DATE: January 18, 1999

In Re:

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

Applicant for Security Clearance

ISCR Case No. 99-0527

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 18, 1999, 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 by Change 4, issued a Statement of Reasons (SOR) to the Applicant that detailed 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 22, 1999, Applicant responded to the allegations set forth in the SOR and elected to have the case determined after a hearing before a DOHA Administrative Judge. The matter was assigned to me for resolution on October 20, 1999. Applicant requested a December 1999 setting for the hearing because of his prior plans to be out of the country during part of the intervening period. Department Counsel having made no objection, a Notice of Hearing was issued on November 30, 1999, setting the hearing for December 8, 1999. The hearing was conducted as scheduled, and the transcript was received by DOHA on December 16, 1999.

FINDINGS OF FACT

The Government opposes the Applicant's request for a continued security clearance, based on the evidence supporting the nine allegations set forth in the attached SOR, specifically the five allegations under Guideline[(1)] C (Foreign Preference) (SOR 1.a.,1.b., 1.c., 1.d., and 1.e.) and the four allegations under Guideline B (Foreign Influence) (SOR 2.a., 2.b., 2.c., and 2.d.). In evaluating the evidence, in addition to the general guidelines found in Section 2.2 of Enclosure 2 of the Directive, I considered the following points: (1) whether the evidence supports each and every SOR allegation; (2) whether the evidence comes within one or more of the Foreign Preference and Foreign Influence guidelines in the Directive at Enclosure 2; (3) whether the evidence establishes a nexus or connection with Applicant's security clearance eligibility; and (4) whether Applicant has established mitigation and/or extenuation.

After a thorough review and analysis of *all* the record evidence in this case, determining and comparing evidence that may be disqualifying with evidence that may be mitigating, considering the totality of the evidence under the "whole person" concept as required by the Directive, and considering arguments from both parties as to how the record evidence should be viewed, I make the following findings of fact as to each SOR allegation:

FOREIGN PREFERENCE - GUIDELINE C

SOR 1.a. - Applicant is a citizen of the United States (U.S.), Canada, and Israel;

SOR 1.b. - Applicant has used an Israeli passport to travel to Israel, once or twice a year, since becoming a U.S. citizen in June 1996. He last used the Israeli passport to travel to Israel in November and December 1999, when he visited his mother and other relatives and friends;

SOR 1.c. - Applicant currently holds a valid Israeli passport, having renewed it prior to its expiration in 1999. Applicant possessed a Canadian passport when he resided in that country, but did not renew it upon its expiration, after moving to the U.S., and does not currently possess a Canadian passport.

SOR 1.d. - Applicant maintains his Canadian citizenship because he worked for several years in that country and believes he needs citizenship to qualify for Canadian retirement benefits in the future. He has not checked to determine his actual eligibility and he does not know how large the retirement benefits might be. He believes the amount, if any, would be "insignificant," compared to potential U.S. retirement benefits (GX 3 at p. 2).

SOR 1.e. - Applicant maintains his Israeli passport, in part, because he worked for many years in that country and believes Israeli citizenship is necessary to make him eligible to receive retirement benefits from Israel in the future. He believes the amount, if any, would be smaller than his potential retirement benefits under the U.S. Social Security System. In addition, he maintains Israeli citizenship and an Israeli passport to assist him in visiting his relatives in that country, because he believes the Israeli government considers him to be a citizen of that country and requires him to use its passport when traveling there. He is aware that he can renounce his Israeli citizenship, through a process that may take up to a year to complete and, that if he did so, he could then travel to that country using his U.S. citizenship and U.S. passport. He has chosen not to do so, primarily because he is concerned about the possible effect on his retirement benefits.

FOREIGN INFLUENCE - Guideline B

SOR 2.a. Applicant's elderly and ailing mother is a citizen of Israel and resides in Israel;

SOR 2.b. - Applicant's brother is a citizen of Israel and resides in Israel. The brother is about 50 years old and handicapped.

SOR 2.c. - Applicant's sister is a citizen of Israel and resides in Israel;

SOR 2.d. - Applicant's three children are citizens of the U.S., Canada and Israel, and all reside in the U.S.[(2)]

I also make the following findings of fact:

Applicant is a 54-year-old vice-president of a defense contractor with 500 + employees. His background is in the design and manufacturing of electronic systems for commercial and military use, specifically in the development of a specialized aviation system. He has worked for the same company for the last 12 years, since moving to the United States (Transcript (Tr) at 5). Applicant was born in 1945 in the Middle East, in Country A. He and his family were deported by Country A to Israel in 1951 (Tr at 51 - 53). Applicant lived in Israel until 1975, when he became unhappy with social and political conditions there and sought employment elsewhere.

Applicant moved to Canada in 1975, became a Canadian citizen, and attended college in that country from 1975 to 1977, at which time he returned to Israel for about four years. He then accepted a job offer in Canada and worked there from about 1981 to 1987. In 1987, he accepted an offer of employment from an American firm and moved to the U.S.

(GX 1 at 2). Applicant became a U.S. citizen in June 1996 and received a U.S. passport in November 1996. His wife and his children live in the U.S. and have multiple U.S./Canadian/Israeli citizenship (Tr at 14)[(3)]. Since becoming a U.S. citizen, Applicant has consistently voted in U.S. elections. Applicant has not voted in any foreign elections since moving to the United States.

TIES TO CANADA

Applicant has expressed his feelings about maintaining Canadian citizenship. Canada has no objection to his multiple citizenship (GX 2 at 1). Applicant became a Canadian citizen in 1984 or 1985 (Tr at 33). He has "national allegiance" to Canada because it's a "procedure you go through when you obtain citizenship" (GX 2 at 1). Applicant's Canadian passport has expired and he has "no desire" or "need" to renew it (*Id*. at 2 and Tr at 30, 31). Military service in Canada was neither required nor served. Applicant's interest in retaining his Canadian citizenship is primarily financial, and is limited to protecting possible future retirement benefits (GX 2 at 3 and Tr at 13). As indicated above, he has not checked to determine either eligibility or the amount of potential benefits, but he believes the amount would be "insignificant" (GX 2 at 3).

Applicant would "certainly renounce his Canadian citizenship" if that country tried to persuade him to betray his loyalty to the United States using the retirement benefits as a lever GX 3 at 3). Applicant has not resided in or traveled to Canada since 1987. He has no family or relatives living in Canada (Tr at 13) and has no other ties or connections to that country (GX 3).

TIES TO ISRAEL

Applicant lived in Israel from 1951 to 1975, when he moved to Canada, to attend a university. He returned to Israel in 1977, only to move back to Canada in 1981 to work. He has not lived in Israel since 1981.

As to why Applicant retains his Israeli and Canadian citizenship, Applicant states: "I don't know why I shouldn't maintain dual citizenship [with Israel and Canada] - as I have been a citizen of these countries" (GX 2 at 1). He has "more emotional ties [to Israel] because of his religion, and his family members are there (mother, brother, and sister). Israel was a refuge for our family [and] saved us from persecution from [Country A]" (*Id*. at 2).

Applicant uses his Israeli passport only to enter and leave Israel. "You must use it or major problems occur. This is a security standpoint from Israel. I don't benefit from an Israeli passport" (*Id*.). His use of the Israeli passport "is strictly to allow me to go to Israel to visit my mother, my sister, and my brother" (Tr at 14). He states that "unlike other countries, Israel demands that I use my Israeli passport" (*Id.* at 14).[(4)]

Applicant has renewed his Israeli passport every five years since he left that country in 1981 (Tr at 31). The last renewal was within the last three years (Tr at 32) and he last used the Israeli passport to enter and exit that country shortly before the December 8, 1999 DOHA hearing.

While residing in Israel, Applicant served in the Israeli Air Force, as "required and desired," as do most young Israelis. He served three years and three months and is not "obligated to serve or bear arms" in the future (*Id*.). Applicant was a "radar technician" and had no connection with intelligence activity (Tr at 56). He has traveled to Israel once or twice a year, most recently in November 1999, to visit his mother and other relatives there (Tr at 15). His mother is "ill" and "very old," and can't be brought to the U.S. (Tr at 14). He does not believe she has long to live (*Id*.). His brother is handicapped and "not in a position to move" (*Id*.).

In response to a question by Department Counsel about his foreign citizenship, Applicant acknowledged that he was aware that he could renounce his Israeli citizenship, as well as his Israeli passport, and travel to Israel on his U.S. passport (Tr at 39). He states that his interest in the "pension benefits" is the main reason he maintains his Israeli citizenship and that:

If somebody tells me today anyone . . . you're not going to get a pension, I have absolutely no problem to revoke the citizenship and the passport. And I will do so, as soon as I discover that's the case (Tr at 39. *See also,* Tr at 54).

Applicant has never checked with either Canada or Israel to determine if he was in fact eligible for a pension, what the amount of the pension would be, and whether he needed to be a citizen of that country to be eligible (Tr at 40, 41).

TIES TO THE UNITED STATES

As discussed above, Applicant accepted a new job offer and moved to the U.S. from Canada in 1987. He became a U.S. citizen in June 1996 and obtained a U.S. passport a few days after that (Tr at 34). Applicant expresses positive feelings for the U.S. (Tr at 14) and believes not only that he has shown a preference for the U.S. "by [his] work," but that his "integrity is beyond doubt" (Tr at 15).

Applicant's understanding of his responsibilities vis-a-vis the protection of classified information feelings is as follows:

I always felt that information given to me is not mine. It's owned by the Government that gives it to me, and I'm not at liberty to sell it or give it to anyone. I feel an obligation and moral responsibility when I have the clearance. I did not ask for the clearance. I really don't want the clearance. It was asked on my behalf by the company. I really don't need it or want it. It's a responsibility; it's a duty . . . . Even if I don't get the secret clearance, I will continue to work in the areas that are not classified. That will restrict my ability to contribute and fully utilize my ability to contribute to the national security (Tr at 15).

As to what might happen if asked to act adversely to U.S. interests, Applicant stated:

The chance of Israel applying any pressure, I think, is very slim. I don't think it will happen. I think it's unrealistic, unwise. If any such attempt would happen, rest assured, I will notify the authorities at such attempts (Tr at 16).

Government Exhibit 3, being the most recent and probing of the Government's three exhibits,

is of particular interest. Question 2 in GX 3 asks Applicant to comment on:

how you would handle any potential conflicts of interest that could arise between your loyalty to the U.S. and your loyalties to Canada and Israel. Comment on how you would draw a line between your personal preferences over such conflicts and your official responsibilities or obligations involving them, if any. (*Potential conflicts would involve, for example, loyalties that are predicated on family, cultural heritage, and ideological doctrines, or other loyalty affiliations that could influence you to make decisions to aid a foreign government or group.*

Applicant responded:

Since I have elected to live and raise my family in the U.S., it is clear in my mind as to my primary loyalty. The relationships among the U.S., Canada, and Israel are such that it is very unlikely that a war will break out among these nations or any hostile act will be taken one against the other. In the event that the U.S. will declare war against Israel I will not be able to bear arms and fight against my family members (Mother, Sister, Brother). I hope I am not expected to do. What is the likelihood for such an event to take place in my lifetime?

Question 3 in the interrogatories asks:

Since you "said, in part," in your security clearance application (GX 1) and in your sworn statement to DSS (GX 2) that "your national allegiance was owed to the U.S.," and "you have no intention of exercising or accepting any rights or privileges offered by the Canadian or Israeli governments, then please explain your reasons for maintaining your citizenship with them and/or holding their passports, along with a valid U.S. passport. (In your comments, also include what steps you have taken, if any, to formally renounce your Canadian or Israeli citizenship and/or relinquish their passports. *To assist you in making*

such a decision, we ask that you review the attached current Department of Defense adjudication policy for persons with dual citizenship.)"

Applicant replied:

In my view, being able to collect benefits that I have earned as a citizen of another nation prior to becoming a U.S. citizen, doesn't mean that I am not a loyal and devoted U.S. citizen. Any attempt by any party to deny me my rights to these benefits will invoke my resentment and disrespect. Any attempt by Canada or Israel to try and use the retirement benefits as a means to pressure me to compromise my loyalty to the U.S. will make me very angry and most certainly will end up with my renouncing my citizenship with that country [which I take in context as referring to Canada or Israel, not the U.S.] (GX 3 at 3).

At the hearing, Applicant was even more explicit when he was asked by Department Counsel: "If a security clearance was depend[ent] upon revoking your Israeli citizenship, what would your response be?" Applicant replied:

Well, I don't feel that I have any risk whatsoever to national security, whether I have [a] passport or I don't have [a] passport. It basically boils down to personal integrity. I can have 20 passports and be liable. I can have no passport and I - my integrity is in question. It has nothing to do with the passport, that's the way I look at it. I would revoke my Israeli citizenship [in a] minute. I have no problem whatsoever to do so, if I know that I can enter the country [Israel] with a U.S. passport. And I didn't renew my Canadian passport, because I could use the U.S. I have absolutely no problem with that (Tr at 38).

Applicant's language on lines 5 and 6 of the above quote is problematic since he knows he can enter Israel with a U.S. passport if he is no longer an Israeli citizen. In addition, I have considered Applicant's statement that his Israeli citizenship was never "an issue for me" and did not "present me with any problem," but that "you have to make a decision, you have to go and check and all that. I'd be more than willing to [renounce his Israeli citizenship]"(Tr at 39).

Applicant's unequivocal commitment to the U.S. has not been clearly established by the totality of his statements (GX 1, GX2, GX 3, and the transcript). In his answer to Question 15 in the Interrogatories (GX 3), Applicant provided some insight into his thought processes. He has elected to live and raise his family in the U.S., believing that they will have a better future in a country that offers so much to its citizens. He has been happily married for 31 years and he and his wife were brought up to cherish family values and were "taught the importance of honesty, integrity, and humanity. These same values were taught to [his] children." Applicant believes that ever since moving to the U.S. in 1987, he has "dedicated all of [his] efforts to establish a [specialized type of aircraft] industry in the U.S." He believes he has made a "significant contribution to the success of this industry" and that he has "helped enhance . . . U.S. National Security;" He is a "firm believer that a strong America militarily, economically, and socially is essential to protect democracy and humanity in the world, and promote peace among the nations as we have well demonstrated."

He added that: "It is very unlikely that [he] will compromise [his] strong beliefs and strong investment in the U.S. and cave in under any foreign government pressure." His "immediate reaction would be one of anger and resentment" and "the slightest attempt will be promptly reported to the U.S. authorities."

Applicant's portrayal of himself is supported by the testimony of Mr. X, who is the Controller and Facility Security Officer of the Applicant's employer company. The company has about 500 employees. Applicant is the company's vice-president for manufacturing. Mr. X has known Applicant for seven years. Applicant is "frequently required to make financial decisions affecting the company" and, in all cases, the decisions have been made "in full compliance of the laws and regulations; in some cases to the detriment of the company" (Tr at 23). Applicant is "very secure financially" (*Id*.). Applicant has "frequently related his disagreement to me with some of the politics of Israel and he has never indicated to me any personal loyalty to the country" (Tr at 24). Mr. A believes Applicant's "loyalty is 100 per cent with the U.S." (Tr at 25). He is aware that Applicant's reluctance to give up his Canadian and Israeli citizenship is based on Applicant's belief that since he paid into the retirement funds, he is entitled to the pensions and "doesn't want to give them up" (Tr at 26).

POLICIES

The adjudication process established by DoD Directive 5220.6 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 to the Directive, as amended, sets forth specific adjudicative guidelines that must be carefully considered according to the pertinent criterion in making the overall common sense

determination required. In addition, under Section E.2. 2 of the Directive, 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.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion 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 emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

The preface to this guideline states that: "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.

Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship;

E2.A3.1.2.2. The possession and/or use of a foreign passport;

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country;

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement or social security from a foreign country;[(5)]

E2.A3.1.2.6. Using foreign citizenship to protect financial or business interests in another country.

Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country (Applicable to Israel but not to Canada);

E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

E2.A3.1.3.4. Individual has expressed a willingness to renounce that citizenship.

FOREIGN INFLUENCE (GUIDELINE B)

The preface to this criterion states that 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 (1) not citizens of the United States or (2) 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 foreign 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.

Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or lives in a foreign country;

E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or foreign-operated business that could make the individual vulnerable to foreign influence.[(6)]

Conditions that could mitigate security concerns:

E2.A2.1.3.1. A determination that the immediate family members(s), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in such a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

E2.A2.1.3.2. - Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 Applicant to hold a security clearance. In reaching the fair and impartial overall common sense determination required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability on the part of an Applicant. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 an Applicant's admissions or by other evidence) and establishes 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 who seeks access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. When the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted in dicta by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's language, doubts are to be resolved in favor of the government.

CONCLUSIONS

The following conclusions are based on an analysis first of the evidence directly relating to the specific issues and, ultimately, in the context of the record evidence as a whole, as required by Appeal Board precedent (ISCR Case No. 98-0476 (December 14, 1999) at 4. I have carefully considered the security significance of the totality of the facts and circumstances of Applicant's case (*Id.*).

` The record in this case consists entirely of information provided by Applicant in 1997 (GX 1 and 2) and in 1999 (GX 3

and Applicant's transcript testimony). I have studied the entire record several times and have considered the context in which each statement was made, first by itself and then in the context of the entire record. For the reasons given below, I conclude, from the overall record, that enough questions of security significance exist, that Applicant's eligibility for access to classified information is not clearly established.

FOREIGN PREFERENCE -

The underlying premise behind the Foreign Preference guidelines is that actions taken by an applicant that tend to show a preference for another country (generally but not necessarily a country of which an applicant has dual citizenship with the U.S.) raise the possibility that the applicant may be prone to provide information or make decisions that are harmful to the interests of the U.S. Indeed, DOHA case precedent supports this premise. Specifically, the Appeal Board has stated that even "if an applicant has not engaged in other conduct that has more serious negative security significance, the Judge still has the obligation to evaluate the security significance of the conduct the Applicant did engage in (ISCR Case No. 98-0476 at 4). I have complied with this guidance.

As I consider all of the record evidence to determine what evidence might tend to show a foreign preference, the evidence supporting the issuance of the SOR allegations under paragraph 1, is substantially that Applicant has multiple citizenship (1.a.); that he uses his Israeli passport to travel to Israel once or twice a year (1.b.); that he possesses a valid Israeli passport (1.c.); and that he intends to apply for retirement benefits from both Israel and Canada, sometime in the future, when he reaches retirement age under the laws of the other countries (1.d. and 1.e.).

Additional evidence that might tend to show a foreign preference includes his October 14, 1997 statements that (1) he has "more emotional ties" to Israel because of his religion, because of his family ties there; and because Israel was a refuge for his family when they were deported there in 1951.[(7)]

Other information that might tend to show a preference for Israel is his statement that in "the event that the U.S. will declare war against Israel, I will not be able to bear arms and fight against my family members (Mother, Sister, Brother)" (GX 3). I have given due consideration to all of the above evidence and to all additional record evidence as well in which Applicant talks about Canada and Israel.

A recent Appeal Board decision[(8)] provides some contains some helpful guidance:

An applicant's possession and use of a foreign passport are clearly of security significance. However, the Adjudicative Guidelines require that Applicant's conduct be analyzed from the perspective of whether Applicant was expressing a foreign preference by using or possessing a foreign passport. Given the totality of the record evidence in this case, Applicant's use and possession of a foreign passport cannot fairly be characterized as an expression of foreign preference[(9)] . . . Given the totality of the circumstances in this case, it was appropriate for the Administrative Judge to conclude that Applicant's conduct with his FC passport was not demonstrative of a foreign preference within the parameters of the Directive.

Although there are some similarities between the facts and circumstances of the above case and the present one, there are some fundamental differences. Applicant became a citizen of Israel as a child, when his family was deported there by Country A.[(10)]

He left Israel permanently in 1981, to work in Canada, but has retained his Israeli citizenship and passport (1) because he believes that country requires him to do so to visit his parents and (2) to protect what rights he may have to Israeli retirement benefits of an unknown amount. He uses his U.S. passport for all other purposes.

Unlike the circumstances in ISCR Case No. 98-0476, where the person was required to accept an Israeli passport as a condition of entering and leaving that country, Applicant has possessed an Israeli passport since residing in that country as a citizen, and has renewed it periodically. His use of the Israeli passport cannot be construed as a submission to authority or legal requirements imposed by the Israeli government. It is of considerable additional security significance that Applicant is aware that he can renounce his Israeli citizenship and then use his U.S. passport to enter and leave Israel.

The totality of the record evidence is that Applicant retains his Israeli citizenship for primarily financial reasons, to protect possible rights to retirement benefits. He has clearly made a choice that can be construed as one of self-perceived personal interests (as to retirement benefits) or simple convenience (to be able to see his family without undergoing the time-consuming renunciation process). Such choices do not demonstrate an unquestionable commitment to the U.S.

In the present case, Applicant has made no use whatsoever of his Canadian citizenship in the past but retains it only because of the possibility of his needing it in the future to be eligible for retirement benefits. He uses his U.S. passport to travel to Canada and there is no evidence of any problems caused by such use. Applicant's allegiance to and citizenship in Canada came about because of his moving there and gaining employment. His commitment to Canada lasted only as long as he was residing in that country. He is now willing to renounce his Canadian citizenship, but

that willingness is conditional on his being ineligible for that country's retirement benefits. Otherwise, as a matter of principle, e.g., I earned it, I deserve to get it, he is resistant to doing so even though he is aware of the government's security-related concerns.

Applicant has no Canadian passport, apparently because citizenship itself may qualify him for the retirement benefits with which he is concerned. His maintenance of Canadian citizenship for personal and financial reasons is clearly reasonable to him but it does show some equivocation as to his interests and loyalties to the U.S. Applicant's possession and exercise of (or intent to exercise) his Canadian citizenship is legal under U.S. law, but that fact does not prevent his possession and use of Canadian citizenship from having security significance. By itself, this matter is relatively minor, but it must also be considered along with all other available evidence, under the Directive's "whole person" standard.

Applicant's retention and use of his Israeli citizenship is even more problematic. He uses the Israeli passport to enter and leave the country on visits to his mother, other relatives, and friends. However, he understands that he could renounce his Israeli citizenship and then travel to that country using a U.S. passport. He has so far declined to do so because of his interest in obtaining possible retirement benefits from Israel in about ten years. As with Canada, Applicant has not checked to ascertain whether citizenship is a requirement for eligibility and what the amount of any benefits might be.

Again, this evidence must be viewed in the context of all the evidence. Applicant's ties to Israel are much deeper, extensive, and longer lasting than to Canada. His statements about the circumstances under which he would renounce Israeli citizenship and surrender his Israeli passport may be understandable from his viewpoint, but indicate some ambivalence about his commitment to the U.S. and what is in his own best interests as a seeker of a security clearance. In reaching this overall conclusion, I have considered Applicant's statement that he would respond negatively to any attempt to pressure him using the retirement benefits as a weapon (GX 3 at Response to Question 3).

I have carefully analyzed Applicant's testimony on this point. Applicant's hearing testimony was explicit about any possible preferences he might have for Israel:

You know, after 2,000 years, you would think that people that suffered so much would have a better relationship, less corruption. You expect much more. And I saw that when I was a teenager. I could not live with them. I could not live with the social structure, misjustice that happened. And I was very active about this. I remember thinking, you know, about children, that they were starving and I could not understand how that could happen. So, politically, I was not happy; the social structure - even though I personally did very well, I could not - I just could not live there. I thought that [it] would be devastating to me to continue and I decided I had to get out of there. I really felt that the best thing is to move to a country like the United States, to raise my children. This is a great country (Tr at 57, 58).

The Interrogatories asked a number of hypothetical questions about what applicant would do "If." In response to a question as to what Applicant would do in the event of hostilities between the U.S. and Israel, Applicant answered:

Well, as I stated [in the interrogatories], I tried to be honest about my feelings about that, straightforward. And I think if a war broke out between Israel and the United States, it will be hard for me to go bear arms and go kill my mother and sister. . . . I can sit here and do nothing about it; that's different (GX 3).

When Applicant was asked what his reaction would be if "for instance, part of the Israeli government indicated to you they had some sort of hold over your family . . . and asked you to cooperate in ways that were contrary to the interest of the United States." Applicant's reply was that:

The first thing that would happen is that I would be extremely angry. That's the first reaction, anger, because it's wrong and I would rebel against it and I would seek help here in the United States. I would inform the authorities immediately. That would just devastate me, because I would not expect that from the Israeli government. And there's a lot of things that I don't agree with then politically and that's why I am here and not over there. Again, I would like to think it would never happen. But, if that would happen, I would be extremely angry and I would report it to the authorities here. There's no question in my mind (*Id.*).

The question asked of Applicant are difficult ones to answer, but some of what Applicant said can be construed as ambivalence and a less than total commitment to the United States. What he said may be understandable, but enough of it is ambivalent enough to have a negative impact on the overall consideration of Applicant's eligibility for access to the nation's secrets.

FOREIGN INFLUENCE - GUIDELINE B

These four allegations are based on the premise that the existence of the family members living in Israel and having Israeli citizenship "may" be a disqualifying factor or condition in determining security clearance eligibility. That such evidence *may* be disqualifying is certain. Whether it is or no necessarily depends on the surrounding facts and circumstances, and the totality of the evidence.

The security clearance significance of the four Guideline B allegations is problematic. The Government's concerns are certainly valid, but the evidence supporting the Government's position is essentially limited to the fact that Applicant has a mother, brother, and sister who are Israeli citizens and reside in that country (SOR 2.a - 2.c.); and that his children are also citizens of Canada and Israel (through Applicant and his wife) (SOR 1.d., which is incorrect to a degree in that all his children now reside in the U.S.).

I have found no direct Appeal Board precedent holding that the existence of such family ties, by themselves, constitute disqualifying factors. The procedural guidance on this issue calls for an analysis of the facts and circumstances in each instance to determine whether there exists "the potential for foreign influence that could result in the compromise of classified information."

There is no evidence and no argument was presented by Department Counsel as to why the admitted relationships with family members residing in Israel raise the risk, by themselves, or more importantly in the context of the totality of the evidence, that Applicant *might* be influenced by the relationship(s) to betray the trust placed in him when he was granted a security clearance close to two years ago. Unless and until the Directive guidance changes to make family members who are citizens or residents residing in foreign countries an automatic disqualifying factor, as is the case in granting or denying access to sensitive compartmented information (SCI), although with some limited exceptions, it is reasonable to require some evidence by the Government as to *why* the relationship should be deemed disqualifying. In the absence of such positive information, factors such as the age and situation of the relatives, and the presence of or lack of any demonstrated connection with any intelligence gathering or other governmental entities, I conclude that the Government has not established that a risk or doubt exists as to SOR 2.a. - 2.d.

While dual (or multiple) citizenship is legal under U.S. law, the real issue in this case is whether Applicant has demonstrated an unequivocal preference for the United States. While protection of one's citizenship is entitled to Constitutional protection, holding a security clearance is a privilege, not a right, and Applicant has the ultimate responsibility of demonstrating his eligibility.

Based on all the record evidence, I conclude that Applicant is a mature, intelligent American by choice, with strong personal, family, and business ties to this country over a period of 12 years.

Applicant's personal and work history show that he moved first to Canada, and then to the United States, to follow job offers. Although his testimony contains statements and inferences that he chose the United States when he left Israel, it

is a fact that he moved first to Canada and only eleven years later to the U.S. There is certainly nothing improper about this sequence, but it at least suggests Applicant's relationship with the U.S. began more because of financial interests (following the job) than a preference for this country.

Looking at the evidence in the context of the possible Foreign Preference Disqualifying Conditional that only E2.A3.1..2.1 (exercise of dual citizenship), E2A.3.1.2.2. (possession and/or use of a foreign passport); E2A3.1.24. (accepting (in this case anticipating) retirement benefits from Canada and Israel); and E2.A3.1.2.6 (Using foreign citizenship to protect financial or business interests in another country), are applicable. At the same time, I conclude that Mitigating Condition E2A3.1.3.1 is applicable as to Israel (but not Canada) since Applicant's dual citizenship is derived, in substance, from his parents' citizenship in that country; and (E2.A3.1.3.2.) applies because the only "possible indicator of a foreign preference" of which there is any evidence, i.e., foreign military service, occurred many years before he obtained U.S. citizenship; (E2.A.3.1.3.4.) applies because Applicant has expressed a willingness to renounce his dual (actually triple) citizenship.

However, weight to be given this factor is reduced because that willingness is conditional, with no evidence as to when, if ever, it will occur. The Appeal Board has stated that "an unqualified or unconditional willingness to renounce foreign citizenship should be given more weight that a qualified or conditional willingness to do so" (ISCR Case No. 98-0476 at p. 4); citing ISCR Case No. 98-0252 (September 15, 1999) at 8. and ISCR Case No. 98-0331 (May 26, 1999) at 8).

As to Foreign Influence, I conclude that only Disqualifying Condition E2.A2.1.2.1. applies, because of his relationship with his family members. At the same time, I conclude that Mitigating Condition E2.A2.1.3.1. applies. Based on the totality of the evidence, I previously concluded that the relationships are not such as to reasonably be exploitable by a foreign power in a way that could persuade or force Applicant to choose to act adversely to U.S. interests. The overwhelming weight of the evidence is that Applicant would respond to such pressure by reporting it to U.S. authorities; E2.A2.1.3.5. applies because of Applicant's foreign financial interests tied to possible retirement, where the possible amounts are unknown but likely minimal in the context of Applicant's financial ties to the United States and not sufficient to affect the individual's security responsibilities.

Summary

This is a particularly difficult case. While Applicant is clearly a man of principle, the evidence suggests that Applicant has allowed some of those principles to outweigh the requirements for eligibility for a security clearance. Considering the totality of the evidence, I conclude that all of the SOR allegations under Guideline C are substantially supported by the overall record, but that the evidence does not adequately support the SOR's Guideline B allegations.

Applicant has been substantially involved in developing the aviation systems that are part of the Department of Defense's contract with his employer. Deciding against Applicant at his point necessarily means that he will be not be able to work on systems he has helped develop over many years, and which are therefore no secret to him. At the same time, Applicant should now be fully aware of the Government's concerns. In the year that must pass from the date of issuance of this decision before he can reapply for a security clearance, Applicant is encouraged to take the steps necessary to address the Government's concerns and to facilitate the reinstatement of his clearance.

FORMAL FINDINGS

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

CRITERION B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

CRITERION C (Foreign Preference) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The SOR uses the designation "Criterion," but since the SOR was issued after July 1, 1999, Change 4 to the Directive applies and the term "Guideline" should have been used. This is a difference in terminology only and does not affect the substance of the analysis.

2. At the time Applicant completed his security clearance application (GX 1), one daughter still lived in Israel, while attending university. That child has since graduated and returned to the U.S.

3. I accept Applicant's hearing testimony about the U.S. citizenship status of his children. That status was not clearly established in the documentary evidence (*See* GX 1 at 4 and GX 3 at 8).

4. When he enters Canada, he uses his U.S. passport because he doesn't possess a Canadian passport.

5. I have specifically considered Disqualifying Conditions E2A.3.1.2.5. - E2.A3.1.2.9 and found no evidence suggesting their applicability, under the facts and circumstances of this case.

6. I have specifically considered the remaining six Disqualifying Conditions and found them not to be relevant under the facts and circumstances of this case. Specifically, there is *no evidence* even suggesting a negative construction of: (E2.A3.1.2.2.) Applicant is sharing living quarters with a person or persons, regardless of citizenship status, presumably his wife and perhaps one child, but there is no evidence suggesting the potential for foreign influence or duress exists; there is no evidence of: (E2.A3.1.2.3.) any relatives, cohabitants or associates who are connected with any foreign government; (E2.A3.1.2.4.) any associations with foreign nationals that were required to have been reported; (E.2.A3.1.2.5.) any connection with a foreign intelligence service; (E2.A3.1.2.6.) any conduct that may make Applicant vulnerable to coercion, exploitation, or pressure by a foreign government; or (E2.A2.1.2.7.) any indication *anyone* is seeking to increase Applicant's vulnerability to future exploitation, coercion, or pressure.

7. Applicant served in the Israeli Air Force, "as required by that country's law" (which I take to mean as a youth and when he was living there) (GX 2 at p. 2). In addition, he worked as a Radar Electronic Technician from 1968 to 1975 for a company owned by the Israeli government (GX 3 at p. 6). Since both these periods ended long before he became a U.S. citizen, or even moved to the U.S., the evidence does not show a preference for Israel over the U.S.

8. Appeal Board Decision and Reversal, ISCR Case No. 98-0476 (December 14, 1999), at p.2, 3.

9. The Appeal Board characterized the record evidence as follows: "Applicant attempted to enter FC (a country both his parents had held citizenship from) on a U.S. passport. He was asked by FC officials at the point of entry to answer

questions. Based on Applicant's honest responses, the FC officials determined that under FC law, he was a citizen of FC. They allowed Applicant to enter FC but they entered FC citizenship information on his U.S. passport. When Applicant attempted to leave FC for a neighboring country, he presented his U.S. passport. At that point, hew was denied permission to exit FC and told he must exit with a FC passport. Only then did Applicant seek to obtain an FC passport. He has only used his FC passport to enter and depart FC, otherwise he has used his U.S. passport. Applicant has made it clear that the only circumstances under which he would use FC's passport again is to enter and leave FC if it is required of him.

10. Although Applicant became a citizen of Israel when he entered that country at the age of the five, he was still a minor and under his parents's care. For all practical purposes, he did obtain Israeli citizenship because of his parents status at the time, and not by his own efforts. For this reason, Mitigating Condition 1 under Guideline C is deemed to applicable.