KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a dual U.S.-Israeli citizen, possessed and used an Israeli passport after becoming a U.S. citizen. She has surrendered her Israeli passport. Her parents, brother, father-in-law, and grandmother are citizens and residents of Israel, and she travels regularly to Israel to visit them. She owns a condominium in Israel and intends it to be her parents' future home. None of her immediate family members in Israel are connected to the government, military, or high technology businesses. Security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

CASENO: 06-24808.h1

DATE: 09/25/2007

DATE: September 25, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 06-24808
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT
Candace Le'i, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant, a dual U.S.-Israeli citizen, possessed and used an Israeli passport after becoming a U.S. citizen. She has surrendered her Israeli passport. Her parents, brother, father-in-law, and grandmother are citizens and residents of Israel, and she travels regularly to Israel to visit them. She owns a condominium in Israel and intends it to be her parents' future home. None of her immediate family members in Israel are connected to the government, military, or high technology businesses. Security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On February 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence)

Applicant answered the SOR in writing on April 5, 2007, admitted the allegations, offered explanations, and requested a hearing. The case was assigned to an administrative judge on May 25, 2007 and reassigned to me on July 25, 2007, based on workload. The case was heard as scheduled on August 22, 2007. I kept the record open until September 5, 2007, to enable Applicant to submit additional evidence. I received her evidence on September 4, 2007, and it was admitted as Applicant's Exhibit (AX) M, without objection. DOHA received the transcript (Tr.) on September 4, 2007.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 47-year-old employee of a defense contractor. She has been director of engineering for her company since September 1997. She has never held a clearance.

Applicant and her company have received numerous accolades from major defense contracts for the quality and responsiveness of their performance (AX A-E, I-L). Applicant's company was recently awarded a significant defense contract (AX F, G, H).

Applicant was born in Argentina. She and her family moved to Israel in 1972, and they all became Israeli citizens. Applicant was married in Israel in August 1979. She studied engineering at Tel Aviv University but does not have a degree (Tr. 6). She came to the U.S. in 1994 (Tr. 51), when she was offered a job by a U.S. company. She became a U.S. citizen in April 2003, and her husband became a U.S. citizen in July 2003. They have three children, ages 24, 22, and 14, who were born in Israel and are now U.S. citizens (Tr. 66).

Applicant's parents, brother, and sister are dual citizens of Argentina and Israel and reside in Israel. Her father-in-law and grandmother are citizens and residents of Israel. Applicant traveled to Israel, using her Israeli passport, to visit her family in December 1998, July 2000, December 2001, September 2002, June 2004, and July 2005. On each trip, she stayed with her parents for one or two weeks (Tr. 41).

On August 30, 2007, Applicant surrendered her Israeli passport to the Israeli Consul General. She also submitted a letter to the Israeli Ministry of Interior, declaring her understanding that she

"will not be entitled to receive any educational, medical or social benefits nor exercise any rights or privileges of citizenship" as a result of surrendering her passport (AX M).

Applicant's brother is a private insurance broker in Israel (Tr. 43). His wife is a social worker employed by city to care for the elderly (Tr. 44). They own their own home in Israel, which Applicant estimates is worth about $300,000 (Tr.42).

Applicant's father is 79 years old and her mother is 75 (Tr. 44). Her mother is a self-employed architect (Tr. 47). Her father was an accountant for a labor union but is now retired, although he sometimes helps Applicant's brother with his insurance business (Tr. 48). They have visited Applicant in the U.S. about five times, the last time in June 2007 (Tr. 46). Her brother has visited twice (Tr. 45).

Applicant and her brother have an informal fund to help support their parents financially. Applicant sends about $300 per month to her brother to help support their parents. They are surreptitious about using the fund, and they create "make work" to keep their father occupied, to avoid hurting his feelings (Tr. 61-63).

Applicant's 95-year-old grandmother lives with Applicant's parents (Tr. 52). She has never worked outside the home. Applicant talks to her about once every three months, but finds it difficult to talk to her.

Applicant's mother-in-law is deceased. Her father-in-law is a retired truck driver (Tr. 60). Applicant and her husband talk to him every week or two, and he visits them every year (Tr. 60).

Applicant's sister is a citizen of Israel, but she lives and works in the U.S. as an information system manager for a furniture importing company. Her sister returned to Argentina after living in Israel for three years, and then came to the U.S. on a work visa (Tr. 63-64). Her sister's husband also lives and works in the U.S. on a work visa. Applicant visits with her sister once or twice a week (Tr. 65).

Applicant owns a condominium in Israel. She purchased it in 1988 and estimates its value as somewhere between $150,000 and $180,000. She relies on her father to manage the property, and her testimony at the hearing reflected that she is unfamiliar with the financial details of his management of the property. She knows it is rented for about $600 per month (Tr. 53), and her father collects the rent and pays the mortgage (Tr. 54). Her parents do not own a house, and she intends to have the condominium available for their use as they become older and less able to pay rent. Applicant and her husband also own their home in the U.S., worth about $850,000 (Tr. 57).

At Department Counsel's request and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Israel (Tr. 20; Hearing Exhibit (HX) I). Israel is a parliamentary democracy with a diversified, technologically advanced economy. Israel's major industries include high-technology electric and biomedical equipment. Almost half of Israel's exports are high-technology equipment. The U.S. is Israel's largest trading partner. Israel generally respects the human rights of its citizens, although there have been some issues respecting treatment of Palestinian detainees and discrimination against Arab citizens.

Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests. Israel has given high priority to ending hostilities with Arab forces. The Israeli Defense Force has close ties with the U.S., and the two countries participate in joint military exercises and collaborate on military research and weapons development.

The U.S. is strongly committed to Israel's security and well being. The two countries have strong historic and cultural ties as well as mutual interests. However, the U.S. has several concerns about Israel, including its military sales to China, inadequate protection of U.S. intellectual property, and several espionage cases in which classified documents or information were passed to Israeli officials. Israel has been identified as an active practitioner of industrial espionage.

Israeli citizens who become U.S. citizens retain their Israeli citizenship. Israeli citizens, including dual nationals, are required to enter and depart Israel using an Israeli passport. Israeli authorities may require persons whom they consider to be Israeli citizens by birth to obtain an Israeli passport before departing Israel (HX 1, Enclosure II at 7).

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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition 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 it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline C (Foreign Preference)

The SOR alleges Applicant exercises dual U.S.-Israeli citizenship (SOR ¶ 1.a) and holds an active Israeli passport (SOR ¶ 1.b). She admitted both allegations. The SOR does not allege, and Department Counsel did assert any security concerns based on Applicant's Argentine citizenship. The concern under this guideline is as follows: "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." AG ¶ 9.

A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1). This disqualifying condition is established by evidence of Applicant's possession and use of an Israeli passport. No other exercise of Israeli citizenship was alleged or proven.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by evidence that "dual citizenship is based solely on parents' citizenship or birth in a foreign country." AG ¶ 11(a). This condition is established.

Security concerns under this guideline also may be mitigated by if "the individual has expressed a willingness to renounce dual citizenship." AG ¶ 11(b). Applicant's letter to the Israeli Minister of Interior declares that by surrendering her passport, she understands she "will not be entitled to receive any educational, medical or social benefits nor exercise any rights or privileges of citizenship." This letter appears to fall short of renouncing citizenship. Based on the ambiguity of her letter, coupled with her reluctance at the hearing to renounce her citizenship, I conclude this mitigating condition is not established.

However, dual citizenship is not a disqualifying condition unless it is exercised. By surrendering her passport, Applicant has relinquished the only means she is alleged to have used to exercise dual citizenship. Furthermore, her letter to the Israeli government acknowledges that she will be unable to exercise any rights or privileges of citizenship as a result of surrendering her passport.

Guideline B (Foreign Influence)

The SOR alleges Applicant's parents and brother are dual citizens of Argentina and Israel residing in Israel (SOR ¶¶ 2.a and 2.b); her sister is a dual citizen of Argentina and Israel residing in the U.S. (SOR ¶ 2.c); her father-in-law and grandmother are citizens and residents of Israel (SOR ¶ 2.d and 2.e). It also alleges she owns a condominium in Israel (SOR ¶ 2.f). Finally, it alleges she traveled to Israel in December 1998, July 2000, December 2001, September 2002, June 2004, and July 2005 (SOR ¶ 2.g). Applicant admitted all the allegations. Department Counsel did not assert any security concerns based on the Argentine citizenship of her parents and siblings.

The concern under this guideline is as follows: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism." AG ¶ 6.

Three disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "contact with a foreign family member, business or professional associate, friend, or other person 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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "connections to a foreign person, group, government, or country 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, group, or country by providing that information." AG ¶ 7(b). Third, a security concern also may be raised by "a substantial business, financial, or property interest in a foreign country . . , which could subject the individual to heightened risk of foreign influence or exploitation." AG ¶ 7(e).

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. *See* Directive¶ E3.1.15; ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 (App. Bd. Feb. 8, 2001). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's family members in Israel raise AG ¶¶ 7(a) and (b). Her ownership of a condominium in Israel raises AG ¶ 7(e). Although she does not appear to consider the condominium an investment property and seems somewhat unconcerned about how it is managed as a rental property, it is important to her as a future home for her parents. Since the government produced substantial evidence to raise the disqualifying condition in AG ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). Israel is a friendly country with numerous ties and common interests with the U.S. Industrial espionage cases involving Israel have been conducted by direct contact between U.S. citizens and Israeli operatives, not duress or intimidation of his own citizens. Israel respects the human rights of its citizens and does not resort to abuse of its own citizens to gather economic or military intelligence from the U.S.

The nature of Israel's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Israel would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S. None of Applicant's family members in Israel are involved with the military or involved in high technology enterprises. None are connected to the government, except for a sister-in-law employed as a city social worker. I conclude AG ¶ 8(a) is established.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). Applicant has strong ties to the U.S., but she also has strong ties to her family in Israel. Applicant has not carried her burden of establishing this mitigating condition. However, for the reasons set out above concerning AG ¶ 8(a), it is highly unlikely she will ever placed in a situation where she must choose between the interests of her family and the interests of the U.S.

Security concerns based on foreign property interests can be mitigated by showing "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely

to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual." AG ¶ 8(f). Applicant's condominium is not nearly as valuable as her primary home, but it is important to Applicant as a future home for her parents. I conclude this condition is not established. However, for the reasons discussed above, I also conclude that it is highly unlikely that Israel would use her property interests as leverage to obtain protected information.

Applicant's travel to Israel, alleged in SOR ¶ 2.g, was to visit her family. Her travel has no security significance independent of her feelings of affection and obligation for her family.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

Applicant is a mature adult. She was candid, thoughtful, sincere, and credible at the hearing. Surrendering her passport undoubtedly was a difficult decision, because it can significantly complicate her ability to visit her aging parents. She is a hard-working, self-made, successful professional, respected in the community of defense contractors. She has chosen to make a life for herself and her family in the U.S. She, her husband, and their three children, two of whom are adults, all have become U.S. citizens. Her ties to Israel are familial, not political or ideological.

After weighing the disqualifying and mitigating conditions under Guidelines C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2. Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a-2.g:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge