizens, even citizens with dual citizenship with another country, to use an Israeli passport to enter and leave Israel. (5) Applicant is not willing to renounce his Israeli citizenship or surrender his Israeli passport. (6)

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." (7) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. (8)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁹⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹⁰⁾

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 necessarily a determination as to the loyalty of the applicant.⁽¹¹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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.⁽¹²⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁴⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁶⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C - When an Applicant acts in such a way as to indicate a preference for a foreign country over the United States, then Applicant may be prone to provide information or make decisions that are harmful to the interests of the United States.

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

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline C. Applicant's possession and use of a foreign passport raises Foreign Preference Disqualifying Conditions E2.A3.1.2.1 (*The exercise of dual citizenship*), and E2.A3.1.2.2 (*Possession and/or use of a foreign passport*). In addition, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, issued a Memorandum (Money Memorandum) stating that a security clearance for an applicant in possession of a foreign passport must be denied or revoked unless the applicant surrenders the foreign passport. ⁽¹⁷⁾ Surrender contemplates returning the passport to the issuing agency. Applicant has a current Israeli passport that he used to travel to Israel in 1999 and 2004. This is an exercise of dual citizenship. He has not surrendered the passport to the issuing authority, the Government of Israel. I conclude the above disqualifying conditions have been established, and Applicant is in possession of a foreign passport under the Money Memorandum.

I have considered Foreign Preference Mitigating Conditions E2.A3.1.3.1 (*Dual citizenship is based solely on citizenship or birth in a foreign country*), and E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*). While Applicant's dual citizenship is based on his birth in Israel to an Israeli father and a United States citizen mother, Applicant continued to exercise the dual citizenship by obtaining and using an Israeli passport as a United States citizen. He has specifically stated he will not renounce his Israeli citizenship, so that mitigating condition does not apply. In addition, the Money Memorandum precludes granting Applicant a security clearance since he is in possession of a valid foreign passport. The dilemma faced by Applicant because Israel requires him to have an Israeli passport to enter the country is understandable. However, the guidelines are clear that Applicant cannot be granted a security clearance.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

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 C AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

DECISIONS

In light of all of the circumstances in the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Government Exhibit 4 (Security clearance application, dated Mar. 3, 2003).
2. Government Exhibit 5 (Interrogatories, dated Mar. 14, 2005) at 4.

3. Government Exhibit 6 (Israeli passport, dated Apr. 11, 2004); Government Exhibit 8 (Applicant's statement, dated May 28, 2004) at 1.
4. Government Exhibit 7 (United States passport, dated Oct. 15, 2003).
5. Government Exhibit 5 (Interrogatories, dated Mar. 14, 2005) at 3.
6. Government Exhibit 5 (Interrogatories, dated Mar. 14, 2005) at 4-5; Government Exhibit 8 (Applicant's Statement, dated May 28, 2004) at 2.
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
17. Government Exhibit 13 (Money Memorandum, dated Aug. 16, 2000).