

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-10754

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an engineer working for a defense contractor. She was born in Israel to Israeli parents. She and her immediate family members became naturalized U.S. citizens in 1996, and are dual citizens of Israel and the U.S. She has current U.S. and Israeli passports. She used her Israeli passport to travel to Israel on multiple occasions. Applicant's renewal and use of her Israeli passport are an exercise of dual citizenship which raises security concerns under Guideline C, and violates a DOD memorandum. Clearance is denied.

STATEMENT OF THE CASE

On March 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under 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 her access to classified information. ⁽¹⁾ On April 26, 2006, Applicant answered the SOR (Answer). She denied SOR ¶1. (alleging that she has preference for a foreign country), admitted ¶1.a. (that she possesses a valid foreign passport), and admitted, in part, ¶1.b. (she corrected the day she became a U.S. citizen), 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 September 26, 2006. She acknowledged receipt of the FORM on October 19, 2006, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to her. The case was assigned to me on January 11, 2007.

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 27-year-old engineer who has worked for a defense contractor for close to five years. Applicant, her brother, and her mother were born in Israel. Her father was born in Romania. She and her immediate family members became naturalized U.S. citizens in September 1996, and are dual citizens of the U.S. and Israel residing in the U.S. (2) Applicant lived in Israel until age four when her family moved to the U.S. She grew up, attended schools/college, and has worked in the U. S. for approximately 23 years. (3)

Applicant was issued an Israeli passport as a child before leaving Israel. She has continued to renew her Israeli passport through the years. She last renewed her Israeli passport on January 19, 2005, and it has an expiration date of January 18, 2015. (4) In September 1996, Applicant became a naturalized U.S. citizen and received her U.S. passport shortly thereafter. She last renewed her U.S. passport in October 2001, and it will expire in October 2011. (5)

Applicant has extended family members living in Israel. She used her Israeli passport to travel to Israel and visit her extended family members in June 1998, July 2000, May and December 2002, and April 2005. Israel requires its citizens, even citizens with dual citizenship with the U.S., to use an Israeli passport to enter and leave Israel. (6) In her December 2005 response to DOHA interrogatories, Applicant stated she was not willing to surrender her passport. She made it clear she wants to keep her Israeli passport to visit her elderly grandparents in Israel. Applicant then qualified her answer by stating that unless absolutely necessary she would not surrender her Israeli passport. (7) Applicant also offered to surrender her dual citizenship "if extremely necessary as a condition of access" (8) and there are no alternatives. (9) She would rather keep her dual citizenship because it is part of her roots and her heritage. She provided no evidence to show that she surrendered her Israeli passport, or that she obtained U.S. approval to use it.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. 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, (10) and the whole person concept. (11) **Having considered the record evidence as a whole, I conclude Guideline C (Foreign Preference) is the applicable relevant adjudicative guideline.**

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. (12) 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 (13) 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. (14)

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. (15)

CONCLUSIONS

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 U.S., then he/she may be prone to provide information or make decisions that are harmful to the interests of the U.S.**

Applicant's admitted conduct - her possession, renewal, and multiple use of an Israeli passport to travel to Israel - raises concerns under Guideline C. Applicant's renewal of her Israeli passport and its use after her naturalization as a U.S. citizen to comply with Israeli law constitutes an exercise of dual citizenship. Her possession and use of an Israeli passport permitted her to exercise the rights and privileges of foreign citizenship. Foreign Preference Disqualifying Condition (FP DC) 1: *the exercise of dual citizenship,*⁽¹⁶⁾ and FP DC 2: *possession and/or use of a foreign passport,*⁽¹⁷⁾ apply.

In August 2000, Assistant Secretary of Defense Arthur L. Money, issued a Memorandum (Money Memorandum), requiring the denial or revocation of any clearance for an applicant in possession of a foreign passport unless the applicant surrenders the foreign passport or obtains U.S. approval for its use.⁽¹⁸⁾

It was Applicant's responsibility to refute, extenuate, or mitigate the government's foreign preference concerns raised by her exercise of dual citizenship and the possession and use of a foreign passport. The record is silent as to whether Applicant surrendered her passport to the issuing authority, the government of Israel, or obtained U.S. approval for its use. Applicant failed to mitigate both the Guideline C concern and the Money Memorandum.⁽¹⁹⁾

I have considered Foreign Preference Mitigating Conditions (FP MC) 1: *dual citizenship is based solely on parent's citizenship or birth in a foreign country,*⁽²⁰⁾ and FP MC 4: *the individual has expressed a willingness to renounce dual citizenship,*⁽²¹⁾ and conclude they do not mitigate the concern. Applicant's disqualification is not based solely on her birth to Israeli parents or in Israel, rather, she exercised her dual citizenship by renewing and using her Israeli passport in preference to her U.S. passport. Although Applicant indicated she would renounce her dual citizenship (if extremely necessary), the Money Memorandum applies to her case. The Memorandum makes it clear that Applicant cannot be granted a security clearance.⁽²²⁾

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in this case, I find Applicant has not mitigated the security concern.

FORMAL FINDINGS

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

Paragraph 1, Foreign Preference (Guideline C) AGAINST APPLICANT

Subparagraphs 1.a - 1.b 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.

Juan J. Rivera

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. Government Exhibit (GE) 3 (Office of Personnel Management Security Clearance Application (SF 86), dated March 31, 2004.
3. GE 4 (Applicant's affidavit, dated March 11, 2005).

4. GE 5 (Response to DOHA Interrogatories).

5. *Id.*

6. GE 2 (Applicant's Answer to SOR); GE 7 (U.S. Dept. of State Consular Information Sheet: Israel, the West Bank and Gaza); GE 6 (Applicant's Response to DOHA Interrogatories, dated December 22, 2005.)

7. GE 6.

8. GE 4.

9. GE 6.

10. 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.

11. 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. . . ."

12. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

13. 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.

14. *Id.* at 528, 531.

15. *See Egan*; Directive E2.2.2.

16. Directive, E2.A3.1.2.1.

17. Directive, E2.A3.1.2.2.

18. GE 8 (Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Memorandum for the Secretaries of the Military Department, subject: Guidance to DOD Central Adjudication Facilities Clarifying the Application of the Foreign Preference Adjudicative Guideline, dated August 16, 2000. (Money Memorandum).

19. The Money Memorandum contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.

20. Directive, E2.A3.1.3.1.

21. Directive, E2.A3.1.3.4.

22. Administrative judges have no authority or discretion to ignore, or decline to apply the Money Memorandum. Judges must make decisions "in accordance with policy, procedures, and standards established by the Directive." Directive, Section 5.2.14., and ISCR Case No. 01-00782 (Dec 19, 2003).