

DATE: December 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04765

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

James J. McKee, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant has renounced his Israeli citizenship, and has surrendered his Israeli passport in Compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000). From 1991 to 2003, he worked in Israel, as a dual national, for an Israeli firm, working on a joint project with an American firm for the U.S. Army. He receives a \$250 monthly pension as a result of this employment. He also voted in a local mayoral election. He has little contact with an elderly cousin and her spouse, who are citizens and reside in Israel. The Applicant is not subject to coercion vis-a-vis these distant relatives. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On August 3, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR soon thereafter.

The case was received by the undersigned on September 22, 2005. A notice of hearing was issued on September 28, 2005, and the case was heard on October 20, 2005. The Government submitted documentary evidence. The Applicant called one witness to testify on his behalf, testified himself, and submitted documentary evidence. The transcript (TR) was received on November 3, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 73 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

1.a.~1.d. The Applicant is a native born American, who served as an officer in the U.S. Army for two years in the 1950s (TR at page 45 lines 12~16, and Government Exhibit (GX) 1 at pages 1 and 4). In 1995, he became an Israeli citizen, as a condition of employment, and obtained an Israeli passport, when working for an Israeli firm in Israel (TR at page 32 line 16 to page 33 line 16, at page 39 line 21 to page 40 line 16, and at page 41 lines 19~24). The Applicant has recently renounced his Israeli citizenship and surrendered his Israeli passport (Applicant' Exhibit (AppX) A). While living in Israel, the Applicant also voted in a local mayoral election (TR at page 35 line 17 to page 36 line 3, and at page 42 lines 3~11).

Guideline B - Foreign Influence

2.a.~2.e. The Applicant was employed by an American firm in Israel for two years from 1964~1965 (TR at page 22 line 23 to page 24 line 20). From 1991 to 2003, he also worked in Israel, as a dual national, for an Israeli firm, working on a joint project with an American firm for the U.S. Army (TR at page 27 line 11 to page 31 line 3). He receives a \$250 monthly pension as a result of this employment (TR at page 36 line 18 to page 37 line 8, and at page 43 line 17 to page 44 line 15). This small monthly stipend is insignificant considering the Applicant's annual salary, \$123,000, and net worth in the U.S. (*Id*). The Applicant has little contact with an elderly cousin and her spouse, who are citizens and reside in Israel (TR at page 34 line 13 to page 35 line 16).

Mitigation

Those who know, supervise and/or work with the Applicant think most highly of him (TR at page 14 line 24 to page 19 line 12, and AppX B). He has their unqualified support, and they would recommend the Applicant for a position of trust (*Id*).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, 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:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant was a dual national with Israel, and until recently maintained an Israeli passport. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This has been countered, however, by his compliance with both the last mitigating condition, when he renounced his Israeli citizenship; and by his compliance with the *Money Memorandum*, when he surrendered his Israeli passport. Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's cousin and her spouse are citizens of and reside in Israel. These distant relatives are not included within the purview of "[a]n immediate family member," as delineated by the first disqualifying condition under Foreign Influence. ISCR Case No. 02-26978 (September 21, 2005) at page 7. In any event, there is no evidence that their presence in Israel can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 34 line 13 to page 35 line 16). However, the Applicant does receive a \$250 monthly pension as a result of his employment in Israel. This is not a "substantial financial interest," within the meaning of the last disqualifying condition, in light of his substantial income and net worth in the U.S. Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge