

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03529

ISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's family ties to Israel pose an unacceptable security concern or risk of foreign influence under Guideline B. Furthermore, Applicant possesses an Israeli passport which precludes him from holding a security clearance under current DoD guidelines. His possession and use of a foreign passport creates an unacceptable foreign preference concern under Guideline C. Clearance is denied.

STATEMENT OF THE CASE

On August 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant his access to classified information. [\(U\)](#) On August 29, 2005, Applicant answered the SOR (Answer), admitted all allegations, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on March 2, 2006. He acknowledged receipt of the FORM on March 7, 2006. On March 29, 2006, Applicant submitted additional information in response in the FORM within the 30-day time period provided to him. The case was assigned to me on April 10, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 47-year-old married man. He was born in Romania and moved to Israel with his parents and older brother

as a child. He became an Israeli citizen, and from November 1976 to January 1981 performed mandatory military service in the Israeli Army Tank Corps earning the rank of Lieutenant. His current status or future obligation, if any, with the Israeli Army is unknown. In August 1984, he married his Israeli-born wife in Israel, and they had two Israeli born daughters. From September 1981 to May 1985, he attended college in Israel and was awarded a degree, major unknown.

In November 1988, Applicant, his spouse and two daughters immigrated to the U.S. He entered the U.S. under an H-1, Needed Profession Visa. In March 1999, Applicant and his wife became naturalized U.S. citizens. Applicant's two daughters also became U.S. citizens at an unknown date.⁽²⁾ After arriving in the U.S., Applicant and his wife had their third and last child, a U.S. born son. Since June 1988, Applicant has been employed by a defense contractor as Vice President of Advanced Engineering. He is a first-time applicant for a security clearance.

Applicant, his wife, and two daughters are dual citizens of Israel and the U.S. Applicant currently holds an Israeli passport issued to him in January 1997, renewed in March 2002, which will not expire until January 2007.⁽³⁾ Applicant has expressed his willingness to surrender his Israeli passport in order to support his security clearance application.⁽⁴⁾ The record contains no affirmative evidence that he has relinquished his Israeli passport. Applicant has also held a U.S. passport since at least May 1999.

Applicant's father, brother, parents-in-law, brother-in-law, and sister-in-law are resident citizens of Israel. He maintains bi-weekly telephone contact with his father and brother, he maintains approximate once weekly telephone or e-mail contact with his parents-in-law, and he maintains approximate once monthly telephone or e-mail contact with his brother-in-law and sister-in-law. Nothing in the FORM indicates what any of Applicant's Israeli relatives do for a living, what they did for a living if they are retired, or what connection, if any, they have with the Israeli government.

Since 1973, Applicant has maintained a close, personal relationship with a dual citizen of Israel and the U.S., who resides in the U.S. Since 2002, Applicant has also maintained a close, personal relationship with an Israeli citizen, who resides in the U.S.

Between the approximate dates of July 1997 and August 2003, Applicant traveled to Israel on five occasions, using his Israeli passport. Also, during the approximate date of July 2000, Applicant traveled to Israel using his U.S. passport.

Except for using his Israeli passport, Applicant claimed he has not exercised any rights, privileges, or benefits of being an Israeli citizen such as voting in an Israeli election. He has no financial interests in Israel and affirms his allegiance is to the U.S.

Israel is a modern, well developed country, with a history of past and present tension with its Arab neighbors.⁽⁵⁾ The government submitted evidence of recent cases of individuals engaging in espionage on behalf of Israel against the U.S., as it pertained to matters within the defense industry.⁽⁶⁾

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the granting or denial of access to classified information.

However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁽⁷⁾ and the whole person concept.⁽⁸⁾ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence), and Guideline C (Foreign Preference) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽⁹⁾ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁽¹⁰⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.⁽¹¹⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Guideline B - Foreign Influence

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

In every security clearance case an applicant's ties or connections to any foreign country require careful examination.⁽¹³⁾ Notwithstanding, the mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying. The language of the foreign influence guideline does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country.⁽¹⁴⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern or risk.⁽¹⁵⁾

The government established a prima facie case under Guideline B by showing that Applicant has close ties of affection or obligation with his father, brother, parents-in-law, and brother-in-law and sister-in-law, who are resident citizens of Israel.⁽¹⁶⁾ The strength of his relationship is demonstrated, to a certain extent, by his frequent contacts with his family, and numerous visits to his family in Israel. The fact that Applicant has close ties of affection to persons who are either citizens or residents of Israel is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure by a foreign country.⁽¹⁷⁾ Foreign Influence Disqualifying Condition (DC) 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 DC 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.*

In deciding whether Applicant's family members are in a position to be exploited, I considered, among other things, past instances of espionage against the U.S., especially in the area of defense related matters.⁽¹⁸⁾ That being said, the U.S. and Israel seem to have a friendly, cooperative relationship as demonstrated by their diplomatic status, and mutual cooperation, which is more often than not the case. Nevertheless, the concerns still exist, because even friendly countries have interests that are contrary to the national interest of the U.S.

It was the Applicant's responsibility to refute, extenuate, or mitigate the government's foreign influence concerns raised by his family ties. The record is silent as to whether any of Applicant's Israeli family members are agents of a foreign
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power or employed by or connected to a foreign government or in positions where they are likely to be exploited by a foreign power. The lack of information concerning Applicant's relatives, and his failure to demonstrate that his family members are not in a position to be exploited, by either coercive or non-coercive means, by a foreign government in a way that could force him to choose between loyalty to those relatives and loyalty to the U.S., precludes a finding that any of the Guideline B mitigating conditions apply. [\(20\)](#)

Guideline C - Foreign Preference

Under Guideline C (Foreign Preference), a security concern exists 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.

The government established a prima facie case under Guideline C by showing that Applicant maintains an Israeli passport. Applicant has exercised dual citizenship and a foreign country preference by traveling on an Israeli passport after becoming a naturalized U.S. citizen. Applicant has admitted all allegations under Guideline C, namely, dual citizenship, possession/use of an Israeli passport, repeated travel to Israel, and Israeli military service for over four years. [\(21\)](#) Despite his offer to do so, there is no evidence that Applicant has taken any affirmative steps to relinquish his Israeli passport. Under current guidelines, his continued possession of a foreign passport is a bar to holding a security clearance. Even if Applicant were to now relinquish his Israeli passport, his history of past use, as an exercise of the privilege of Israeli citizenship, remains a continuing Guideline C concern. Foreign Preference Disqualifying Condition (DC) 1: *The exercise of dual citizenship*; and DC 2: *Possession and/or use of a foreign passport* and the Money Memorandum applies. Possession and use of an Israeli passport *per se* precludes Applicant from holding a security clearance absent approval from proper authority. Under current DoD guidelines a favorable finding under this concern is not authorized. [\(22\)](#)

I have carefully weighed all the evidence, and I have applied the disqualifying conditions and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in this case, including Applicant's statement, his family ties to foreign nationals, exercise of dual citizenship, possession of an Israeli passport, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has not mitigated the security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST APPLICANT

Subparagraphs 1.a - 1.f.: Against Applicant

Paragraph 2, Foreign Preference (Guideline C): AGAINST APPLICANT

Subparagraphs 2. 1.a. - 1.d.: Against Applicant

DECISION

In light of all 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.

Robert J. Tuider

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.

2. Applicant's limited personal information was obtained from his security clearance application (SF- 86), FORM Item 4, and his October 2004 statement, Item 5.
3. Assistant Secretary of Defense for Command, Control, Communications and Intelligence Memorandum of August 16, 2000 (Subj: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline, commonly referred to as "The [Arthur L.] Money Memo", which reads in part:
"The security concerns underlining 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."
4. FORM, Item 5.
5. FORM, Items 6 through 9.
6. FORM, Item 10.
7. Directive, Section 6.3. 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: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.
8. Directive, E2.2.1. ". . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ."
9. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2 (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 (April 3, 2006) p. 3 (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
11. *Id.* at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. ISCR Case No. 97-0699 (November 24, 1998) at p. 3 (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").
14. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.
15. *Id.*
16. *See ISCR Case No. 03-24144* (December 6, 2005) at p. 5 (As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.); *ISCR Case No. 03-04343* (December 20, 2005) at p. 4 (There is a rebuttable presumption that contacts with immediate family members are not casual.).

17. ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

18. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the U.S.

19. *See* ISCR Case No. 03-10954 (March 8, 2006) at p. 4 (An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigation Condition 1.)

20. ISCR Case No. 02-04455 (March 7, 2006) at p.2 (The issues is not merely whether Applicant's father can influence him, but whether Applicant has presented evidence showing his father is not in a position to be exploited by a foreign power in a coercive or noncoercive manner.).

21. Record evidence suggests Applicant's foreign military service may be mitigated as occurring before obtaining his U.S. citizenship. Directive E2.A3.1.3.2.

22. *See fn 3 supra.*