

DATE: November 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10987

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Edward O. Lear, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant has renounced his Israeli citizenship, and has surrendered his Israeli passport 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). He has an American son, who resides in Israel. He is a student. The Applicant is not subject to coercion vis-a-vis his son. The Applicant traveled to Israel in 2002, in 2003, and the last time, in 2004. He used his Israeli passport to exit and enter Israel in 2003 and 2004. All three trips were for pleasure to visit his son. litigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On July 5, 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 3, 2005.

The case was received by the undersigned on September 7, 2005. A notice of hearing was issued on September 15, 2005, and the case was heard on October 11, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 27, 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 for subparagraph 2.b., in that he denies his American daughter lives in Israel.]

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 51 years of age, 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 was born in Israel, but came to the U.S. as a five year old, in 1959 (TR at page 18 lines 1~18). He became a naturalized U.S. citizen in 1967 (*Id*).

1.a.~1.d. and 2.c. The Applicant has renounced his Israeli citizenship, and has surrendered his Israeli passport (TR at page 24 line 1 to page 31 line 6, and Applicant's Exhibits (AppXs) A and B). The Applicant traveled to Israel in 2002, in 2003, and in 2004 (TR at page 21 line 11 to page 22 line 25). He used his Israeli passport to exit and enter Israel in 2003 and 2004 (*Id*). All three trips were for pleasure to visit his son (*Ibid*).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant has an American son, who resides in Israel as a dual national (TR at page 20 lines 1~23, and at page 42 lines 3~7). His son is a student (*Id*). The Applicant's American daughter has returned from Israel, and now resides in the U.S. (TR at page 23 lines 1~11).

Mitigation

Those who supervise and work with the Applicant think most highly of him (AppX C).

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 dual national with Israel, and until recently maintained an Israeli passport. 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 he countered, however, by his compliance with both the last mitigating condition, when he renounced his Israeli citizenship; and by his compliance with the *Money Memorandum*, when he surrendered his Israeli passport. Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's American son resides in Israel. 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 son is not connected with any government, and there is no evidence that his presence in Israel 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 32 line 17 to page 33 line 10). 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.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. 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