

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant is 54 years old, married with two children. She works for a defense contractor. Applicant is a naturalized U.S. citizen. Applicant has a U.S. and Israeli passport, and she has not surrendered the Israeli passport. Applicant's husband and children in the U.S. have dual citizenship along with Applicant. She has other family members who live in Israel where they are citizens. Applicant has not mitigated the foreign preference, foreign influence, or personal conduct security concerns. Clearance is denied.

CASENO: 05-03532.h1

DATE: 05/12/2006

DATE: May 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03532

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 54 years old, married with two children. She works for a defense contractor. Applicant is a naturalized U.S. citizen. Applicant has a U.S. and Israeli passport, and she has not surrendered the Israeli passport. Applicant's husband and children in the U.S. have dual citizenship along with Applicant. She has other family members who live in Israel where they are citizens. Applicant has not mitigated the foreign preference, foreign influence, or personal conduct 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 September 12, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on October 7, 2005. Applicant requested her case be decided on the written record in lieu of a hearing.

On February 9, 2006, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on March 13, 2006, within the 30 day time allowed that would have expired on March 24, 2006. The case was assigned to me on March 24, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 54 years old, a systems engineer for a defense contractor, married with two children. She immigrated to the U.S. in 1976 and became a naturalized U.S. citizen in 1985. She is a dual citizen with Israel, the country of her birth. She expressed a willingness to renounce that citizenship. Her husband was also born in Israel and has dual citizenship. Her children were born in the U.S., and Applicant obtained Israeli citizenship for them. Applicant has a U.S. passport, and an Israeli passport. She renewed the Israeli passport in 2000, and again in 2005. She uses the Israeli passport to travel to Israel for her own convenience, finding it easier to enter Israel with that passport. Applicant served in the Israeli Self Defense Forces from 1969 to 1971. She disclosed that service on her naturalization documents, but did not disclose it on her security clearance application (SCA) of April 12, 2004, in answer to Question 11 that asked for the Applicant's "foreign military service". (Items 3, 6, 7, 10)

Applicant's mother, sister, and half brother are citizens and resident of Israel. Her parents-in-law and sister-in-law are citizens and residents of Israel. Since June 1997 she traveled four times to Israel to visit with her family members, particularly her mother and parents-in-law, all of whom are in the 80s and ill with various conditions. (Items 3, 6, 7)

Israel is an active collector of economic and industrial information, including proprietary and classified information. Israel is a parliamentary democracy in the middle east. The U.S. government issued a travel warning to U.S. citizens about travel in Israel, the West Bank, and the Gaza Strip, dated February 8, 2006, noting its concerns about terrorist attacks in those areas targeting U.S. citizens. (Items 8-13)

Applicant submitted three character letters from co-workers. Those letters attest to Applicant's moral standards, ethics, work productivity, and civic-mindedness. (FORM Response)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national

interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states 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 identify 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 raised 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline C: Foreign Preference: The Concern: 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. E2.A3.1.1

Guideline B: Foreign Influence: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

Guideline E: Personal Conduct: The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has close connections to Israel with her family being there, is an educated engineer who should have no problem understanding the SCA questions, yet she failed to disclose her Israeli military service in answer to such a question, and has an Israeli passport used by her to enter Israel for her own convenience. She has not surrendered the passport as required by the Money Memo.

Based on the facts and the policies of the Directive, under the foreign preference security concern, Disqualifying Conditions (DC) 1 (The exercise of dual citizenship E2.A3.1.2.1), DC 2 (Possession and/or use of a foreign passport E2.A3.1.2.2), and DC 3 (Military service or a willingness to bear arms for a foreign country) apply. The Money Memo applies also because of the acquisition of an Israeli passport, and her periodic renewal of it, the most recent renewal being in 2005.

The Mitigating Conditions (MC) applicable are MC 1 (Dual citizenship is based solely on parent's citizenship or birth in a foreign country. E2.A3.1.3.1), MC 2 (Indicators of possible foreign preference, e.g., foreign military service, occurred before obtaining U.S. citizenship. E2.A3.1.3.2), and MC 4 (Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4). Applicant was born in Israel where her parents lived, she served in the Israeli military 35 years ago before she came to the U.S. in 1976. She expressed a willingness to renounce her Israeli citizenship. Were these MC alone to be applicable and controlling, Applicant would have mitigated this security concern. But there is another security concern because she has not surrendered her Israeli passport. Under the Money Memo policy, Applicant cannot have a security clearance. Therefore, I conclude this security concern against Applicant.

The foreign influence security concern 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. E2.A2.1.2.1) applies because all of Applicant's family members except her husband and two children live in and are citizens of Israel.

The MC 1 (A determination that the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate 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 loyalty to the persons involved and the United States. E2.A2.1.3.1) might apply if Applicant met her burden of proof on this security concern. While her Israeli family members might not be agents of the Israeli government, she has not shown they are not in a position to be exploited to force Applicant to choose between them and loyalty to the U.S., particularly since Israel is one of the most active collectors of industrial and proprietary information from the U.S. Therefore, I conclude this security concern against Applicant.

The final security concern in this case is the personal conduct issue. The Government is concerned that Applicant, an

educated person, could not read, comprehend, and disclose in response to Question 11 on the SCA the fact of her Israeli military service from 1969 to 1971. That service is "foreign military service" contemplated by Question 11. DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) and DC 4 (Personal conduct that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. E2.A5.1.2.4) apply. Applicant knew she served and her explanation of why she did not disclose it is not persuasive. Failing to disclose it makes her vulnerable to coercion, exploitation, or duress because of the type of engineering work she does for a defense contractor on certain aircraft, at least

There are no MC applicable under this security concern that would mitigate this substantial lack of disclosure. Therefore, I conclude this security concern against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against 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

Subparagraph 2.d: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).