

KEYWORD: Foreign Influence

DIGEST: The Applicant's immediate family (wife, children and parents), except for his sister, are American citizens. His sister is a citizen of Israel and lives there. The Applicant's in-laws are citizens of Belarus and reside there, though they are in the process of emigrating to Canada. Neither his sister or in-laws are agents of the Israeli or Belarusian governments, or in a position to be exploited by those governments. The Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. He is knowledgeable about his security responsibilities, and shows that he can fulfill them. Sufficient mitigation is shown. Clearance is granted.

CASENO: 06-24497

DATE: 08/02/2007

DATE: August 2, 2007

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| Applicant for Security Clearance |) | |

**DECISION OF ADMINISTRATIVE JUDGE
WILFORD H. ROSS**

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's immediate family (wife, children and parents), except for his sister, are American citizens. His sister is a citizen of Israel and lives there. The Applicant's in-laws are citizens of Belarus and reside there, though they are in the process of emigrating to Canada. Neither his sister or in-laws are agents of the Israeli or Belarusian governments, or in a position to be exploited by those governments. The Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. He is knowledgeable about his security responsibilities, and shows that he can fulfill them. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On December 29, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 9, 2007, and requested a hearing. The case was received by the undersigned on February 13, 2007, and a Notice of Hearing was issued on February 27, 2007.

A hearing was held on March 21, 2007, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted eleven exhibits. The Government also requested that Administrative Notice be taken of certain adjudicative facts about the State of Israel. The request for Administrative Notice is marked Administrative Judge Exhibit I, and the documents attached to the request are marked as Administrative Judge Exhibits I(A) through I(H). The transcript was received on March 30, 2007.

FINDINGS OF FACT

The Applicant is 43, married and has a Master of Science degree. He is employed by a defense contractor as an engineer, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

The Applicant was born in Belarus (then part of the Soviet Union) in 1964. He emigrated from Belarus to Israel in October 1990 because of the anti-Semitic atmosphere in the Soviet Union at that time. He went to Israel because he was allowed to travel there. (Transcript at 36, 43-44, 63-64.) The Applicant traveled to Belarus twice since he left, the last time being in 1995. His parents now live in the United States, so he has no plans to return there. (Transcript at 40.)

The Applicant stayed in Israel about one year before emigrating to the United States. In Israel, the Applicant found that he was discriminated against because he was from Belarus. (Transcript at 47-48, 62-63.) In addition, his then fiancé (now wife) is not Jewish and would also have been discriminated against in Israel. The Applicant developed no close ties to anyone in Israel during his year there. (Transcript at 36, 45-48.) The Applicant has never returned to Israel for any reason since leaving in 1992. (Applicant's Exhibit B.)

The Applicant became a naturalized American citizen in April 2002. (Government Exhibit 2.) His wife was also born in Belarus, and she also became a naturalized American citizen in April 2002. (Government Exhibit 1, Applicant's Exhibit K.) They were married in 1992, and have two American born sons. (Government Exhibit 1, Applicant's Exhibit D.) They have about \$1,200,000 in assets in the United States. (Transcript at 37, Applicant's Exhibit E.)

The Applicant's parents emigrated to the United States in 1997. (Transcript at 51-52.) His mother became an American citizen in March 2003. (Applicant's Exhibit C at 1.) His father became an American citizen in April 2003. (Applicant's Exhibit C at 2.)

The Applicant's mother-in-law and father-in-law are citizens of Belarus and reside there. They are completing the process to allow them to emigrate to Canada, where they have another daughter who is a Canadian citizen. (Transcript at 53-54, Applicant's Exhibit J.) They are both retired and have a pension income from non-governmental entities in Belarus. (Transcript at 38-39.) The Applicant does not talk to them. (Transcript at 51-52.) Concerning his relationship with his in-laws the Applicant states, "[We] don't have too close relationship with my in-laws because they were not too happy about our marriage - - interracial marriage." The Applicant has little knowledge of current events in Belarus, and he has no strong emotional ties to that country. (Transcript at 51-52.)

The Applicant has one sibling, a sister. She is 11 years younger than the Applicant and they are not close. The sister emigrated to Israel in about 1996 and continues to live there. Both the sister and her husband work for the Israeli subsidiaries of American companies. (Transcript at 38, Applicant's Exhibits H and I.) The Applicant's relationship with his sister is not close, consisting of two or three phone calls a year. (Transcript at 55-58.) The Applicant was asked by Department Counsel, "Now, as a brother and as blood, do you care about your sister's security and safety?" He replied, "I care about my children's security and safety more than my sister's." (Transcript at 58.)

The Applicant was specifically asked about his feelings towards the State of Israel. He stated, "I didn't feel too comfortable when I came to Israel because I suddenly became Russian. And, so, it was for me it was a tough time. So, I had much more easier time to live here than in Israel. And, so, I don't have any warm feelings for Israel. I respect Israel as a democratic country; but not more than U.S." (Transcript at 62.)

The Applicant testified about what he would do if he was approached by a foreign intelligence service. He stated, "First of all, I don't believe it will happen; but if, hypothetically, it will happen, I will notify my Security Department at my work and I will follow their directions, and I will notify the FBI." (Transcript at 61.)

Mitigation.

The Applicant submitted documentary evidence showing that he is well respected at his place of employment. His most current performance appraisal states that, on the whole, he "Exceeded Expectations." (Applicant's Exhibit F.) Statements from work associates and supervisors state that the Applicant "possesses a high level of integrity," and that he is "honest and hard-working." A Lead Software Engineer states, "I, personally, would trust [the Applicant] with my life." (Applicant's Exhibit G.) Finally, the Applicant testified that his friends are primarily work associates, most of them native born Americans. (Transcript at 64.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- (1) The nature, extent and seriousness of the conduct
- (2) The circumstances surrounding the conduct, to include knowledgeable 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 behavior changes

- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) The likelihood of continuation or recurrence.”

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign contacts or interests that could lead to acts of untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct or circumstances and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's parents both live in the United States and are American citizens. His sister lives in Israel, but he has very limited contact with her, and little familial feeling. It is difficult to call any family relationship "casual and infrequent," but this one comes close.

The evidence shows that the Applicant's relationship with his in-laws in Belarus is not close, primarily because of the mixed nature of his marriage. His in-laws are in the final stages of emigrating to Canada, a close ally of the United States. Finally, neither of his wife's parents in Belarus is an agent of that government or, in my opinion, in a position to be exploited by that government. The possibility that the Applicant can be coerced by his in-laws is virtually nil.

Based on the evidence the Government has presented, the following Disqualifying Conditions arguably apply to this case: 7.(a) *Contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;* (b) *connections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information;* and (d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.*

The Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 8(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;* (b) *There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;* and (c) *Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation.*

I have also considered the information concerning the intelligence activities of the Israeli government provided by Department Counsel in Administrative Judge's Exhibit I and its attachments I(A) through I(H). In addition, I have also considered the repressive nature of the Belarusian government, as set forth in Government Exhibits 3 and 4. The Applicant's connections to Belarus and Israel are tenuous at best. He has presented compelling evidence concerning the discrimination he and his wife endured in both countries. The Applicant has a real life appreciation for the equal rights accorded to all citizens of the United States regardless of creed or national origin.

In addition, "[A] Judge is not limited to Adjudicative Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation."¹ The application of the Directive's General Factors to the Applicant's foreign connections, specifically relevant General Factor (8), also justifies granting the Applicant a security clearance. The totality of this Applicant's conduct and circumstances, as set forth at length above, including the virtually non-existent potential for exploitation, shows that he warrants a favorable finding under the whole person standard.

The record shows that the Applicant has been a patriotic American citizen for several years, and has substantial financial assets in the United States. All of his immediate family are citizens of the United States (especially his wife and children). The Applicant is alert to the security concerns

¹ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006).

presented by his particular circumstances and the responsibilities incumbent upon him. The Applicant testified about the importance of his family in the United States, and his pride in being an American citizen and a member of the defense industry. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and is eligible for a security clearance.²

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.
Subparagraph 1.a.: For the Applicant.
Subparagraph 1.b.: For the Applicant.

DECISION

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

Wilford H. Ross
Administrative Judge

²“[Matters], such as evidence of an applicant’s personal loyalties, the nature and extent of an applicant’s family ties to the U.S. relative to his ties to a foreign country, his or her social ties within the U.S., and many others raised by the facts of a given case can properly be factored in to a judge’s evaluation of an applicant’s worthiness for a security clearance.” ISCR Case No. 04-11414 at 4 (App. Bd. Mar. 5, 2007). (Citations omitted.)