

DATE: October 5, 2005

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 04-11878

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is an Israeli citizen by birth. In 1990, at the age of 14, he became a naturalized U.S. citizen. In 1997, he obtained an Israeli passport and traveled to visit his grandmother on two occasions. She has since died. Applicant has surrendered his passport to the appropriate authorities and has taken steps to renounce his Israeli citizenship. Eligibility is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's application for a position of public trust. <sup>(1)</sup> On 24 January 2005, DOHA issued a Statement of Reasons <sup>(2)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 17 February 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 23 May 2005. On 28 June 2005, I convened a hearing to consider whether to grant Applicant eligibility for a position of public trust. DOHA received the hearing transcript (Tr.) on 14 July 2005.

I held the record open until 8 July 2005 so Applicant could submit a document from the Israeli military stating he was not subject to military service there. Applicant submitted the document and it was admitted, without objection, as Ex. C.

### **FINDINGS OF FACT**

Applicant is a 29-year-old software developer for a defense contractor. His supervisor finds him to be a hardworking, dedicated, and trustworthy member of the team.

Applicant was born in Israel in 1975. When he was five years old, his family emigrated to the U.S. In 1990, when he was 14 years old, Applicant became a naturalized U.S. citizen. When he turned 18 years of age, he registered with the U.S. Selective Service System and tried to renounce his Israeli citizenship. The Israeli government refused to accept his renunciation because he was still obligated (until he turned 30) for mandatory military service. He obtained his U.S.

passport in 1997.

Applicant obtained an Israeli passport in 1997 so he could exit Israel. He went to Israel to visit his grandmother. All persons born in Israel must have an Israeli passport to exit that country regardless of whether they are citizens of another country and traveling on a passport of that other country. Applicant renewed the passport in 2003 to visit his grandmother. His grandmother died a few months after his 2003 visit.

Applicant's parents and brother are dual U.S./Israeli citizens. Applicant's parents have cousins that still reside in Israel. Applicant has no immediate family members in Israel, and since his grandmother died, has neither traveled to Israel nor had contact with citizens there. After he received his SOR, with the help of his security officer, Applicant sent his Israeli passport to the Israeli Consulate. He has also submitted to the Israeli Consulate forms to renounce his Israeli citizenship, and the Israeli military no longer considers him subject to Israeli military service. He has no plans to visit or return to live in Israel. The Israeli government has not as yet granted his renunciation request.

Applicant bought a house in the U.S. and will marry a U.S. citizen in July 2005. He has no property or financial interests in Israel. Applicant never voted in an Israeli election or served in its military.

Applicant worked for two years in Japan. He contacts a friend he met there each New Year.

### POLICIES

As Commander in Chief, 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions the Directive. Therefore, a finding the applicant is eligible for a position of trust may be granted only upon a finding that it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant has the ultimate burden of persuasion. *See* Directive ¶ E3.1.15.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating an applicant for a position of trust, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an applicant a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting eligibility for such a position.

### CONCLUSIONS

#### **Guideline C-Foreign Preference**

In the SOR, DOHA alleged Applicant exercises dual citizenship with Israel and the U.S. (¶ 1.a), applied for an Israeli passport even though he was a U.S. citizen with a U.S. passport (¶ 1.b), used his Israeli passport to travel to Israel in 1998 and 2003 (¶ 1.c), and remains in possession of a valid Israeli passport (¶ 1.d). Applicant admitted ¶¶ 1.b and 1.c, but denied, with explanations, the other allegations. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Department of Defense is prohibited from granting a security clearance to an applicant who possesses a foreign passport "unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." Memo from Arthur L. Money, Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). The foreign passport must be returned to the issuing authority or authorized representative. ISCR Case No. 99-0480 at 8 (Nov. 28, 2000).

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline C. Applicant exercised dual citizenship (DC E2.A3.1.2.1) by acquiring and using a foreign passport (DC E2.A3.1.2.2). Although Applicant's dual citizenship was based on his birth in Israel (MC E2.A3.1.3.1), he exercised this citizenship by acquiring an Israeli passport after he became a U.S. citizen. Nevertheless, he has returned his passport to appropriate authorities and has taken steps to renounce his Israeli citizenship. MC E2.A3.1.3.4. If an applicant surrenders a foreign passport, the judge must consider not only the bare fact of surrender, but also the overall facts and circumstances surrounding the applicant's possession, use, and surrender of the foreign passport." ISCR Case No. 02-00318 at 4 (App. Bd. Feb. 25, 2004).

After considering all of the facts and circumstances of this case, including the purpose of his obtaining the passport-to visit his grandmother, the death of his grandmother, and the surrender of his passport-I find for Applicant on ¶ 1.

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's grandmother and other relatives are citizen residents of Israel (¶ 2.a) and he traveled to Israel in at least 1998 and 2003 (¶ 2.b). Applicant denied ¶ 2.a, but admitted ¶ 2.b. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government's evidence and Applicant's admissions fail to establish potentially disqualifying conditions under Guideline B. It is potentially disqualifying for an applicant to have immediate family members or persons to whom he is bound by affection or obligation who are citizens, residents, or present in a foreign country. DC E2.A2.1.2.1. Applicant's parents and brother are dual U.S./Israeli citizens. But dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. *Cf.* ISCR Case No. 99-0454, 2000 DOHA LEXIS 221 at \*\*14-15 (App. Bd. Oct. 17, 2000). The evidence would support a finding Applicant had a sense of affection and obligation to his grandmother. But she is deceased and Applicant has no other ties to Israel. I find for Applicant on ¶ 2.a.

Applicant admits he visited Israel on at least two occasions in order to visit his grandmother. But travel to a foreign country is not a disqualifying condition. It may be evidence of an applicant's ties to that foreign country or foreign associates residing in that country. As Applicant's grandmother is dead, his past travels have no security significance to his present position. I find for Applicant on ¶ 2.b.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a

security clearance for Applicant. Applicant's application for eligibility for a position of trust is granted.

James A. Young

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of Department of Defense Directive 5220.6 (Directive). emo. from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to Director, DOHA, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).
2. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.