

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born in Israel. She currently works for a defense contractor as a computer scientist. In 1995, she married an American in the U.S. She became a naturalized U.S. citizen in 2000. Her children were born in the U.S. and are not citizens of Israel. Her mother and three brothers are citizens and residents of Israel. Applicant visited Israel in 1998, 2000, 2002, 2004, and 2005, using her Israeli passport. Recently, her Israeli passport was cancelled and is no longer valid. Applicant has mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

CASENO: 06-24888.h1

DATE: 07/19/2007

DATE: July 19, 2007

In re:

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

Applicant for Security Clearance

)  
)  
)  
) ISCR Case No. 06-24888  
)  
)  
)  
)

**DECISION OF ADMINISTRATIVE JUDGE  
JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was born in Israel. She currently works for a defense contractor as a computer scientist. In 1995, she married an American in the U.S. She became a naturalized U.S. citizen in 2000. Her children were born in the U.S. and are not citizens of Israel. Her mother and three brothers are citizens and residents of Israel. Applicant visited Israel in 1998, 2000, 2002, 2004, and 2005, using her Israeli passport. Recently, her Israeli passport was cancelled and is no longer valid. Applicant has mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

## **STATEMENT OF THE CASE**

On November 18, 2005, Applicant executed an Electronic Questionnaires for Investigations Processing (e-QIP).<sup>1</sup> On February 1, 2007, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and issued a Statement of Reasons (SOR)<sup>2</sup> to Applicant, detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised AG was provided to Applicant when the SOR was issued.

In a sworn, written statement, on February 16, 2007, Applicant responded to the SOR allegations and requested a hearing. Department Counsel was ready to proceed on April 2, 2007. The case was assigned to me on April 4, 2007. A Notice of Hearing was issued on April 17, 2007, scheduling the hearing for May 10, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered one exhibit, Ex. 1. Applicant offered one exhibit, Ex. A. All exhibits were admitted into the record without objection. Prior to the hearing, the Government requested that administrative notice be taken of the content of eight documents about Israel. There being no objection, administrative notice was taken of those facts. The transcript (Tr.) was received on May 30, 2007.

## **MOTION TO AMEND THE STATEMENT OF REASONS**

Prior to the hearing, the Government submitted a Motion to Amend the Statement of Reasons. Pursuant to ¶ 2 of the SOR, the Government moved to add an additional allegation as follows:

2.c Your mother is a citizen of and resident in Israel.

At the hearing, Applicant did not object to ¶ 2.c.<sup>3</sup> Accordingly, the SOR is amended as stated above.

## **FINDINGS OF FACT**

Applicant admitted the factual allegations under subparagraphs 1.b through 1.d and 2.a through 2.c. Those admissions are incorporated herein as findings of fact. She denied the factual allegation under subparagraph 1.a. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

---

<sup>1</sup>Ex. 1 (Electronic Questionnaires for Investigations Processing (e-QIP), dated November 18, 2005).

<sup>2</sup>Pursuant to Exec. Or. 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), as amended (Directive).

<sup>3</sup>Tr. 8.

In August 1986, Applicant received a master's degree from a university in Israel. Applicant came to the U.S. in 1993, while on sabbatical leave.<sup>4</sup> She married an American citizen in 1995 in the U.S.<sup>5</sup> She became a naturalized U.S. citizen in February 2000.<sup>6</sup> Their two children, now aged 10 and 8, were born in the U.S.<sup>7</sup>

Applicant is 50 and works for a defense contractor as a computer scientist since October 2005.<sup>8</sup> Prior to that position, she worked for a defense contractor from November 2000 to October 2005 as a chief programmer/analyst. From March 1993 through November 2000, she worked as a chief programmer/analyst for another defense contractor.

Applicant's mother is a citizen and resident of Israel.<sup>9</sup> Applicant's mother is 78 years old. Applicant's father is deceased. Her parents are Holocaust survivors, and Israel provided refuge to them.<sup>10</sup> Her mother owned a shoe store, and retired almost 20 years ago.<sup>11</sup> Applicant speaks to her mother by telephone at least once a week.<sup>12</sup> Her mother does not belong to, does not participate in, and is not active with any government agency of Israel. Applicant respects her mother being a Holocaust survivor. She is not willing to renounce her Israeli heritage because it would hurt her mother's feelings.<sup>13</sup>

Applicant's three brothers are citizens and residents of Israel.<sup>14</sup> One of her brothers is an artist, another is a chemist working for a pharmaceutical company, and the other is an electrical engineer.<sup>15</sup> She talks to her younger brother, the chemist, at least once a week to find out how the

---

<sup>4</sup>*Id.* at 17.

<sup>5</sup>*Id.* at 19.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.* at 18.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.* at 21.

<sup>10</sup>*Id.* at 22.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 23.

<sup>13</sup>*Id.* at 24.

<sup>14</sup>*Id.* at 21.

<sup>15</sup>*Id.* at 22.

family is doing.<sup>16</sup> She talks to her other two brothers about four times a year.<sup>17</sup> Her brothers do not belong to, do not participate in, and are not active with any government agency of Israel.<sup>18</sup>

Applicant's U.S. passport was issued in June 2000. In 1998, 2000, 2002, 2004, and 2005, she traveled to Israel. She used her Israeli passport, as required by Israeli law, to enter and exit Israel, exercising dual citizenship. Applicant denies this allegation. She stated:

I have not exercised dual citizenship since I have no intention in holding or keeping Israeli citizenship, which is not up to me, but is up to the Israeli authorities. I have, on the contrary, actively pursued United States citizenship.<sup>19</sup>

After the 2005 trip, Applicant deposited her Israeli passport at the Embassy of Israel, where it was secured until she requested it for her next trip. She presented her U.S. passport for entry and exit when she traveled to other countries.

On May 2, 2007, Applicant received a letter from the Embassy of Israel, confirming that her Israeli passport has been cancelled and is no longer valid.<sup>20</sup> The passport was cut in half and returned to Applicant. She will now use her American passport when entering and exiting Israel.

Applicant has strong ties to America. Her husband was born in America, as were their two children. She owns real estate here, she has bank and retirement accounts, her children attend public school and are in the boy and girl scouts. She votes in U.S. elections. She has a profession that she excels in and enjoys. Applicant has no foreign property or foreign investments.<sup>21</sup>

I take administrative notice that Israeli citizens, including dual nationals, must enter and depart Israel on their Israeli passports, and Israeli authorities may require persons whom they consider to have acquired Israeli nationality at birth to obtain an Israeli passport prior to departing Israel, even if said persons neither are aware of the nationality nor have any desire to maintain it.<sup>22</sup>

Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Israel has an active program to gather proprietary information with the United States. These collection activities are primarily directed at

---

<sup>16</sup>*Id.* at 23.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* at 22.

<sup>19</sup>Applicant's Answer (dated February 16, 2007).

<sup>20</sup>Ex. A (Letter from Embassy of Israel, dated May 2, 2007).

<sup>21</sup>Tr. 16, 21.

<sup>22</sup>U.S. Department of State, Consular Information Sheet: *Israel, the West Bank and Gaza*, dated February 8, 2006 at 7.

obtaining information on military systems and advancing computing applications that can be used in Israel's sizeable armaments industry.<sup>23</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>24</sup> The Government has the burden of proving controverted facts.<sup>25</sup> The burden of proof is something less than a preponderance of evidence.<sup>26</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>27</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>28</sup>

No one has a right to a security clearance<sup>29</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>30</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved

---

<sup>23</sup>Interagency OPSEC Support Staff (IOSS), *Intelligence Threat Handbook*, June 2004, excerpts, including IOSS background information.

<sup>24</sup>ISCR Case No. 96-0277 (July 11, 1997) at 2.

<sup>25</sup>ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

<sup>26</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>27</sup>ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

<sup>28</sup>ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

<sup>29</sup>*Egan*, 484 U.S. at 531.

<sup>30</sup>*Id.*

in favor of protecting such sensitive information.<sup>31</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>32</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

### **Foreign Preference**

Under Guideline C, a security risk may exist when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant has U.S. citizenship by naturalization. Since 2000, she possessed an active U.S. passport. Applicant traveled to Israel in 1998, 2000, 2002, 2004, and 2005, and used her Israeli passport to comply with the requirement of her Israeli nationality, thus exercising dual citizenship. Her possession and use of a foreign passport permitted her to exercise the rights and privileges of foreign citizenship and indicated a preference for Israel to the U.S. Thus, Foreign Preference Disqualifying Condition ¶ 10(a) (*conditions that could raise a security concern and may be disqualifying include: (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (a) possession of a current foreign passport*) applies.

Various factors can mitigate the foreign preference security concerns. Applicant's dual citizenship is based on her parents' citizenship or birth in a foreign country. Her Israeli passport has recently been cancelled and is no longer valid. Consequently, Foreign Preference Mitigating Conditions ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) apply. Accordingly, allegations 1.a through 1.d of the SOR are concluded in favor of Applicant.

### **Foreign Influence**

Under Guideline B, a security risk may exist for an individual with divided loyalties or foreign financial interests. The person may be manipulated or induced to help a foreign person, group, organization, or a government in a way that is not in the interests of the U.S., or is vulnerable to pressure or coercion by any foreign interest.

---

<sup>31</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>32</sup>Executive Order 10865 § 7.

Applicant's mother and three brothers are residents and citizens of Israel. Moreover, she has a niece and two close friends who are also residents and citizens of Israel. She has visited her family and friends in Israel at least five times between 1998 and 2005. Thus, the Israeli citizenship and residency of Applicant's family and friends create the potential for a heightened risk of foreign exploitation that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. Consequently, Foreign Influence Disqualifying Conditions ¶ 7(a) (*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*) and ¶ 7(b) (*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*) apply.

Various conditions can mitigate the foreign influence security concerns. The most important mitigating factor is Applicant herself and her total commitment to the U.S. through her employment with major defense contractors for the past 10 years. She married an American and they have a home in the U.S. Moreover, their children were born here, and she has not sought dual citizenship for them in Israel. None of her relatives living in Israel pose a potential security threat or are in a position likely to be influenced by the Israeli government. None of them work for the Israeli government or are involved in work that might create security issues for the U.S. Israel is a country where there is a heightened risk because of their active intelligence gathering activities aimed at the U.S. Thus, Foreign Influence Mitigating Condition ¶ 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.*) applies.

Although Applicant has traveled to Israel five times between 1998 and 2005, she has knowledge of security requirements. Applicant can be relied on to take whatever steps are necessary to eliminate any possible risk when she travels to Israel. Moreover, Applicant has deep and longstanding relationships and loyalties in the U.S. and she can be expected to resolve any conflict in favor of the U.S. Thus, ¶ 8(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*) applies. Accordingly, allegations 2.a through 2.c of the SOR are concluded in favor of Applicant.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Looking at the whole person, Applicant presents a highly credible case that she would not be influenced by anything contrary to the best interests of the U.S. Her residence in the U.S. for more than 14 years, her marriage to an American and their children born in the U.S., her career record with several major defense contractors for more than 10 years effectively refute the risk that she would now take any action that would jeopardize U.S. security interests. She has assimilated into U.S. customs and culture and continues to embrace the U.S. as her home. I conclude Applicant has mitigated the



potential security concerns arising from her personal ties to Israel. I find that it is clearly consistent with the national interest to grant a clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 2. Guideline C (Foreign Preference):      FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2. Guideline B (Foreign Influence):      FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

### **DECISION**

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

Jacqueline T. Williams  
Administrative Judge