

DATE: May 25, 2006

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In Re:

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SSN:-----

Applicant for Security Clearance

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CR Case No.05-02684

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

#### **FOR APPLICANT**

Robert R. Bohn, Esquire

### **SYNOPSIS**

This 68-year-old engineer moved to the United States from Israel in 1973, became a U.S. citizen and has lived here ever since, obtaining a graduate education, marrying, and raising a family. He has worked in the U.S. defense industry for decades and has held a DoD security clearance for about 20 years with no problems. Once he learned that dual citizenship and possession of a foreign passport was problematic, he renounced his Israeli citizenship and surrendered his Israeli passport. His ties with Israel are minimal when compared with his family, personal, and financial ties to this country. Mitigation has been established. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 21, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On October 25, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on November 25, 2005. On February 2, 2006, a Notice of Hearing was issued setting the hearing for March 6, 2006. At the hearing the Government introduced three (3) exhibits (Government's Exhibits (GX) 1-3), The applicant testified and introduced 26 exhibits (Applicant's Exhibits (AX) A-Z). All exhibits were admitted into evidence, except for AX Z, which was withdrawn. The transcript (TR) was received at DOHA on March 17, 2006.

### **FINDINGS OF FACT**

Applicant is a 68-year-old engineer for a defense contractor. The September 21, 2005 SOR contains two (2) allegations under Guideline C (Foreign Preference) and seven (7) allegations under Guideline B (Foreign Influence). Applicant admits all nine allegations, with detailed comments. All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation.

***Guideline C (Foreign Preference)***

1.a. Applicant exercised dual citizenship with Israel and the United States (U.S.). He has now formally renounced his Israeli citizenship and exercises only his U.S. citizenship.

1.b. Applicant used his Israeli passport instead of his U.S. passport to travel to Israel from February 1998 to October 2002. He believed he was required to do so under Israeli law. He last used it in 2002. The passport expired and has been returned to Israeli authorities along with a renunciation of his Israeli citizenship (AX J).

***Guideline B (Foreign Influence)***

1.a. - Applicant's brother is a citizen and resident of Israel. The brother is 65 years old and is retired/unemployed at present. He was a civil engineer, working on municipal projects (Tr at 35), but has never worked for the Israeli government (Tr at 36). Applicant's contacts with him are sporadic.

1.b. - Applicant's brother-in-law is a citizen and resident of Israel. He does not describe his relationship with him as close (Tr at 37, 38).

1.c. - Applicant's extended family members are citizens and residents of Israel. He does not describe his relationship with them as close (Tr at 37, 38).

1.d. - Applicant was employed by a major Israeli technical institute between 1964 and 1967.

1.e. - Applicant was employed by an Israeli defense contractor between 1967 and 1973

He has not had any contact with either company (1.d. or 1.e.) since 1973 (Tr at 44).

1.f. - Applicant owned 50% of a condominium residence in Israel. Applicant's brother in Israel (1.b.) owns the other 50% and they worked together to sell the property (Tr at 36). He estimated his likely share as about \$35,000.00, but finally received only about \$20,000.00

1.g. - Applicant traveled to Israel in 1998, 1999, twice in 2001, and in 2002, mostly to visit his elderly and ailing mother, now deceased.

**POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific

allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

Applicant is 68 years old. He was born in Bulgaria in 1937, moved with his family to Israel in 1949, when he was about 11. He served in the Israeli Defense Forces, in the Armored Corps, for several years, until 1959, when he was about 22. Applicant emigrated to the U.S. in 1973, when he was about 35 (Tr at 42). He became a U.S. citizen in 1995, along with his Israeli-born wife (Tr at 33). They have three grown children, all naturalized U.S. citizens, in their 30s. All three hold important positions in American society. He has six grandchildren, all native-born U.S. citizens. His parents are both deceased. His father, who died in 1973, was an accountant, his mother a housewife. He last saw his brother in 2002, during a visit to Israel and speaks with him several times a year (Tr at 37).

Applicant obtained a PhD in Engineering from an American university in 1983, and a DoD security clearance in 1993. He has worked in the defense industry since about 1979, and for his present employer, a major defense contractor, for about 10 years (Tr at 25-32). He has held a DoD security clearance for about 20 years (Tr at 30). He is currently an engineering specialist working on important defense programs (Tr at 28). He frequently had access to sensitive company proprietary information (Tr at 32) and has never had any problems while doing so.

He has always been careful in handling classified information, and never been disciplined for any security-related violations (Tr at 30). He has received periodic security briefings (Tr at 31, 32) and has conformed to company policy requiring notification of foreign travel (Tr at 30 and AX K). He has received high praise for his work efforts and handling of classified information and material from numerous co-workers and supervisors (Tr at 32 and AX A-F).

### ***Guideline C (Foreign Preference)***

The SOR alleges the exercise of dual U.S./Israeli citizenship and the possession and use of an Israeli passport while traveling to Israel only. When he learned that holding Israeli citizenship would raise security issues, he renounced that citizenship, as did his wife (Tr at 52, 53). His Israeli passport had expired in October 2005, but he returned the now expired passport to Israeli authorities (Tr at 53 and AX J). He used the Israeli passport to only to enter and exit Israel because he believed that was required by Israeli law (Tr at 54). He used his U.S. passport for all other purposes (*Id.*). He has always notified his company before doing any foreign travel (Tr at 30, AX K).

Most of the cited travel to Israel was to visit his elderly and ailing mother, who then died, so the 2002 trip was to settle the inheritance (Tr at 54).

### ***Guideline B (Foreign Influence)***

Applicant has about \$650,000 to \$700,000 equity in his house in the U.S. and about \$500,000 equity on a second property he and his wife own (Tr at 47). He estimates his current net worth at about \$1.75 million (Tr at 48). His share of the property in Israel was less than \$20,000.00 (AX L).

His one brother is 65. He worked as an engineer, but is currently unemployed (Tr at 35). With the death of his mother in

2002, Applicant's relationship with the remaining relatives in Israel does not reach the level of emotional importance that comes anywhere near outweighing his feelings and ties to his wife, children, and grandchildren in the United States.

*The Concern:* 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 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.

*Disqualifying Conditions* that may be applicable: 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. *Mitigating Conditions* that could mitigate security concerns: (1) a determination that the immediate family member(s), . . . 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; or (2). that his contact and ties with his family are casual and infrequent;

Based on the overall record, I find no basis in logic or experience for finding a risk that Applicant would even feel forced to choose. The focus of his life is obviously here with his family. He has lived the American dream, improving his life, while also improving the national defense of the United States over several decades of service and some 20 year of holding a security clearance without a problem. The evidence from those who have known him for so long, are familiar with his work ethic and service to his country far outweighs any abstract risks resulting from his remaining ties to Israel.

It is understood that Israel is officially recognized as one of the most active gatherers of defense and industrial information in the United States, which means Applicant's burden of proof is even heavier than for someone with relatives in a country such as Canada or Mexico (ISCR Case No. 01-26893 (October 16, 2002) Directive, Additional Procedural Guidance, Item 15).

However, even by this standard, I conclude there is no likelihood that Applicant would ever feel that he had to choose between his relatives in Israel and his obligations to the United States. There is minimal and acceptable risk that Applicant would ever voluntarily act against U.S. security interests, or even act against U.S. interest for any other non-voluntary reason.

The overall record establishes Applicant as a man of integrity (AX A-AX F, AX T-AX V) and substance (personal and financial) (AX H, AX I). He has lived in the U.S. for 33 years, has worked in the defense industry for many years, and has held a DoD security clearance for at least two decades, with no problems of any kind being reported in the record. It is clear that the present adjudication occurred basically because of a change in DoD policy, and not as a result of anything new that Applicant has done or said. He has presented evidence in mitigation sufficiently strong to establish that he is presently eligible for continuing his long time access to the nation's secrets. I conclude that even under the new standards, Applicant has established himself as a man who can safely be relied upon to continue to protect classified information and material. Consequently, I conclude that it is clearly consistent with the national interest for Applicant to retain his DoD security clearance.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

*Guideline C (Foreign Preference)* For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

*Guideline B (Foreign Influence)* For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b.. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. For the Applicant

Subparagraph 2.g. For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**