

DATE: July 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-00435

## **DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

Francisco J. Mendez, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Although Applicant's two siblings are citizens of and residents of Israel, his immediate family, wife and two daughters, are citizens of and reside in the United States. He has held a security clearance for over 22 years without a security violation. When he travels overseas, he follows the proper security procedures. Applicant renewed and traveled on an Israeli passport after becoming a United States citizen. When he was informed of the DoD policy regarding possessing a valid foreign passport, he surrendered his Israeli passport. He has mitigated the foreign influence and foreign preference security concerns. Clearance is granted.

### **STATEMENT OF CASE**

On September 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B, Foreign Influence; and Guideline C, Foreign Preference.

In a sworn statement signed November 30, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned me on March 20, 2006. A Notice of Hearing was sent out on April 12, 2006, scheduling the hearing for May 1, 2006. The hearing occurred on the date scheduled. The government submitted six exhibits that were marked as Government Exhibits (Gov Ex) 1-6. The exhibits were admitted into the record without objection. The government requested that administrative notice be taken on 11 documents. The documents were marked Administrative Notice documents (Admin Not) I - XI. Applicant testified on his own behalf and submitted six exhibits which were marked as Applicant Exhibits (AE) A-F. I took administrative notice of five additional documents which were marked as Applicant Administrative Notice documents (App Admin Not) I-V. DOHA received the hearing transcript (Tr.) on May 10, 2006.

## FINDINGS OF FACT

In his SOR response, Applicant admits to all of the SOR allegations. His admissions 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 a 57-year-old senior advisor engineer for a defense contractor. (2) (3) He has held a SECRET security clearance since May 3, 1984. He has worked for his current employer for 25 years. (4)

Applicant was born and raised in Israel. (5) He lived in Israel until age 30. From 1967 to 1970, he served his mandatory three-year service in the Israeli military as an infantry soldier. (6) After his military service, he attended two years of college earning an associate's degree in mechanical engineering. (7) He then worked for less than a year as a supervisor in a government-owned oil refinery and for less than a year in a metal shop of a privately-owned company. (8)

Applicant met his wife while she was visiting Israel. She was born and raised in the United States. They married on November 16, 1978. (9) About a month after their marriage, they moved to the United States. They chose to live in the United States because his wife's family resides in the United States and they believed the United States would be a better place to live. (10) They have two daughters who were born and raised in the United States, ages 23 and 25. (11) Both are United States citizens. (12) Applicant applied for United States citizenship as soon as he was eligible. He became a United States citizen on August 20, 1982. (13)

Upon moving to the United States, Applicant became a full-time student. In 1980, he graduated with a Bachelor of Science degree in mechanical engineering. (14) He accepted a position with his current employer in September 1980. (15) In September 1982, he took an unpaid leave of absence to pursue a master's degree in computer science. He was awarded his master's degree in 1984. (16)

All of Applicant's financial assets are in the United States. He owns a home. (17) After becoming a United States citizen, he has voted in every major election. (18) Since becoming a United States citizen, he has not voted in any Israeli elections. He has not renewed his Israeli driver's license. He has no financial interests in Israel. He does not participate in the Israeli national health care system. He does not participate in the Israeli National Welfare System. He is not entitled to any pension from the Israeli government or any other Israeli institution. He is not entitled to educational benefits from the Israeli government. He does not pay taxes to the Israeli government. Although required by Israeli law, he did not register his children as Israeli citizens. He has never held political office in Israel. (19)

Applicant obtained a United States passport when he became a naturalized citizen. (20) He also maintained an Israeli passport after becoming a United States citizen. His basis for doing so was that under Israeli law, he is considered an Israeli citizen. He understood that he was required by law to hold a valid Israeli passport in order to travel back to Israel. (21) He fully disclosed his dual citizenship with Israel on his current security clearance application, dated August 4, 2003, and on his previous security clearance applications submitted on February 26, 1984, and April 29, 1992. He noted on each application that Israel considers him to be an Israeli citizen since he was born in Israel. (22) He indicated that he possessed an Israeli passport on his current security clearance application in response to question 15, indicating that Israel requires him to use an Israeli passport when traveling to and from Israel. (23) The security clearance questionnaires he completed in 1984 and 1992 did not ask about the possession of a foreign passport.

On November 7, 2003, Applicant was interviewed in conjunction with his background investigation. He told the investigator that since he was born in Israel, he was required to use an Israeli passport when traveling to Israel. He indicated if he was asked to surrender the passport he would do so. (24)

On March 11, 2005, Applicant answered interrogatories sent to him by the DOHA. He was asked to provide copies of his United States and Israeli passports. He sent complete copies of both passports. His Israeli passport was issued on

August 31, 2004, and does not expire until August 30, 2014. His United States passport was issued on September 23, 1998, and does not expire until September 22, 2008. There are no travel stamps on his Israeli passport. There are travel stamps on his United States passport. [\(25\)](#)

Applicant did not learn of the security concern about possessing a foreign passport until October 17, 2005, when he received the SOR. A copy of the August 16, 2000, memorandum signed by the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C3I) titled "Guidance to DoD Central Adjudication Facilities Clarifying the Application of the Foreign Preference Adjudicative Guideline" was attached to the SOR. [\(26\)](#) He immediately inquired about the procedure for surrendering his Israeli passport. [\(27\)](#) On December 12, 2005, the Israeli Embassy cancelled his Israeli passport. [\(28\)](#) He does not intend to renew his Israeli passport in the future. [\(29\)](#)

Applicant's brother and sister are citizens of and reside in Israel. [\(30\)](#) His brother, age 54, is a manager of a supermarket. [\(31\)](#) His brother's wife is a teacher. [\(32\)](#) His sister, age 63, lives and works on a kibbutz, which is a communal farm. On the kibbutz, a person changes jobs frequently. His sister is currently responsible for building a cultural center on the kibbutz. Her husband is currently the lab technician for the dairy on the kibbutz. His brother and sister and their spouses do not work for the Israeli government and are not agents of a foreign power. He has two cousins and an uncle who are citizens of and reside in Israel. He has little to no contact with his uncle and cousins. [\(33\)](#) His parents are deceased. [\(34\)](#) All of his wife's family members are citizens of and reside in the United States. [\(35\)](#)

Applicant telephones his brother and sister in Israel about once a month. [\(36\)](#) Since moving to the United States, he has traveled to Israel to visit family members. He visited in August 1978, February 1980, August 1980, August 1983, January 1985, June 1986 (family emergency - his mother was sick), June 1987 (visited after business trip to England), 1993, November 1998, November 1999 (visited after business trip to Germany), Nov-Dec 2002 (visited after visiting daughter who was studying for a semester in Belgium) and August 2004 (daughter was taking a Hebrew course over the summer). [\(37\)](#) With the exception of when his mother was ill, the average length of his visits lasted no more than 15 to 20 days. [\(38\)](#) He disclosed his foreign travel on his security clearance applications. [\(39\)](#)

The Vice President and Chief Information Officer of the Electronic Systems Sector wrote a letter indicating Applicant reported directly to her from February 1998 to May 2000 when she served as manager of the Process & Tools Development Support Branch. She also worked closely with him between May 2000 and December 2002. She indicates his contributions have been excellent. He is an industry expert and was critical to enabling the successful design activity for mechanical engineering and was recognized as a significant contributor to the engineering enterprise. He has demonstrated outstanding leadership, technical ability and work ethic. She is not aware of any conduct that would cause her to be concerned about his ability to protect and handle classified information. She has no reason to question his loyalty to the United States. She notes that he continues to be a tremendous asset to the enterprise. [\(40\)](#)

The Director of Sector Security provided a letter on Applicant's behalf. She notes he has held a SECRET clearance since 1984. She indicates he has worked within facilities and areas of extreme sensitivity and is aware and cognizant of his security responsibilities. He has had no security violations during his 25 year career with the company. He dutifully attends security briefings and reports his international travel and contacts in accordance with company security policy. She notes he is trustworthy and recommends continuance of his SECRET security clearance. [\(41\)](#)

The Deputy Chief Information Officer and Operations Manager for the Information Technology Sector, testified and wrote a letter on Applicant's behalf. He recently assumed this position. His former position was the Director, Sector Engineering & Manufacturing Automation. He has known and worked with Applicant in a variety of capacities for over ten years. From 2000 to April 2006, he was his supervisor. Applicant was his team lead for the mechanical design of their products. He placed him in that role based on his trustworthiness and personal integrity. He states that Applicant always demonstrates good judgment and character. As a senior advisor engineer, Applicant is looked upon as an expert in the field and demonstrates integrity in any decisions made with respect to classified data. He has no concerns with Applicant continuing to have access to classified information. [\(42\)](#)

Applicant's performance appraisals indicate that he exceeds standards. (43) He has received numerous awards and incentives for his outstanding and efficient performance. (44) In September 2005, he received a service award for his 25 years of service with the company. (45) He is aware that a security clearance is a privilege and not a right. He has always obeyed the rules and regulations that govern the handling of classified information. He has a stable job. He and his family's life is established in the United States. His allegiance is to the United States government. He would never compromise the national security of the United States. (46)

## 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." (47) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

**Guideline C - Foreign Preference:** 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. (Directive ¶ E2.A3.1.1.)

**Guideline B - Foreign Influence:** 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 obligation 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 foreign countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. (Directive ¶ E2.A2.1.1.)

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

On August 16, 2000, the Assistant Secretary of Defense, Command, Control Communications, and Intelligence (ASD/C3I) issued a memorandum to clarify, Guideline C, Foreign Preference, relative to cases involving possession and/or use of a foreign passport. "The possession and use of a foreign passport in preference to a United States passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." (48)

"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." (49) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (50) An administrative judge should consider the following factors: (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 individual'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 or recurrence. (51)

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. (52) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (53) An applicant "has the ultimate

burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (54) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (55)

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 a determination as to the loyalty of the applicant. (56) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## 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 Guideline C, Foreign Preference, and Guideline B, Foreign Influence.

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

The Government established its case under the Foreign Preference concern. Applicant is a dual citizen of the United States and Israel. The Government has also shown Applicant renewed his Israeli passport after becoming a United States citizen and that he has traveled on his Israeli passport when traveling to Israel. His possession and use of an Israeli passport after becoming a United States citizen is considered exercising dual citizenship. As such, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1: (*The exercise of dual citizenship*) applies as well as FP DC E2.A3.1.2.2: (*Possession and/or use of a foreign passport*).

The Foreign Preference Concern can be mitigated. In Applicant's case, Foreign Preference Mitigating Condition (FC MC) E2.A3.1.3.1: (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies since Applicant acquired his foreign citizenship by birth in a foreign country.

Although there is some concern that Applicant applied for and used an Israeli passport after becoming a United States citizen, he was not fully aware of the security concerns related to possessing and traveling on a foreign passport. He consulted his security office each time he traveled to Israel. He maintained his Israeli passport because he believed he was required to do so under Israeli law. Once he became aware of the security concern regarding possession and use of a foreign passport, he took immediate action to surrender his Israeli passport. In December 2005, his Israeli passport was cancelled. He does not intend to renew his Israeli passport in the future. Aside from the use of the Israeli passport, he has exercised no other rights as an Israeli citizen. The Foreign Preference security concern has been mitigated. I find for Applicant under Guideline C.

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

Under the foreign influence concern, a potentially disqualifying condition is raised. The Government has established that Applicant has immediate relatives who are citizens of and reside in a foreign country. His brother and sister are citizens of and reside in Israel. As such, 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*) applies.

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1: (*A determination that immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates) 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 the loyalty to the person(s) involved and the United States*) has the potential to be applicable to this case. The record evidence and the testimony at the hearing established that Applicant's brother and sister are not agents of a foreign power. Applicant also has the burden to meet the second prong of FI MC 1 which is whether his relatives living in Israel would be in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his relatives and the United States.

In analyzing whether a foreign relative is in a position of vulnerability it is necessary to assess the nature of the foreign countries involved. Israel is a parliamentary democracy dependent on the United States' continued recognition and financial support.<sup>(57)</sup> While Israel is an ally of the United States, there have been difficulties in U.S./Israeli relations over the Palestinian conflict, Israel's military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases.<sup>(58)</sup> The United States remains committed to Israel's security.<sup>(59)</sup> Although Israel is vulnerable to terrorist attacks, they have dealt with terrorism for a long time.<sup>(60)</sup> The United States and Israel have an overall positive record of cooperation and coordination in working against terrorism.<sup>(61)</sup>

Although the risk of undue foreign influence cannot be completely ruled out as long as Applicant's siblings are citizens of and reside in a foreign country, Applicant's substantial ties to and preference for the United States lead me to conclude he can be trusted to place his obligation to the United States government ahead of any sense of obligation to his family members residing in Israel. The people most important to him - his wife and two children - reside with him in the United States. He has worked for the same defense contractor for over 25 years. All of his financial assets are in the United States. Although he occasionally travels to Israel to visit his siblings, he informs his security office of his travel each time. He has held a security clearance for 22 years with no security violations. His superiors respect and trust him based on his integrity and work performance. I find Applicant has mitigated the Foreign Influence concern. I find for Applicant under Guideline B.

### **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 APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: 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. Clearance is granted.

Erin C. Hogan

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.

2. Tr. at 6.

3. Tr. at 135.

4. Tr. at 17, 40.

5. Tr. at 16, 76; Answer to SOR; Gov. Ex. 1.
6. Tr. at 107 - 108; Gov. Ex. 2.
7. Tr. at 102.
8. Tr. at 109-110.
9. Tr. at 104-105; Gov. Ex. 1, question #8.
10. Tr. at 106.
11. Tr. at 70.
12. Tr. at 16, 132.
13. Answer to SOR; Tr. at 16.
14. Answer to SOR; Tr. at 6, 16.
15. Answer to SOR; Tr. at 17.
16. Answer to SOR; Gov. Ex. 1; Tr. at 16.
17. Answer to SOR; AE B; Tr. at 45, 86-87, and 110-111.
18. Answer to SOR; AE F, Certificate of Registration, dated April 7, 2006; Tr. at 87.
19. Answer to the SOR; Tr. at 83-84.
20. Tr. at 79.
21. Answer to SOR; Gov. Ex. 2, 3 and 4; Tr. at 82; Admin Not VIII, US Department of State Consular Information Sheet, Israel, the West Bank, and Gaza, dated March 3, 2006, at 7 referring to Dual Nationality.
22. Gov Ex. 1; AE 6, Department of Defense Personnel Security Questionnaire, DD Form 49, dated February 6, 1984 and Department of Defense National Agency Questionnaire, DD Form 398-2, dated April 29, 1992.
23. Gov Ex 1, question 15.
24. Gov. Ex. 3.
25. Gov Ex. 4.
26. Answer to SOR; Gov. Ex. 5; Tr. at 80-82, 89-91.
27. Answer to SOR.
28. Gov. Ex. 6.
29. Tr. at 92, 127.
30. Tr. at 73.
31. Tr. at 135.
32. Tr. at 137.

33. Tr. at 133-137.

34. Gov. Ex. 1, question 9.

35. Tr. at 132.

36. Tr. at 134.

37. Tr. at 116-121.

38. Tr. at 122.

39. Gov Ex 1 at question 16; AE F, DD Form 49, dated February 6, 1984, at 13.b, DD Form 398-2, dated April 29, 1992, at 14.c.

40. AE A, Letter from Vice President and CIO, Electronic Systems, dated March 26, 2006.

41. AE A, Letter from Director, Sector Security, dated April 14, 2006.

42. Tr. at 52-77; AE A, Letter from Director, Sector Engineering and Manufacturing Automation, dated March 26, 2006.

43. AE D; AE E.

44. AE D, Timely Awards Program, 1997-2003; Management Achievement Plan Incentive, 2004-2006.

45. Answer to SOR, Tr. at 41.

46. Answer to SOR; Tr. at 131.

47. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

48. ASD/C3I Memorandum, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline," dated August 16, 2000.

49. Directive, ¶ E2.2.1.

50. *Id.*

51. *Id.*

52. Directive ¶ E3.1.14.

53. Directive, ¶ E3.1.15.

54. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. Dec 19, 2002).

55. Directive ¶ E2.2.2.

56. Exec. Ord. 10865, § 7.

57. Admin Not II, III, and VIII; App Admin Not II.

58. Admin Not II and III.

59. App Admin Not II; III; IV, and V.



60. Admin Not VIII, IX; App Admin Not II.

61. Admin Not III; XI.