

DATE: February 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-00152

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

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 served in the Israeli Defense Force prior to his emigrating to the U.S. and becoming a naturalized American. The Applicant traveled to Israel in 1988, 1989, 1990 and 2001. He plans no future trip to Israel. The Applicant has no remaining familial connections to Israel, and none are alleged under Guideline B. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On August 26, 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 September 19, 2005.

The case was received by the undersigned on October 20, 2005. A notice of hearing was issued on November 14, 2005, and the case was heard on December 6, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on December 15, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and alluded to Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations as amended by the Government.]

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 50 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 & Guideline B - Foreign Influence⁽¹⁾

The Applicant "came to the United States in 1981 to finish . . . [his] degree" (TR at page 28 line 8 to page 29 line 18). He was naturalized as an American citizen in 1988 (TR at page 33 line 24 to page 34 line 3).

1.a.~1.d. and 2.a. and 2.b. Prior to coming to the U.S., the Applicant served in the Israeli Defense Force from 1976~1981 (TR at page 35 line 22 to page 36 line 4, and at page 39 line 21 to page 41 line 4). The Applicant traveled to Israel in 1988 to attend his father's funeral, and in 1989 and 1990 to settle his father's estate (TR at page 35 lines 16~21). The Applicant also applied for Israeli passports in 1991 and again in 2001 (TR at page 29 line 19 to page 30 line 21, at page 33 lines 8~23, and at page 34 line 11 to page 35 line 14). He had no valid Israeli passport from 1996~2001 (*Id*). In 2001, he traveled to Israel to show his non-Israeli American wife the country of his birth (TR at page 41 line 5 to page 43 line 9). He used an **unsigned** Israeli passport and a valid American passport to enter and exit Israel in 2001 (*Id*, and Applicant Exhibit (AppX) A at page 3). The Applicant plans no future trips to Israel (*Ibid*). The Applicant has renounced his Israeli citizenship, and has surrendered his Israeli passport in Compliance with the *Money Memorandum* (TR at page 30 line 22 to page 33 line 7, and AppXs C~H).

Mitigation

The Applicant's colleagues, who work at the highest of levels of a research laboratory, to include a retired Lieutenant General, think most highly of the Applicant and would recommend him to a position of trust (AppXs N~P).

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 unsigned 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 is countered, however, by his compliance with both the last mitigating condition, when he renounced his Israeli citizenship; and by his compliance with the *Money emorandum*, when he surrendered his Israeli passport. He also served in the Israeli Defense Force, which brings him within the purview of the third disqualifying condition, "[m]ilitary service . . . for a foreign country." The countervailing second mitigating condition is applicable, however, as his "foreign military service . . . occurred before obtaining United States citizenship." Mitigation is shown. Guideline C is found for the Applicant.

As to the Applicant alleged Foreign Influence, I can find none, as none of the disqualifying conditions under Foreign Influence are applicable. 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.

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

1. Paragraph 2 of the SOR is improperly alleged. Subparagraph 2.a. refers to travel to Israel, and subparagraph 2.b. refers to service in the Israeli Defense Force. Both subparagraphs should have been more appropriately alleged under Foreign Preference; and as such, will be discussed in that context.