KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is 58 years old and holds a doctorate in nuclear engineering. He works in many facets of scientific research and has worked for a defense contractor since 1994. He has held a secret clearance since 1991. Applicant was a citizen of Israel and became a naturalized citizen of the U.S. in 1990. To enter and exit Israel he was required to obtain an Israeli passport. Applicant has surrendered the passport, and is willing to renounce his former citizenship. Applicant's wife is a dual citizen of the U.S. and Argentina, and has extended family in Argentina and Israel. Applicant has successfully mitigated the security concerns under Guidelines C, foreign preference, and B, foreign influence. Clearance is granted.

CASENO: 04-12156.h1

DATE: 01/12/2006

DATE: January 12, 2006

In re:

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

Applicant for Security Clearance

ISCR Case No. 04-12156

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 58 years old and holds a doctorate in nuclear engineering. He works in many facets of scientific research and has worked for a defense contractor since 1994. He has held a secret clearance since 1991. Applicant was a citizen of Israel and became a naturalized citizen of the U.S. in 1990. To enter and exit Israel he was required to obtain an Israeli passport. Applicant has surrendered the passport, and is willing to renounce his former citizenship. Applicant's wife is a dual citizen of the U.S. and Argentina, and has extended family in Argentina and Israel. Applicant has successfully mitigated the security concerns under Guidelines C, foreign preference, and B, foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On July 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.[(1)] The SOR, which is in essence the administrative complaints, alleged security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).

In a sworn statement, dated September 2, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR responses, Applicant admitted and denied certain allegations under Guidelines C and B. The case was assigned to me on November 2, 2005. A notice of hearing was issued on November 9, 2005, scheduling the hearing for December 8, 2005. An amended notice of hearing was issued on November 23, 2005, rescheduling the hearing for December 7, 2005, with the concurrence of Applicant. The hearing was conducted as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted five exhibits that were marked as Applicant's Exhibits A-E. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 22, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 58 years old. He was born in Bulgaria and in 1959, at the age of 12, he and his family fled and immigrated to France as refugees. At the age of 17, his parents made the decision that he should become a French citizen. He remained in France until 1971, and at the age of 23 went to Israel. He had already received a bachelor's degree in mathematics and a master's degree in physics in France. He left to pursue additional education and received a second master's degree in chemical engineer in 1975, and a doctorate in nuclear engineering in 1978. Applicant's education was funded by a U.S. corporation to whom he provided the results of his research. Applicant is of Jewish ethnicity and became a citizen of Israel while living there, and received benefits from his citizenship, such as a scholarship. He was required to perform military service and was conscripted as a soldier. He stood border guard duty for a short period, but was assigned to an academic group whose members were permitted to continue their studies during their conscription.

Applicant married an Argentinian/Israeli dual citizen in 1975. Together they immigrated to the United States in 1978. Applicant was 31 years old and has considered himself an American since arriving. Applicant became a naturalized citizen of the United States in 1990. His wife is also a naturalized citizen of the United States, but maintains dual citizenship with Argentina. She only travels on her U.S. passport. Applicant and his wife have two daughters, both born in the United States, who hold U.S. passports only.

Applicant is currently the director at a center for engineering science, works for a federal contractor, is a professor of computer science at a state university, and is a resident affiliate for a jet propulsion laboratory. Applicant has held a secret security clearance since 1991.

After becoming a U.S. citizen Applicant traveled to Israel with only his U.S. passport. Upon arriving, Israeli immigration refused to accept his U.S. passport because he had previously been a citizen of Israel. He was required to pay a fine to enter the country and was required to obtain an Israeli passport in order to exit the country.[(2)] Applicant complied. Applicant used his Israeli passport to enter and exit Israel in, July-August 1997, June 2001, and January 2003. Applicant used his U.S. passport for all other international travel.

When Applicant became aware through the SOR that possession of a foreign passport was now a disqualifying condition he sought guidance for surrendering the passport. Applicant surrendered his Israeli passport to the Consulate General of Israel on October 28, 2005.[(3)] Applicant was willing to renounce his French and Israeli citizenship in 1991 [(4)] and reaffirmed his willingness at his hearing.[(5)] Applicant readily volunteers that he would bear arms for the United States against any foreign country to include both Israel and France, and he would not fight for any foreign country. His

total allegiance is to the United States.

Applicant's elderly father lives in France and is a retired attorney. His mother is deceased. His father worked in private practice and has no contact with the government.[6] He talks to his father about once a month and when he travels to France on business, he will stop in and see him. Applicant's brother also lives in France. He owns his own computer repair company and does not have any contact with the government.[7] Applicant has contact with his brother a couple of times a year. Applicant's wife's parents are deceased and she has one brother who lives in the U.S.[8] Applicant's wife has aunts and cousins in Israel and Applicant and his wife will visit them on average about once a year. None of them work for the government; they are lawyers, teachers and work in agriculture.[9] She also has extended family in Argentina, but apparently little or no contact with them. Applicant has only one cousin in Israel, with whom he has no contact.

Israel is a parliamentary democracy with a modern economy.[10] Israel has close ties with the United States. Israel has strict security requirements and Americans have been detained, searched and denied access to U.S. consular offices, lawyers of family members.[11] The national police have monitored, arrested and deported members of religious groups who they believe intend violence toward Israel.[12] The U.S. government has tight restrictions for American traveling in Israel due to the civil unrest there.[13] "U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed in terrorist actions in Israel."[14] The potential for further violence is high.[15] Israeli citizens naturalized in the United States retain their Israeli citizenship.[16] Israeli citizens, including dual nationals, must enter and depart Israel on their Israeli passports.[17]

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline C, foreign preference, and Guideline B, foreign influence, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.(18) The government has the burden of proving controverted facts.(19) The burden of proof is something less than a preponderance of evidence.(20) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.(21) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.(22)

No one has a right to a security clearance(23) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."(24) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.(25) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.(26) 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.

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

Guideline C-Foreign Preference is a security concern because when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B-Foreign Influence is a concern because a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligations are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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 below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines C and B.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship);* FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport);*FP DC E2.A3.1.2.3 (*Military service or a willingness to bear arms for a foreign country)*, FP DC E2.A3.1.2.4 (*Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country)* and FP DC E2.A3.1.2.5 (*Residence in a foreign country to meet citizenship requirements)* apply. Applicant obtained and used an Israeli passport after becoming a U.S. citizen. The possession and/or use of a foreign passport is an exercise of dual citizenship. Applicant served in the Israeli military and received educational benefits such as an academic scholarship while he was a citizen of Israel. He was required to be a citizen to receive these benefits. A foreign preference can be shown by an applicant's exercise of the rights and privileges of foreign citizenship for reason of personal convenience or expediency.[(27)] Use of a foreign passport for personal convenience is not extenuating or mitigating.[(28)] All of the above disqualifying conditions apply.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2 *(Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship)* and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship),*and conclude both apply. Applicant was conscripted into the Israeli military before becoming a U.S. citizen. He also received educational benefits and met the resident requirements due to his citizenship that occurred before he became a U.S. citizen. In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport." Surrender of the passport contemplates returning it to the issuing authority. Applicant willingly returned the Israeli passport to the appropriate authority. Applicant has exercised dual citizenship in the past and is willing to renounce it. I find the above mitigating conditions apply.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country),* and FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists)* apply. Applicant's wife is a dual citizen of the U.S. and Argentina and presumably Israel. She is an immediate family member who lives with the Applicant in the U.S. An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters.[(29)] Applicant's wife's parents are deceased and her only sibling lives in the U.S. She has extended family in Israel and Argentina. Both Applicant and his wife visit her extended family in Israel about once a year. I find Applicant and his wife have ties of affection to her extended family and the above disqualifying condition applies. Applicant's father and brother live in France, however these facts were not raised as an allegation and therefore will not be considered for disqualifying purposes.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI

MC) E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States),* and FI MC E2.A2.1.3.3 (*Contacts and correspondence with foreign citizens are casual and infrequent).* Applicant and his wife have some contact with her extended family as evidenced by their visits to Israel. The frequency of the visits and the extended familial relationship through his wife is a matter of mitigation. Because there is some contact I have considered their ties of affection to be minimal. I conclude Applicant's cousin is not a member of Applicant's immediate family, nor is he bound to his cousin by close ties of affection or obligation.

Applicant's wife's aunts and cousins are not agents of a foreign power since they are not engaged in intelligence work and work in the private sector.[(30)] The question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the wife's relatives vice the United States. Another consideration is whether these relatives are vulnerable to exploitation in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is an analysis of the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. Although there are terrorist activities and components in Israel it is a country with longstanding close ties with the United States, and is equally committed to combating terrorism. I find Applicant's in-laws are extended family and although he has some contact it is minimal. I find the potential vulnerability is not a security risk.. FI MC E2.A2.1.3.1 applies.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered the whole person and kept in mind that any doubt as to whether access to classified information must be resolved in favor of national security. Applicant has strong ties to his adopted country, including his children, and his professional ties are all in the United States. Past conduct is a strong predictor of future conduct. Applicant has held a security clearance since 1991, with no security issues. Applicant has worked and had access to classified information for over 14 years. This extended period of time is an important predictor when analyzing Applicant's security vulnerability. Balancing the potentially disqualifying and mitigating conditions and considering the totality of all the evidence, I conclude Applicant has mitigated the security concerns under Guidelines C and B, and it is clearly consistent with the national interest to grant Applicant a security clearance.

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: 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

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a: For the 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. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Tr. 44.

3. AE B.

4. AE D at 2.

5. Tr. 23.

6. Tr. 58-61. Applicant's father was not cited as a security concern in the SOR.

7. *Id.* Applicant's brother was not cited as a security concern in the SOR.

8. Tr. 55-57.

9. Tr. 62-63.

10. United States Department of State Consular Information Sheet: Israel, the West Bank and Gaza, dated June 7, 2005, at 1.

11. *Id.* at 3.

12. *Id.*

13. *Id.*

14. *Id.* at 5.

15. United States Department of State Travel Warning: Israel, the West Bank and Gaza, dated June 20, 2005.

16. *Supra* note 10 at 7.

17. *Id.*

18. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997)

19. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

20. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

21. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

22. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

23. *Egan*, 484 U.S. at 531.

24. *Id*.

25. *Id*.; Directive, Enclosure 2, ¶ E2.2.2.

26. Executive Order 10865 § 7.

27. ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003)

28. ISCR Case. No. 99-0424, 2001 DOHA Lexis 59 at *47 (App. Bd. Feb 8, 2001)

29. Directive E2.A2.1.3.1.

30. *See*, 50 U.S.C. secs. 435, 438, and 1801 (b), *But,* ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."