DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 07-02780
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

January 29, 2008

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Decision

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Preference and Foreign Influence. Clearance is granted.

History of Case

Applicant submitted his Security Clearance Application (SF 86), on October 4, 2006. On May 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Influence) and B (Foreign Preference) 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 May 21, 2007. He answered the SOR in writing on May 25, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on May 29, 2007. Department Counsel was prepared to proceed on June 28, 2007, and I received the case assignment on June 29, 2007. On July 31, 2007, Applicant's counsel entered a Notice of Appearance. DOHA issued a notice of hearing on August 15, 2007, scheduling a hearing for October 4, 2007. Delay in scheduling this case was at the request of Applicant's counsel due to schedule conflicts. I convened the hearing on October 3, 2007 for the limited purpose of taking testimony from one of Applicant's witnesses, who was only available to testify that day. The case was continued to October 4, 2007, as originally scheduled, and completed.

The government offered Government Exhibits (GE) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through L, without objection. DOHA received the transcripts of the hearings (Tr.) on October 15, 2007.[1] I granted Applicant's request to keep the record open until November 19, 2007, to submit additional matters. On December 14, 2007, Applicant's counsel submitted Exhibit M, without objection from Department Counsel to the document or to Applicant's late submission. The record closed on December 14, 2007.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 2.c, alleging Applicant had an uncle who was a citizen and resident of Israel. Tr. 65-66. Applicant's counsel objected to the motion, arguing that Department Counsel had not shown good cause for failing to raise the allegation sooner and that the lack of notice denied Applicant the opportunity to prepare to respond to the allegation at the hearing. After argument by counsel, I denied Department Counsel's Motion to Amend. Tr. 66-70.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Israel contained in Exs. I through IX. Tr. 8. Applicant's counsel had no objection and I took administrative notice of the documents offered by Department Counsel, which pertain to Israel. Tr. 9-10.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from

[1] Unless otherwise indicated, references to the transcript (Tr.) refer to the hearing held on October 4, 2007.

government reports. See Stein, Administrative Law, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Israel Korea were derived from Exs. I through IX as indicated under subheading "Israel" of this decision. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR submitted on May 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a. , 1.b., 2.a. and 2.b., with explanations.

Applicant is a 33-year-old microwave engineer, who has been employed by a defense contractor since January 2006. He is a first-time applicant for a security clearance and seeks a clearance to enhance his opportunities within his company.

Applicant was born in 1974 in the Ukraine, and is an only child. In 1990, when he was 15 years old, he and his parents immigrated to Israel in order to increase their standard of living and provide a better way of life for the family. Upon arrival in Israel, Applicant and his parents, were granted Israeli citizenship. After graduating from high school and receiving an associate's degree, Applicant began his mandatory military service with the Israeli Defense Force. He served from 1995 to 1998 as an enlisted technician with a local missile battery and was discharged with the rank of sergeant.

In 1999, Applicant applied for and was granted an F-1 Student Visa through the U.S. Immigration and Naturalization Service. In 1999, Applicant immigrated to the U.S. and attended a U.S. college from January 2000 to May 2002, and was awarded a bachelor of science degree *magna cum laude* in electrical and computer engineering. He is currently attending graduate school to earn a master's degree in electronics, and expects to graduate in December 2008.

Applicant became a naturalized U.S. citizen in April 2006, and has a current U.S. passport. SOR ¶ 1.a. alleges that Applicant exercises dual citizenship with Israel and the U.S., and SOR ¶ 1.b. alleges that Applicant possesses a valid Israeli passport until July 2013. Since the SOR was issued, Applicant surrendered his Israeli passport to the Israeli Consulate in September 2007 and submitted a request to renounce his Israeli citizenship to the Israeli Consulate in May 2007. Applicant provided documentation from the Israeli Consulate regarding the renunciation of his Israeli citizenship entitled "Confirmation For The Waiver of Israeli Citizenship" dated May 24, 2007. Tr. 33-35, 54-57, 62, 64-65, AE J – M. Applicant is not a citizen of or passport holder of any other country other than the U.S.

Applicant is married and his wife, like him, was born in the Ukraine. She became a naturalized U.S. citizen in October 1997. Applicant and his wife were married in the U.S. in May 2002. They recently became parents of their first child, a son born in September 2007. Applicant's wife holds a master's degree in physical therapy, is a licensed physical therapist, and is currently on maternity leave.

Applicant's mother-in-law and father-in-law were born in the Ukraine and immigrated to the U.S. They both became naturalized U.S. citizens in September 1997. His wife's immediate family resides in the U.S.

Applicant's parents are citizens and residents of Israel. SOR ¶ 2.a. His mother is 58 years old and his father is 60 years old. His father is a music instructor at a facility for mentally handicapped people, and has a second job as a musician playing at various social clubs in the local area. His mother is a physical therapist/instructor and is employed at the same facility for mentally handicapped people as his father. Applicant maintains weekly telephone contact with his parents. GE 2, pgs. 3-4. Neither parent is associated with or employed by the Israeli government. The only other relative Applicant has in Israel is a retired uncle. This uncle immigrated to Israel from the Ukraine after he retired as a factory worker that made musical instruments. Tr. 60-61.

Applicant's parents are in the process of immigrating to the U.S. Applicant has received Approval Notices (Form I-797) from the U.S. Immigration and Naturalization Service for each of his parents to immigrate to the U.S. AE H, AE I. Applicant's parents are awaiting receipt of their visas and it is the intent of his parents to permanently reside in the U.S. Tr. 36.

Applicant traveled to Israel to visit his parents in July 1999, July 2000, January 2002, and November 2005. GE 2. SOR ¶ 2.b. He also visited Israel in January 2007 for his father's birthday party. After becoming a U.S. citizen in April 2006, Applicant used his U.S. passport for his 2007 visit to Israel. Tr. 53.

The President of Applicant's company testified on his behalf. He holds a secret clearance and also is the facility security officer. He stated Applicant holds a key position within his company as a microwave engineer and further stated that microwave engineers are difficult to find. The President sees the Applicant on a daily basis and described him as "diligent and intelligent," "very loyal to both company and to our society, and . . . a very hard working and thorough individual." Tr. 16 (Oct. 3, 2007). He noted Applicant is "very happy to be a citizen of the United States." Tr. 19 (Oct. 3, 2007). Referring to giving up his citizenship status, the President stated, "[Applicant's] happy to be a citizen of the U.S. He wants to bring his parents here, to live here and make his life here, bring up his brand new child here." Tr. 19 (Oct. 3, 2007).

Applicant's company President stated that a security clearance is necessary for Applicant ". . . to move ahead in his career, to develop test systems that will test some of the components that we build that do have classified aspects . . . ." Tr. 21 (Oct. 3, 2007). The President also submitted a reference letter reiterating his testimony. He emphasized in his letter that Applicant has a tremendous work ethic, is trustworthy, and is an individual who has tremendous potential as a U.S. citizen, and as a microwave engineer who can make a substantial contribution to the U.S. defense effort. AE L.

The Director of Operations for Applicant's company testified on behalf of Applicant. He interacts with the Applicant on a daily basis and holds a secret clearance.

He reiterated what the company President stated and recommended Applicant be given a clearance. Tr. 11-19, AE C.

Two character witnesses testified on behalf of Applicant. The first was a physician and the second was a network engineer, who holds a security clearance. Both witnesses are friends of Applicant and his wife and socialize with them on a regular basis. They stated, among other things, Applicant is a dependable, trustworthy, and honest person. Both witnesses recommended Applicant for a clearance. Tr. 19-30.

Applicant submitted seven reference letters. The authors included long-time friends, work colleagues, and work supervisors. Collectively, they paint a very positive picture of Applicant emphasizing again his high moral character, honesty, trustworthiness, and pride he has in being a U.S. citizen. AE A through F, AE L. The President of Applicant's company submitted an evaluation letter in which he described Applicant's potential as a microwave engineer, value as an employee, and additional contribution Applicant could make to the company and national defense if granted a clearance. AE G.

Applicant currently earns $62k per year and expects his salary to increase to $70k when he completes his master's degree in December. When Applicant's wife returns to work after completing her maternity leave, her estimated annual salary will be $67 to $70k per year. All of Applicant's financial interests are in the U.S., which includes a home, 401(k) accounts, and checking and savings accounts. He has no financial ties to Israel. Tr. 44-45. Applicant emphasized his loyalty to the U.S. He enjoys and appreciates his way of life in the U.S. and has embraced being a U.S. citizen and exercises his rights as a U.S. citizen to include voting.

Israel[2]

The relationship between Israel and the United States is friendly and yet complex. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. U.S. - Israeli bilateral relations are multidimensional. The United States is the principal proponent of the Arab-Israeli peace process, but U.S. and Israeli views differ on various peace process issues, such as the control of the Golan Heights, Jerusalem, and the West Bank as well as expansion of Israeli settlements. The United States and Israel concluded a free-trade agreement in 1985, and the United States is Israel's largest trading partner. Since 1976, Israel has been the largest recipient of U.S. foreign aid. The two countries also have very close security relations.

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. Almost half of Israel's exports are high

[2] The contents of the Israel section are taken in whole or in part from Exs. 1 through IX.

tech and its major industrial sectors include high-technology electric and biomedical equipment.

According to the Department of State Report on Human Rights, the Israeli government generally respects the human rights of its citizens, but there are some issues with respect to treatment of Palestinian detainees, conditions in some detention and interrogation facilities, and discrimination against Israel's Arab citizens. Terrorist suicide bombings are a continued threat in Israel and the U.S. government has received information indicating that American interests could be the focus of terrorist attacks. American citizens have been urged to exercise a high degree of caution and common sense when visiting restaurants, businesses, and other places associated with U.S. interests and/or located near U.S. official buildings.

Israel has given a high priority to gaining wide acceptance as a sovereign state and to ending hostilities with Arab forces. To that end, the Israeli Defense Force has close ties to the United States and in 1983; the two countries established a Joint Political Military Group which meets twice a year. Israel and the United States participate in joint military planning and combined exercises, and have collaborated on military research and weapons development. 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 interests.

There are several Issues of concern regarding U.S. relations with Israel. These include Israel's military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. In November 1985, Jonathan Pollard (a civilian U.S. Naval intelligence employee), and his wife were charged with selling classified documents to Israel and Mr. Pollard was sentenced to life in prison. Four Israeli officials also were indicted, although the Israeli government claimed the espionage was a rogue operation. On June 13, 2005, U.S. State Department analyst Lawrence Franklin was indicted for the unauthorized disclosure of classified information to a foreign diplomat. He later pled guilty and was sentenced to a 12-year prison term. It was reported that the diplomat in question was a political counselor at the Israeli embassy.

The theft of sensitive and proprietary information threatens U.S. national security in both military and economic terms, and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies. Industrial espionage is intelligence-gathering "conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining commercial secrets." Industrial espionage is not limited to targeting commercial secrets of a merely civilian nature, but rather can include the targeting of commercial secrets that have military applications, sensitive technology that can be used to harm the United States and its allies, and classified information.

The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the active collectors

of proprietary information. The most recent Report, released in 2006, states that the major collectors have been repeatedly identified targeting multiple U.S. Government organizations since at least 1997. Furthermore, Israeli military officers have been implicated in this type of technology collection in the United States.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." AG ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"[3] demonstrating, in accordance

[3] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime*

with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[4]

A person seeking access to classified or sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline C (Foreign Preference)

AG ¶ 9 explains the Government's concern regarding Foreign Preference, "[w]hen 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 Unites States."

Comm'n, 383 U.S. 607, 620 (1966). "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).

[4]"The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

AG ¶ 10(a) indicates one condition that raises a security concern and may be disqualifying in this case, "(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 passport."

SOR ¶ 1.a. alleged Applicant exercises dual citizenship with Israel and the U.S. SOR ¶ 1.b. alleged Applicant possessed a valid Israeli passport. Applicant was granted his Israeli citizenship when he and his parents immigrated to Israel from the Ukraine to Israel in 1990, and he held an Israeli passport after becoming a U.S. citizen.

The Government produced substantial evidence of this disqualifying condition, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Preference Mitigating Conditions under AG ¶ 11 are potentially applicable to these disqualifying conditions:

> (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; and
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority or otherwise invalidated.

AG ¶ 11(a) partially applies because Applicant derived his citizenship as a result of his birth, heritage, and immigration to Israel from the Ukraine. At the point in his life that he moved to Israel and engaged in the attributes of Israeli citizenship, he was too young to choose between the U.S. and Israel.

AG ¶¶ 11(b) and 11(e) fully apply. He not only expressed a willingness to renounce his dual citizenship, but has submitted the necessary paperwork with the Israeli Consulate to formally renounce his Israeli citizenship. Regarding his Israeli passport, he surrendered it to the Israeli Consulate. After becoming a U.S. citizen in 2006, he applied for a U.S. passport, which he used during his most recent visit to Israel in 2007.

As a result of Applicant's affirmative steps to mitigate this concern, he no longer is a citizen of Israel, and has demonstrated the termination of his Israeli citizenship by the mitigating actions described in AG ¶¶ 11(b) and 11(e).

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

> If the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates two conditions that could raise a security concern and may be disqualifying in this case, including:

> (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
>
> (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contacts with his parents, who are citizens and residents of Israel. These close relationships with his parents create a heightened risk of foreign pressure or attempted exploitation because Israel has an active collection program.

The Government produced substantial evidence of these two disqualifying conditions primarily as it pertains to Applicant's contacts and relationship with his parents, and his travel to Israel. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

> (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.; and
>
> (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.

AG ¶ 8(a) partially applies. Applicant's parents are not associated with or connected with the Israeli Government. Applicant's parents are in the process of immigrating to the U.S. On the other hand, Applicant's parents do live in Israel, and he has close emotional ties to them, as evidenced by his frequent telephone calls and visits to Israel. With regards to his parents, Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his parents] and the interests of the U.S." His frequent contacts with his parents in Israel could potentially force him to choose between the United States and Israel. On balance, he did not fully meet his burden of showing there is "little likelihood that [his relationship with his parents and siblings] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant has lived and studied in the United States the last nine years. He is completely vested in the U.S. His wife is a naturalized U.S. citizen and his new-born son is a U.S. citizen by birth. His mother-in-law and father-in-law are naturalized U.S. citizens and live in the U.S. Applicant is an only child, and as such has no other immediate family members living in Israel. Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. He became a U.S. citizen in April 2006. His wife became a U.S. citizen in October 1997. Applicant spent completed his college degree in the U.S. and is in the process of earning his master's degree. Applicant has been employed by his defense contractor employer since January 2006 and is very highly regarded at work. Applicant's contacts and linkage to the U.S. are greater than his linkage to Israel. He is heavily vested in the U.S., financially and emotionally.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and

circumstances."[5] The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[6] In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant's family connections and personal connections to Israel. He lived in Israel for a significant portion of his formative years. He was initially educated in Israel, and served in the Israeli military. His parents are citizens and residents of Israel. He has frequent, non-casual contact with his parents living in Israel. Applicant traveled to Israel five times since 1999. He held an Israel passport. However, he has cut his ties to Israel by renouncing his citizenship, and surrendered his Israeli passport.

Substantial mitigating evidence weighs towards grant of Applicant's security clearance. Applicant has lived in the United States for the past nine years, and he has been a naturalized citizen for almost two years. He has strong ties to the U.S., his wife and all of her immediate family reside in the U.S. Applicant chose to complete college in the U.S. and is a successful microwave engineer. He is continuing with his studies as a graduate student pursuing his master's degree. Although his parents currently live in Israel, Applicant has done everything within his means to bring them to live in the U.S. They will immigrate to the U.S. as soon as the U.S. Immigration and Naturalization Service processes their applications. His ties to the United States are stronger than his ties to Israel. He has no financial ties to Israel in contrast to his U.S. financial ties. He took the affirmative step of formally renounce his Israeli citizenship, which exceed the requirements of "express[ing] a willingness to renounce dual citizenship." There is no

[5] ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

[6] *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

evidence he has ever taken any action which could cause potential harm to the United States.

Applicant's employer's confidence and trust in him is so high as to warrant recommending him for a clearance. This was clearly demonstrated by his company President testifying on his behalf. Other company officials wrote letters of support. The company President has held a clearance over a sustained period of time. Applicant takes his loyalty to the United States very seriously, and he has worked diligently for a defense contractor for two years. His supervisors, family, and friends assess him as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He has an excellent reputation as a friend, family member, employee and U.S. citizen. His witnesses and documentary evidence recommend him for a security clearance. No witnesses recommended denial of his security clearance or produced any derogatory information about him.

Applicant's family members are not, and never have been, Israeli agents. Israel is a highly developed, stable, democratic republic with a modern economy that has supported the U.S. war against terrorism. Israel is a country that has been and continues to be friendly with the U.S. for more than 50 years.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Israeli government or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[7] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

[7]*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 C:	FOR APPLICANT
Subparagraph 1.a. – 1.b.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – 2.b.:	For 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 Applicant. Clearance is granted.

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Robert J. Tuider
Administrative Judge