DATE: August 14, 2006

In Re:

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

Applicant for Security Clearance

ISCR Case No. 05-03254

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr.

SYNOPSIS

Applicant is an internationally recognized scientist with expertise in a field with direct military applications. His close familial relationships in Israel and his use of his Israeli passport when traveling to Israel raised security concerns under Guidelines B and C of the Directive. At his hearing Applicant provided credible evidence showing he had renounced his Israeli citizenship and surrendered his Israeli passport. Applicant failed to mitigate Guideline B security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 25, 2005, under the applicable Executive Order[(1)] and Department of Defense Directive,[(2)] DOHA issued a Statement of Reasons (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 September 9, 2005, and elected to have a hearing before an administrative judge. On April 10, 2006, the case was assigned to me. On May 24, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits (Ex.), which were identified as Ex. 1 and Ex. 2 and admitted to the record without objection. The Government also offered eight documents for administrative notice, which were identified as Government Documents for Administrative Notice I through VIII, and admitted to the record without objection. Applicant offered eleven exhibits, which were identified as Ex. A through K and admitted to the record without objection. DOHA received the transcript (Tr.) of the proceeding on June 2, 2006.

FINDINGS OF FACT

In his answer to the Guideline C allegations in the SOR and in his testimony, Applicant denied he currently exercised dual citizenship with Israel and provided mitigating facts. (Tr. 43-47.) He admitted past possession and use of a valid Israeli passport while holding a valid U.S. passport, and offered mitigating facts. (Tr. 44-47.) He admitted using his

Israeli passport to enter an exit Israel and offered mitigating facts. (Tr. Tr. 40-44.) In his answer to the SOR, Applicant admitted the underlying facts in the Guideline B allegations but disputed the legal conclusions drawn from them. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the record, I make the following additional findings of fact:

Applicant is 56 years old directs a research center for a defense contractor. He is internationally recognized as an expert in a research area which has military and counter-terrorism applications. (Ex. 1; Ex. G at 1; Ex. J; Ex. K; Tr. 94.) He has written many scientific papers and travels to international meetings to discuss his research findings. (Ex. 1; Ex. K; Tr. 95-96.)

Applicant was born and raised in Israel. He served in the Israeli army from 1968 to 1971. (Ex. 1.) In 1975, Applicant came to the U.S. to pursue post-graduate education. He received his master of science and Ph.D. degrees in the U.S. (Tr. 35; 63-64.)

Applicant was married in 1975. His wife is a dual citizen of Israel and the U.S. (Tr. 66.) Applicant is the father of two children, who are now young adults. Both children, who were born in the U.S., are U.S. citizens and claim dual citizenship with Israel. (Tr. 65-66.)

Applicant became a U.S. citizen in 1987. He was employed by the U.S. military and, because of his expertise, was granted a security clearance for the first time in 1983. (Ex. 1; Tr.36-39.)

After becoming a U.S. citizen, Applicant retained his Israeli citizenship. He applied for and was issued an Israeli passport in March 1994. He extended the validity of his Israeli passport in February 1999 for an additional five years, even though he had a valid U.S. passport issued in May 1997. (Ex. 1; Ex. 2). From 1987 until September 2003, Applicant was a dual citizen of the U.S. and Israel. In compliance with Israeli law, he used his Israeli passport to enter and exit Israel. Between 1996 and 2005, Applicant used his Israeli passport approximately 18 times to enter and exit Israel for personal visits to family. (Ex. B.) He also used his Israeli passport to enter and exit Israel when he was conducting business for his government contractor employer in Israel. For all other foreign travel, Applicant used his U.S. passport. (Tr. 92-93; Answer to SOR at 1.)

Applicant completed a security clearance application in November 2002. (Ex. 1) Soon thereafter, a colleague, who also held dual U.S.- Israeli citizenship, advised him that the exercise of dual citizenship could affect the renewal of his security clearance. Until that time, Applicant had not known that exercising his dual citizenship with Israel by using his Israeli passport to enter and exit Israel could be a security problem. (Tr. 67-68.) In September 2003, Applicant, hoping to take action to protect his security clearance, submitted a declaration of waiver of his Israeli citizenship to the Israeli government. (Tr. 67-68.) The declaration of waiver was approved, and the revocation of Applicant's Israeli citizenship became effective March 1, 2004.[(3)] (Ex. C.) However, the document revoking Applicant's citizenship was not provided to Applicant by the Israeli Embassy until August 2005. Because he did not know his request to revoke his Israeli citizenship had been approved, Applicant used his Israeli passport to enter and exit Israel in March 2004 and March 2005. (Tr. 44-45.) In August 2005, after receiving notice that his request to renounce his Israeli citizenship had been approved, Applicant surrendered his Israeli passport to authorized officials at the Israeli embassy. At his hearing, he presented a letter from the Embassy of Israel, dated April 11, 2006, confirming receipt of Applicant's surrendered Israeli passport. (Tr. 46; Ex. D.) Applicant traveled to Israel using his U.S. passport in October or November 2005 and in March 2006. (Tr. 41-42.)

Applicant's mother, who is elderly and in poor health, is a citizen and resident of Israel. Applicant's father, who was also a citizen and resident of Israel, died in March 1997. Since then, Applicant has traveled to Israel each March to attend an annual memorial service for his father. He has promised his mother that so long as she lives, he will travel to Israel for the annual memorial service. Applicant intends to honor his promise to his mother. (Answer to SOR at 2; Tr.40-41; 48.)

Applicant has two sisters who are citizens and residents of Israel. Applicant's older sister is a medical secretary, and his younger sister is the chief financial officer for an Israeli investment fund. Both sisters are married, and their husbands are citizens and residents of Israel. One sister has three children and the other sister has one child. All of Applicant's nieces and nephews are citizens and residents of Israel. Three of Applicant's four nieces and nephews are married, and

they all have young children. None of Applicant's family members in Israel is employed by the government of Israel. (Ex. A; Tr. 50-51; 57-60; 80-81.)

Applicant speaks on the telephone with his mother, whom he describes as very lonely, approximately once a week. He speaks with one of his sisters approximately once every six months, and he speaks with the other sister about every two or three months. He sees both sisters once a year at the annual memorial service for their father. (Tr. 60; 76-78.)

Applicant's wife's parents are also citizens and residents of Israel. Applicant's father-in-law is retired. His mother-in-law, a homemaker, has not worked outside the home. Applicant characterizes his wife, an only child, as "very attached to her parents." She speaks on the telephone with her parents once a week. (Tr. 64; 88-90.)

Applicant submitted seven letters from colleagues and clients attesting to his scientific expertise, trustworthiness, and security worthiness. (Ex. E, F, G, H, I, J, and K.)

I take administrative notice that Israel and the U.S. have a friendly relationship, based on common democratic values, religious affinities and security interests. Despite that friendly relationship, however, Israel has been identified as one of seven most active collectors of U.S. intelligence and proprietary information, including aeronautics, electronics, armaments and energetic materials. (Government documents for administrative notice I, II, III.)

The U.S. State Department has warned that violence from terrorism, including suicide bombers and kidnappers, is a serious concern for U.S. citizens traveling to and visiting in Israel. U.S. citizens have been advised to avoid crowed areas and to be alert to the possibility that violence directed against U.S. citizens and interests can occur without warning. (Government documents for administrative notice IV and V.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

See Government document for administrative Notice VII.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at

2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline C - Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Israel and the United States (¶ 1.a.); that he applied for and was issued an Israeli passport in March 1994, and extended it in February 1999, even though he became a naturalized U.S. citizen in May 1987 and had a valid U.S. passport issued in May 1997 (¶ 1.b.); and that he used his Israeli passport instead of his U.S. passport to enter and exit Israel at least 17 times between 1996 and 2002 (¶ 1.c.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Conditions (DC) E2.A3.1.2.1. and E2.A3.1.2.2. of Guideline C. Applicant, who held U.S. citizenship by naturalization and was in possession of an active U.S. passport, actively sought an Israeli passport to comply with requirements of Israeli nationality. Applicant's acquisition of the Israeli passport permitted him to exercise the rights and privileges of foreign citizenship and indicated a preference for Israel over the U.S.

We turn to an examination of applicable mitigating conditions under Guideline C that pertain to the exercise of dual citizenship. An applicant may mitigate DC E2.A3.1.2.1. under Guideline C if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country. Mitigating Condition (MC) E2.A3.1.3.1. Applicant was an Israeli citizen by birth and a naturalized U.S. citizen. As a U.S. citizen, he exercised his Israeli citizenship by acquiring an Israeli passport to travel into and out of Israel, as was required by Israeli law. Thus MC E2.A3.3.1. is inapplicable.

Under MC E2.A3.1.3.4. an applicant can mitigate the exercise of dual citizenship by expressing a willingness to renounce dual citizenship. Applicant not only expressed a willingness to renounce his Israeli citizenship, he took positive steps to do so. Accordingly, MC E2.A3.1.3.4. applies.

Possession and use of a foreign passport may be a disqualifying condition under E2.A.3.1.2.2. of Guideline C. In a memorandum (Money Memorandum), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. 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 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.

Applicant presented no evidence that he had been granted approval by the U.S. government to acquire and use an Israeli passport. However, he did present credible evidence to demonstrate he had renounced his Israeli citizenship and had surrendered his Israeli passport. Accordingly, Applicant's actions demonstrate compliance with the policy guidance articulated in the Money Memorandum.

At his hearing, Applicant indicated he became aware of the Money Memorandum policy directive from a colleague sometime in late 2002 or early 2003. After receiving notice, Applicant took timely steps to comply with the Money Memorandum policy directive. He testified credibly that from 1987 to 2002, he did not know and had not been informed that his possession, renewal, and use of an Israeli passport to enter and exit Israel could have a negative impact on his security worthiness. Until he received notice of the policy articulated in the Money Memorandum, Applicant had reason to believe his use of his Israeli passport to enter and exit Israel was sanctioned by the U.S.

I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2. of the Directive (whole person analysis). After weighing the applicable Guideline C disqualifying and mitigating conditions, the policy guidance of the Money Memorandum, and the factors in the whole person analysis, I conclude allegations 1.a., 1.b. and 1.c. of the SOR for the Applicant.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother and two sisters are citizens and residents of Israel (¶2.a.); that his parents-in-law are citizens and residents of Israel (¶ 2.b.); and that he had traveled to Israel at least 17 times between 1996 and 2002 (¶ 2.c.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism, or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Israel has an aggressive policy of self defense and is an active collector of U.S. intelligence and proprietary information. Additionally, even though the U.S. and Israel have a friendly relationship, there are extra-governmental factions and terrorists in Israel who are hostile to the United States and who target U.S. security interests in Israel. American citizens with immediate family members who are citizens or residents of Israel could be vulnerable under these circumstances to coercion, exploitation, or pressure.

Applicant admits all Guideline B allegations in the SOR. His admissions raise security concerns under Guideline B, Disqualifying Condition (DC) E2.A2.1.2.1. and DC E2.A2.1.2.2. Applicant's mother and two sisters, individuals with whom he has close lies of affection or obligation, are citizens and residents of Israel. Additionally, Applicant shares his home with his wife, whose parents are citizens and residents of Israel. Applicant is devoted to his elderly mother, and he communicates with her weekly. He has promised his mother he will attend, every March, a memorial service in Israel that honors his deceased father. In the past ten years, he has traveled to Israel at least 17 times to spend time with his mother and other family members there.

Applicant shares his home with his wife, who is a dual citizen of Israel and the U.S. The wife, an only child, is also devoted to her elderly parents, who are citizens and residents of Israel. She also speaks with her parents by telephone weekly.

Applicant is an internationally recognized research scientist whose expertise has military and counter-terrorism applications. The presence of his immediate family members in Israel raises security concerns under DC E2.A2.1.2.6. because their presence there could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government or by terrorist groups operating in Israel and the Middle East.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. Mitigating Condition (MC) E2.A2.1.3.1.[(4)] While the evidence does not establish that Applicant's mother, sisters, or his parents-in-law are agents of a foreign power, they are in a position to be exploited by individuals or groups in the Israel with interests antithetical to the

United States, and those hostile foreign interests could force Applicant to choose between loyalty to his family members and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant is an attentive and devoted son, brother, and son-in-law. His contacts with his mother, sisters, and parents-in-law, who are citizens and residents of Israel, are based on ties of familial affection or obligation. He is in contact with his mother weekly, and his contacts with her are filial and not casual. He visits his mother and sisters in Israel yearly to take part in a memorial service honoring his deceased father. His wife, with whom he shares his home, is also in weekly contact with her parents, who are citizens and residents of Israel. MC E2.A2.1.3.3. does not apply to Applicant's relationships with his mother, sisters, and parents-in-law in Israel. No other Guideline B mitigating conditions apply to Applicant's case. Accordingly, the Guideline B allegations in subparagraphs 2.a. through 2.c. of the SOR are concluded against the Applicant.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

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

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. Applicant testified that only the Israeli Interior minister or his equivalent is permitted to approve a request for revocation of Israeli citizenship. (Tr. 45.)

4. Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1., DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760 at 4 (App. Bd. Feb. 18, 2005).