



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 07-01633

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel

For Applicant: Sheldon I. Cohen, Esquire

February 26, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 1, 2005. On June 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 10, 2007. He answered the SOR in writing on July 12, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on July 17, 2007. Department Counsel was prepared to proceed on September 12, 2007, and another administrative judge received the case assignment on September 19, 2007. The case assignment was transferred to me on October 10, 2007, due to workload considerations. I granted Applicant's request

for a delay until December 4, 2007, in order for his counsel to be available. DOHA issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on December 4, 2007. The government offered exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf, as did four other witnesses, and submitted exhibits (AE) A through Y, which were admitted without objection. Applicant's counsel also offered a hearing memorandum, and copies of the decisions by the administrative judge and Appeal Board in ISCR Case No. 03-21190, that were accepted into the record as Hearing Exhibit (HE) III. DOHA received the transcript of the hearing (Tr.) on December 18, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Dismiss

Applicant's counsel moved to strike SOR ¶ 1.d, alleging that Applicant's "brother is a dual citizen of the United States and Israel, residing in the United States." He argued that the paragraph failed to allege facts that could raise a disqualifying condition because the brother could not be considered a "foreign" family member if he resides in the United States. (HE I; Tr. at 14.) Department Counsel objected to the motion, arguing that Applicant's counsel had not shown that a dual citizen family member could not possibly create a heightened risk of foreign exploitation, etc., under AG ¶ 7(a), simply by virtue of current residence in the United States. (HE II; Tr. at 17.) I denied the motion on the grounds that ¶ 7(a) contemplates potential security concerns arising from, *inter alia*, "foreign family members" and "other persons" who are citizens of or resident in a foreign country if contact with that person creates a heightened risk of foreign exploitation, etc. Accordingly, application of that disqualifying condition turns on demonstration of heightened risk arising from the contact with anyone who is a foreign citizen or resident, not on whether the definition of "foreign family member" requires residence abroad. (Tr. at 19.)

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts relating to Israel. (HE IV; Tr. at 22.) The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit IV. Department Counsel submitted eight reference documents in support of the request that were marked administrative notice (AN) exhibits I through VIII. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. He pointed to several statements in various AN documents, and submitted AE F through X, to dispute some of the proposed administrative notice facts and inferences. He further lodged specific objection to the use of AN VIII, the Interagency OPSEC Support Staff *Intelligence Threat Handbook*, for purposes of administrative notice because it was written by a private contractor. (Tr. at 23-56.) There is no rule of law requiring that a source

document be produced by a government employee or agency to be sufficiently reliable for citation in support of administrative notice of a fact. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.h, 1.i, 2.a, 2.b, 2.c, and 2.d, of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.c and 1.g of the SOR, explaining that they were only partially correct. He also provided additional information to support his request for eligibility for a security clearance. Applicant's admissions are incorporated in the following findings of fact.

Applicant is a 46-year-old dual citizen of the United States and Israel, residing in the United States. He earned his PhD in computer science from an American university in 1993, and is a self-employed research consultant under contract with the Department of Defense. He successfully held a Secret security clearance from 1994 to 1997, while employed by an aerospace defense contractor. He is happily married, with four children ages 15, 12, 11, and 4.

Applicant was born in the U.S., as a fourth-generation American on his mother's side. He was the eldest of four children when, at age ten, his mother and father moved their family to Israel. Applicant's father had an appointment to establish a new department at an Israeli university, where he worked for two or three years until his funding was not renewed. Thereafter, Applicant's mother supported the family by teaching in a high school. His father never resumed employment due to disagreements with the Israeli higher education system. His father is now 70 and his mother is 69 years old. She retired from teaching, and receives a pension from the government, which she supplements by tutoring private students in English. Applicant's parents continue to live in Israel, as do his sister, her husband and children.

By Israeli law, Applicant's mother and all the children became Israeli citizens three years after they moved to Israel. They retained their U.S. citizenship as well. After losing his job, Applicant's father did not want to remain in Israel and did so only at his wife's insistence. He formally declined Israeli citizenship and became a permanent resident instead. This entailed all the obligations of citizenship, including compulsory military service, but did not confer the right to vote or hold elected office. Applicant and his two brothers served their compulsory military service in the Israeli Defense Forces (IDF) between ages 18 and 21.

Applicant's parents, sister and family know he is performing defense-related work and applying for a clearance because he told them that was why he needed some information from them to complete his application. Applicant visited his parents in Israel during September 1989 and February 1993. Applicant and his wife visited his parents in Israel for a few weeks in 1998, and again in 2000, when his sister was married.

Applicant's sister is a home-maker. Her husband, who is an Israeli citizen, works as a computer programmer in Israel for a U.S.-owned company. She and their two children are dual U.S. and Israeli citizens. Applicant used his U.S. passport for all foreign travel, including these trips to Israel, since he moved to the U.S. because he considers himself primarily a U.S. citizen. He has not formally renounced his Israeli citizenship, but is willing to do so if asked. (Tr. at 274-275.) His Israeli passport has long-expired, and has been neither renewed nor used since he came to the U.S. in 1988.

Applicant's military service in Israel, from July 1979 to October 1982, was a difficult period in his life. He started service as a drill instructor training older, immigrant soldiers beginning their compulsory service. When hostilities broke out during the first Lebanese war, he transferred to an artillery unit. Rather than assume the normal duties for his rank and experience, he was assigned to menial duties and was hazed by seniors, peers, and subordinates due to his prior duty as a drill instructor.

Applicant left active service upon completion of his obligated time, and began required reserve duty while attending college in Israel. His next-oldest brother was killed during the summer of 1985, while serving in the Israeli Army, in what the family was told was a training accident. Applicant, with recent military training and experience himself, found the official explanation of the circumstances of his brother's death to be incredible. He expressed his doubts to the army officials, including a general officer, who visited the family during their period of mourning. Thereafter, Applicant was assigned to distasteful reserve duties outside his regular military specialty.

From 1982 to 1988, Applicant finished his bachelor's degree in aeronautical engineering and master's degree in electrical engineering at an Israeli university. During the summers of 1983, 1984, and 1985, he was employed as a summer intern by Israeli Aircraft Industries. From September 1986 to August 1988, he was employed by his university under a teaching graduate assistant stipend program. He maintains neither professional nor personal connections with anyone from either period of employment in Israel. Applicant voted in Israeli elections while he lived there, between 1979 and 1988. Since moving to the U.S., he has voted regularly in American elections but never in Israeli elections.

Applicant moved to the United States in 1988 to pursue his PhD in computer science. He met his wife, who is his second cousin, at a family gathering shortly thereafter. They were married in 1990, and she supported their family until he completed his degree in 1993. His grandparents, and her entire branch of the family remained in the area where his family lived before moving to Israel. After working for a defense contractor in a different city for almost four years, Applicant, his wife, and their children moved back to the family hometown in 1997. They have lived in Applicant's mother-in-law's house ever since, while saving money to buy their own home. This took a long time because housing prices grew rapidly, and they also bore costs of private schooling for their children. They recently purchased a home, and are awaiting completion of a remodeling project to move in. Applicant's personal financial statement reflects a net worth in excess of \$920,000, and an annual income that exceeds annual

expenses by more than \$250,000. (AE B.) Applicant and his wife are deeply involved with their church and their children's school communities.

Applicant's surviving youngest brother is also a dual U.S. and Israeli citizen, trained as a computer expert. The untimely death of their middle brother greatly disturbed him. He left regular employment to pursue eastern religions seeking solace. He eventually became disillusioned with religion altogether, moved back to the U.S., and has worked sporadically as a bus driver in various tourist resort areas. Applicant has infrequent contact with this brother. He communicates with his parents about once a week, and with his sister about once a month. His parents last visited Applicant here in the U.S. in August 2004. They visited about every other year before that, but health concerns have prevented their travel since then. Applicant's sister and her family also came for the August 2004 visit, to celebrate his eldest daughter's bat mitzvah.

During the 1994 background investigation preceding Applicant's receipt of his previous security clearance, he told the investigator, "If Israel should come under attack, I would return to Israel and rejoin the army." (GE 3 at 5.) When asked about this statement in connection with his current clearance application, he responded to the "Foreign Influence and Foreign Preference Interrogatory" question 33 by stating, "I will not return to Israel if it were attacked today. I have four children and family obligations in the U.S. and consider myself a U.S. citizen." (GE 2 at 21.) He credibly testified during the hearing that he would not now return to Israeli military service. He is older and considers his obligations in and to the U.S. to completely outweigh any obligation to Israel. He has redefined his Jewish identity in terms of practicing religion rather than the national affiliation to Israel that he was formerly taught by his secular parents. (Tr. at 271-276, 287-290.) Four witnesses: a professional colleague, a close family friend, Applicant's uncle and his wife, all confirmed these changes in his attitude and his current allegiance to the United States. (Tr. at 117-118, 135-137, 168-169, 210-211.) If faced with the highly unlikely situation in which Israel and the United States became hostile, as opposed to the close friendship and alliance that currently exists, all testimony confirmed that Applicant would fully support the United States in whatever capacity he was asked. His earlier statement about returning to defend Israel was true at the time, and was based upon lingering feelings of family and national duty, and his relatively short time back in the U.S..

The uncontroverted evidence establishes that Applicant is highly principled, with great integrity and strong character. He does not permit his family members to borrow or use pirated entertainment media. When his wife offered to send baked goods to his office during his previous classified employment, he refused to tell her how many people he worked with because that was protected information. He refused funding from a potential investor, in a start-up company that he founded, because the man lacked integrity. He considers voting a solemn obligation of citizenship, and has not missed an election since returning to the U.S. He refuses to shade data interpretation to his potential business benefit, and insists on full integrity from all colleagues as well. He dislikes some aspects of the Israeli government system, and harbors significant distrust and resentment toward their military leadership over what he considers to be a coverup

of the circumstances surrounding his brother's death. (Tr. at 112, 128, 130, 164, 202-209, 211, 216-217, 222, 259, 266; AE C; AE D; AE E.)

If Applicant's family in Israel were approached by the Israeli government in an attempt to obtain protected information from Applicant, he would immediately report that to security and law enforcement authorities for three reasons. He would not compromise his integrity. He believes submitting to any such coercion would only lead to more, and would not end any threat. Finally, he is confident that Israel would not risk good relations with the U.S. by continuing any such attempt once it was known to U.S. authorities. (Tr. at 218-219, 276-277.)

Although Applicant has no independent desire to ever visit Israel again, he recognizes that family obligations may cause him to do so in the future. (Tr. at 284.) Applicant owns no property in Israel, but his parents, sister, and brother each own homes there. His understanding is that when his last surviving parent passes away, their house will be sold and each sibling will inherit one third of its value. That property is presently worth about \$450,000. (Tr. at 236-237, 291-292.)

I take administrative notice of the following facts, which are supported by AN I through VIII and material to determining Applicant's security worthiness. Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified, technologically advanced economy that is growing at about 5.2% per year, and the United States is Israel's largest trading partner. Almost half of Israel's exports are high tech and its major industrial sectors include high-technology electric and bio-medical equipment. The Israeli government generally respects the human rights of its citizens, although there are some issues with respect to treatment of some Palestinian detainees and discrimination against Israel's Arab citizens that have no relevance to circumstances affecting Applicant or his family.

The Israeli government does not support or sponsor terrorism or terrorist organizations, and is a strong U.S. ally in fighting terrorism. Terrorist suicide bombings are a continued threat in Israel, and reliable information indicates that American interests could be the focus of terrorist attacks. As is typical in most parts of the world, American citizens have been urged to exercise a high degree of caution and common sense in public places, especially those near or associated with U.S. interests. The IDF has long-standing, close ties to the U.S. military, including operational, research and development programs. Commitment to Israel's security and well being has been a cornerstone of U.S. policy in the Middle East since Israel's creation in 1948, and the two countries are bound closely by historic and cultural ties, as well as mutual values and interests.

There have been some issues of concern between the U.S. and Israel, including Israel's proposed foreign military sales to third nations, Israeli protection of intellectual property, and espionage-related cases. (AN V at 2.) In general, Israel has curtailed or ended military sales to which the U.S. objected. (AN V at 25-26.) The intellectual property concerns related to biotechnology copyrights, pharmaceutical patents, and

piracy of software, music and DVDs. U.S. concerns were addressed by Israeli authorities. (AN V at 27.) One espionage case involved Jonathan Pollard, who is serving a life sentence for selling classified documents to Israel, and his wife. The only other Israel-related espionage case in the record involves former DoD analyst Lawrence Franklin, who pled guilty to conspiracy to communicate national defense information to unauthorized persons, unlawful retention of national security defense information, and conspiracy to communicate classified information to an agent of a foreign government. He was sentenced to confinement for 12 years and 7 months, and a \$10,000 fine. (AN V at 26-27; AE F at 5, 20.) Two former officials of the American Israeli Political Action Committee are pending trial on related conspiracy charges. Some unidentified press reports purportedly identified an employee of the Israeli Embassy in Washington as the agent of a foreign government involved, but no evidence was supplied to confirm that allegation. Of the 150 cases of espionage against the U.S. by American citizens between 1947 and 2001 that were reported in the Defense Personnel Security Research Center Technical Report 02-5 (July 2002), only the Pollards' case involved Israel. (AE V.) Other recently reported espionage arrests and prosecutions involved an opposition group in the Republic of the Philippines (AE W), the international terrorist group Hizballah (AE X), and the People's Republic of China.

The National Counterintelligence Center (NACIC) prepared an Annual Report to Congress on Foreign Economic Collection and Industrial Espionage each year from 2000 to 2005 (released in Aug. 2006) (AN VI; AN VII: AE K; AE L; AE M; AE N.) The first "Key Finding" of the most recent report was, "Entities from a record number of countries – 108 – were involved in collection efforts against sensitive and protected US technologies in the FY 2005, according to evidence amassed by the Counterintelligence (CI) Community. A relatively small number of countries, though – including China and Russia – were the most aggressive and accounted for much of the targeting, just as they have since the CI Community first began systematically tracking foreign technology collection efforts in 1997." (AN VI at iii.) China and Russia are the only countries identified as among the most aggressive collectors, although the report states that, "The major collectors have been repeatedly identified targeting multiple US Government organizations and all types of technologies since at least 1997, when the CI Community first began systematically reporting on targeting efforts." (AN VI at 2.) The reports from 2001 to 2004 identify press reports of cases involving China, Pakistan, and Iran (AE K at 5.); an unspecified "laundry list" of 75 countries, rich and poor, friend and foe active in 2001 (AE L at viii, 10.); an unspecified description of more than 90 countries, with a few (also unidentified) key countries accounting for the bulk of attacks in 2002-2003 (AE M at v, 3.); and a reportedly "high degree of unanimity among Community members" concerning the "only a few countries," out of almost 100 identified in FY 2004, from whom the gravest threat to U.S. technologies come – again without naming any specific country (AE N at ix, 3.).

The Government sought administrative notice of the fact that, "The [NACIC's] 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the active collectors of proprietary information." The accompanying footnote clarified that this list purports to name the "most" active collectors, and was

compiled based on a survey of private industry. The list is not the body of the report, but appears in an appendix entitled, "Private Industry Survey." The Appendix is a "distillation of corporate responses to questions concerning their experience," from "nearly a dozen Fortune 500 companies" that were contacted by NACIC officers. The reported responses to the question, "Who are the most active collectors?" were "China, Japan, Israel, France, Korea, Taiwan, and India." On this basis, and subsequent NACIC statements to the effect that "the active collectors are well known and remain the same," the Government seeks administrative notice, by inference, that Israel has been indisputably shown to be among the most active countries in industrial espionage and economic collection against the United States. This finding is not warranted. The Industrial Survey report does not identify which companies were surveyed or what type of threat was perceived from any particular country. More tellingly, the list does not include Russia which, with China, are the only two countries named as major collectors in later reports. If the major collectors are as well known as the reports suggest, then better documentation of who they are should be available to Department Counsel, and is required to support administrative notice that any particular country is among them.

The Government also sought administrative notice that, "Israeli military officers have been implicated in this type of technology collection in the United States." The request cites anecdotal description of a dispute involving Israeli officers monitoring performance of an Israeli defense contract by a U.S. company as support for this assertion (AE VIII at 38.) While it is true, in a technical sense, that such anecdotal discussion constitutes being "implicated," it does not establish the truth of the allegation sufficiently to support the inference that the implication itself is true. Additionally, there is no indication that any of Applicant's proposed classified work would be under contract to, or otherwise officially monitored by, the Israeli military. Accordingly, the proposed fact is not material to any issue in this case.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant 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.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG & 6:

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 ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

- (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;
- (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;
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;
- (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;
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;
- (f) failure to report, when required, association with a foreign national;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,
- (i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

AG ¶ 8 provides conditions that could mitigate security concerns:

- (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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) 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.

Applicant admitted the SOR allegations that his parents, sister, brother-in-law, niece, and nephew live in Israel. All of them are dual citizens of Israel and the U.S., except his father, who is a U.S. citizen, and his brother-in-law, who is an Israeli citizen. Applicant and his brother are also dual citizens, but live in the U.S. The nature of Applicant's relationship with his brother, and his brother's lifestyle, are so detached from any risk of influence by Israel as to raise no possible security concerns under any of the disqualifying conditions.

Applicant's other relatives living in Israel create a slight potential for exploitation, inducement, manipulation, pressure, or coercion, should the government of Israel choose to act in such a manner. The risk in this case is no greater than that which is inherent in any situation of a relative living abroad, which is not *per se* disqualifying. While both Israelis and Americans in Israel could be targeted for terrorist attack, there is no evidence of any terrorist organization operating within Israel that would create heightened risk of espionage activity toward his family by virtue of their citizenship or residence. There are some indications that Israel has obtained protected information from U.S. citizens, or failed to adequately protect intellectual property in the past. There is no evidence Israel has ever coerced, manipulated or exploited Israeli citizens or residents in connection with defense or economic espionage activity directed toward their U.S.-based relatives. The close and friendly military, political and strategic relations between the U.S. and Israel would make such activity very unwise, and, considering Israel's record of respecting the human rights of its citizens, quite unlikely. Applicant's

family's lack of government connection in Israel also make it unlikely that he could be placed in a position of having to choose between their interests and those of the U.S. Potential security concerns raised under AG ¶ 7(a) are substantially mitigated under AG ¶ 8(a).

Applicant formerly had connections to Israel, including his IDF comrades, fellow students, and family members, that made him feel obliged to return and help defend that nation if it came under attack. With the passage of many years, loss of contact with all but his close family, and increasing ties and sense of obligation to the U.S., he no longer feels any such duty. He dislikes aspects of, and distrusts, the Israeli government and, in particular, its military hierarchy. The only people in or connected with Israel, with whom he now has sufficient connections to create any possible conflict of interest, are his parents, sister and her family. Other than obligated military conscriptions and his mother's work as a school teacher, Applicant's family has no government connection. Likewise, they have no independent reason to benefit from his provision of protected information to them or others in Israel. While not binding on this determination, Applicant's demonstrated record of successfully protecting classified and sensitive information for more than three years, shortly after the time when he said he did feel that obligation toward Israel, is strong corroboration of other substantial evidence establishing his integrity, trustworthiness, and determination to follow rules. Potential security concerns raised under AG ¶ 7(b) are substantially mitigated under AG ¶ 8(b).

Applicant does not have any business or financial interests in Israel, and the potential to inherit part of his parents' modest estate at some future date is not a point of vulnerability to improper influence in view of his substantial income and assets in the U.S. Applicant's infrequent travel to Israel solely for purposes of visiting family there, which does not, in itself or combined with other evidence in this case, raise any security concerns. Nothing about his conduct during such visits, made using his U.S. passport, would make him vulnerable to exploitation or duress. Accordingly, security concerns are not raised under AG ¶¶ 7(e) or 7(i). The Government neither alleged nor proved facts raising any other foreign influence disqualifying condition.

Guideline C, Foreign Preference

Under AG ¶ 9 security concerns involving foreign preference arise because, "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 ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

- (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:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
- (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,
- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority.
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant was born a U.S. citizen, and obtained dual citizenship under Israeli law because his parents moved the family from the U.S. to Israel when he was 10 years old. He performed his obligatory military conscription in the IDF between ages 18 and 21. Thereafter, he attended a government owned and operated university to obtain his bachelor's and master's degrees, holding a graduate assistant teaching position with a stipend during the last two years.

In 1988, Applicant moved to the U.S. to pursue studies leading to his PhD. He met and married his wife here, and has lived in the U.S. ever since. While he lived in Israel, he voted in Israeli elections as a duty of citizenship there. Since moving to the U.S. in 1988, he has voted in every U.S. election for the same reason. He never voted in an Israeli election after moving to the U.S. In 1994, he indicated a willingness to return and bear arms for Israel if she were attacked, out of a lingering sense of obligation to his former comrades. Despite several interim Israeli military conflicts, he never did so, and has lost all touch with Israelis other than his close family. He is expressly no longer willing to bear arms for Israel. He did possess an Israeli passport when he moved here. It long since expired, and was never used or renewed after 1988.

Since Applicant was born a U.S. citizen, the foregoing exercises of Israeli citizenship did not occur before he was a U.S. citizen. They resulted, however, from his parent's decision to move him to Israel as a child. Once he fulfilled his military obligation there, and finished college, he emigrated to the U.S. and has remained here since. After moving here, he never again exercised any right, privilege or obligation of Israeli citizenship. Instead, he diligently exercised each in connection with his U.S. citizenship.

Applicant's conduct while he lived in Israel, from 1971 to 1988, and his 1994 statement implicate security concerns under all disqualifying conditions of AG ¶ 10, except subparagraphs(a)(5) and (a)(6). All of those actions, however, arose from choices made for him by his parents when he was a child, and his fulfillment of resulting obligations before he reached age 21. He did remain in Israel, where his family lived, while obtaining undergraduate and master's level education and working to pay his educational expenses. He was a dual citizen residing in Israel at the time, and exercised his civic rights and obligations by voting.

In 1988, when Applicant had the credentials to successfully do so, he chose to return to the U.S. at age 27. Ever since, he has exercised only U.S. citizenship. He never formally renounced his Israeli citizenship, but credibly expressed his willingness to do so. Accordingly, the security concerns raised by his conduct many years ago is substantially mitigated under AG ¶ 11(a), (b), (c), and (e). None of the disqualifying conditions have existed for more than 13 years.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's conduct of potential concern under Guideline C resulted from choices made for him by his parents when he was a child. Once fully emancipated and financially independent, he returned to the U.S. to live. He honestly expressed a willingness in 1994, that was never acted on and is no longer held, to return and defend Israel if attacked. Other than that statement, which was made in response to a security investigator's question, his conduct since 1988 has been entirely that of a U.S. citizen. He successfully held a Secret clearance from 1994 through 1997, refusing even to tell his wife how many people he worked with because he thought that the information was classified. All of his foreign travel was done using his U.S. passport.

Applicant's marriage and children, his substantial local extended family, and his professional career generated his full sense of obligation as a U.S. citizen, and eliminated any lingering sense of obligation toward Israel. His self-identity as a Jew is no longer grounded in any relationship with the nation of Israel, but instead arises from his embrace of religion since moving back to his original home. He is very principled, and is a strict follower and enforcer of rules.

Although his relationship with his parents and sister's family in Israel is close and loving, there is no evidence, other than their residence in Israel itself, to suggest potential for pressure, coercion, exploitation, or duress. As discussed above, Applicant would not submit to any such pressure because it would be wrong to do so, would only invite more such misconduct, and would be effectively countered by bringing it to the attention of U.S. authorities given the nature of U.S. - Israeli relations.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence and foreign preference considerations.

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 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge