DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 07-06767
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: Richard L. Moorhouse, Esquire

February 19, 2009

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Decision

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RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the foreign influence and foreign preference security concerns arising from his relationship and contacts with Israel and Israeli citizens. He also failed to mitigate the outside activities security concern. Eligibility for access to classified information is denied.

Statement of the Case

On March 31 and June 30,[1] 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the government's security concerns under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline L (Outside Activities).[2] The SOR detailed reasons why DOHA

[1] Amendment to the Statement of Reasons.

[2] 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

could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR on April 25 and July 16, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 22, 2008. DOHA issued a notice of hearing on October 9, 2008, scheduling a hearing on November 4, 2008. On November 3, 2008, with Applicant's agreement, I granted the government's request for a continuance. DOHA issued a second notice of hearing on November 5, 2008. The hearing was convened as scheduled on November 19, 2008.

At the hearing, the government offered exhibits (GE) 1 through 44. GEs 1 through 21, and 23 through 35, were admitted without objection (Tr. 53).[3] Applicant objected to GEs 22 and 36 through 43. The government withdrew GE 22 (Tr. 357). I considered GEs 36 through 43 relevant and material and admitted the documents over Applicant's objections.[4] Applicant testified on his own behalf, and presented four witnesses and 13 exhibits, marked AE A through M, which were received without objection (Tr. 111). DOHA received the transcript of the hearing (Tr.) on December 2, 2008.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.c - 1.g, 2.a - 2.d, 2.e (admitted and denied in part), 2.f, 2.g, 2.h (admitted and denied in part), and 3.a – 3.i, with explanations. He denied, SOR ¶¶ 1.a, 1.b, 1.h, 2.i (he failed to answer this allegation and I entered a denial), and 3.j. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 51-year-old entrepreneur and owner of numerous successful companies, some of which do business with the Department of Defense. He was born, raised, and educated in Israel (Tr. 114). After completing high school in 1975, he was drafted into the Israeli Army as an infantry man (Tr. 261). He served three and one-half years and was discharged with the rank of captain (Tr. 116). He was transferred into the Israeli Army reserve forces, but he was never called into service again (Tr. 266).

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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.

[3] GE 44 was marked for identification and considered for administrative notice only.

[4] Applicant's counsel objected on grounds of relevance and the government's timeliness in the production of the documents. Applicant was prepared to proceed as scheduled and did not request a postponement. I considered the documents relevant and material, and made them part of the record.

From July 1979 to April 1982, Applicant attended college in Israel, completing a bachelor's degree in economics and international relations (Tr. 121). At the same time, he worked full time for the Israeli Port Authority as a security guard for El-Al, the Israeli airline (Tr. 268-269, GE 7). As a security guard, he received training by private contractors, the Israeli National Police and the Israeli General Security Service (now known as the Israeli Security Agency (ISA)) (Tr. 120).[5] Applicant became friends with four or five members of the ISA and continued his relationship with some of them until at least 2005 (GE 23). He believes his ISA friends are now retired. In 2005, he met with one of his ISA friends approximately 10 times for business purposes (GE 23). Applicant has a close personal relationship with another ISA agent (called A) because they attended elementary school together. He meets with A for dinner once a year when Applicant is in Israel on business (GEs 23 & 32). He denied ever being employed by the ISA.

He emigrated to the United States in April 1982 at age 25 (Tr. 121, 269). In 1982, Applicant applied for a position as a security guard in the Israeli Embassy in Washington, D.C (Tr. 269). He stated he applied for the position seeking to continue his education (Tr. 121). As an Embassy security guard, he received special training from his supervisor and the chief of security at the Embassy who at the time was a general officer in the Israeli Defense Forces (IDF) (Tr. 123, 274). He worked in that position around two and one-half years (Tr. 270). At the same time, he attended a U.S. university and earned a bachelor's degree in business administration (Tr. 124).

Applicant's wife was born in Argentina and emigrated to Israel at a young age. She grew up and was educated in Israel. He married his wife in 1984 in Israel. Applicant and his wife applied for U.S. citizenship in 1988 and became U.S. naturalized citizens in 1998. They were issued U.S. passports shortly thereafter (Tr. 280).They have four U.S. born children, ages 23, 21, 16 and 14 (Tr. 132). After their births, Applicant registered his children as Israeli citizens at the Israeli Embassy (GE 7).

In 1984, Applicant was promoted to the position of Embassy research and development assistance defense attaché (Tr. 270-274). He served as liaison between the Israeli Embassy and the Department of Defense for approximately two years and possessed an Israeli security clearance (Answer to the SOR, GEs 7 & 32). He assisted the Israeli government and defense industry in purchasing and selling products to the U.S. government and defense industry. During that same period, he continued his education, and in 1986 he received a master's in business administration (Tr. 124).

Applicant resigned his position at the Israeli Embassy in 1986 (Tr. 125). In mid-1986, he became the head of the Washington office of a company called "S", which was a U.S. subsidiary of a large international corporation headquartered in Israel, called "K" (Tr. 125, 277-78, 312-13). K's management knew Applicant from his jobs at the Israeli Embassy and they trusted him to manage their operation in the United States. S was attempting to establish a business relationship with the U.S. government and the U.S.

[5] ISA received responsibility for the recruitment and training of security guards and members of the security divisions of Israeli airlines in 1968 (GEs 37 & 38).

defense industry. His work at S involved selling the company's security and defense-related products to the U.S. government and defense contractors. In September 1988, K sold S to Applicant in exchange for him taking responsibility of approximately $30,000 in liabilities (a rental agreement) (Tr. 126). Applicant paid no money for S.

In September 1988, Applicant used S to incorporate his own company "M," in the United States (Tr. 126). He is M's sole owner and its key management person (Tr. 302). Initially, his company worked in research and development. Now it specializes in providing the U.S. government with technological innovations in anti-terrorism and anti-insurgency developed particularly by Israel and its defense industry (Tr. 127). M sells industrial, defense, and security products to the U.S. government and the defense industry. Applicant's hard work has paid off, as M has grown significantly and become a very lucrative company working closely with government agencies, the defense industry, and law enforcement agencies.

M as a prime contractor or subcontractor on contracts with the U.S. government and the defense industry, M has direct revenues of approximately $40 million a year, with sales in the several hundred millions of dollars (Tr. 155). Ninety percent of M's revenues derive from its business with the United States. The company has had Alcohol Tobacco and Firearms (ATF) licenses to import, and State Department licenses to export, since 1988 with a record free of rules and regulation violations (Tr. 190). A U.S. subsidiary of M provides governments and commercial customers worldwide with security products similar to the ones sold to the United States. Its customers include the governments of Taiwan, Israel, and Greece (GE 35).

M represents and assists Israeli defense manufacturers in developing business, and marketing and selling their products to the U.S. government and manufacturers (Tr. 345). Some of the companies are M's suppliers, and in turn, M supplies products to the U.S. market. M serves as a bridge to the U.S. government and defense industry for systems and technology developed by Israel's government and defense industry (Tr. 111). The company has had strong, long-term relationships with approximately 8 to 10 Israeli companies for between four and 20 years (Tr. 217, 319). Some of the companies are Israeli government owned companies; others are privately owned companies that are also cleared facilities by the Israeli government (Tr. 217).

Applicant also assists in the day-to-day management of particular programs for a couple of Israeli companies (Tr. 222-223). He encouraged two of his client companies in Israel (PS (Israel) and O) to open U.S. subsidiaries to manufacture and sell their products directly to their U.S. customers (Tr. 166, 254). As of the hearing day, Applicant was acting president/manager of PS, North America, a U.S. subsidiary of one of Applicant's Israeli client companies (Tr. 251). Applicant explained the Israeli companies trust him with their proprietary secrets because of their long-term relationships, and because he understands their technology and knows how best to put it to use in the United States (Tr. 318).

Applicant has made impressive contributions to the security protection levels of U.S. airports and other public places through the technology and products his companies have sold to the U.S. government and defense industry.[6] His products have significantly improved the protection, survivability, and effectiveness of U.S. tactical forces in combat. Many of these technical advances and products are also being made available to U.S. law enforcement personnel to assist in the fight against terrorism and drugs.

Applicant incorporated several companies in Israel to assist him with M's business in the United States. The principal company, "K," was incorporated in 1996 (Tr. 154, 242). This company serves as a conduit for M to interact with its clients in Israel. It deals directly with the Israeli companies, and it is a key element in supporting M's U.S. business (Tr. 349-350). Applicant owns 90% of K, and his Israeli local general manager owns 10%. The company has between eight and 11 Israeli employees. Applicant communicates telephonically with K's manager at least twice a week and via e-mail around three to four times a week. He has personal contact with the manager every time he travels to Israel, or when the manager travels to the United States, approximately once a year (Tr. 244). Applicant stated he does not sell U.S. products in Israel through any of his companies. The only products his Israeli companies sell in Israel, or to other countries, are those products produced by his companies in Israel (Tr. 155).

"MD" is a manufacturing company incorporated by Applicant under K in Israel (Tr. 245). It developed and manufactures aerosol detecting sprays sold by K in Israel and other countries. The same products are manufactured for M to be sold in the United States. K makes approximately $2-3 million in profits a year from the sale of these products. "KPS" is another company under K. According to Applicant, KPS took technology from another Israeli company, modified it to make it more effective, and supplied the products to M for sale in the United States. Applicant sits on the board of directors for both MD and KPS (Tr. 249).

Through the years, Applicant has maintained close contact with the Israeli Embassy in Washington, D.C. He attends periodic meetings at the Embassy and receives e-mails from the Embassy's Defense Cooperation Office (Answer to the SOR, GE 26). His last attendance to an Embassy defense industry briefing was in August 2007 (GE 3).

Applicant has extensive contacts and a personal relationship with General X, a retired chief of the Israeli Aman Military Intelligence (Tr. 280-289, Answer, GEs 23 & 28).[7] He met General X approximately in 2000, when the General was the head of one of Israel's intelligence services. He was introduced to the General by his brother.

[6] The file contains a detailed description of Applicant's impressive contributions. *See* Tr. 134-154, 168-188; AEs C, H, I.

[7] The Aman Military Intelligence is one of the three bodies that form the Israeli intelligence services (GE 36).

Applicant believes his brother and the General became friends when they served together in the Israeli forces. He noted that most of his contacts with General X have been since the General retired from the Israeli Army Military Intelligence. Applicant meets with General X for dinner once or twice a year. He met with General X four times in 2007. They e-mail each other and talk on the telephone about once or twice a month. According to Applicant, General X is actively involved in the defense industries of both the United States and Israel (Tr. 287-288). General X sits on the boards of companies with whom Applicant's company conducts or would like to conduct business (Answer). At his hearing, Applicant denied ever discussing or conducting business with General X (Tr. 280-289).

In 2006, a federal agency sponsored Applicant's company to receive a facility security clearance at the secret level (Tr. 297, 302, AE A). Because he is the sole owner and key management person for M, he is required to have the same level of access. Consequently, he submitted security clearance applications in May 2006 and May 2007 (GEs 1 and 2).

Applicant considers himself to be a dual citizen of both the United States and Israel (GEs 1 and 2). He explained, however, that in his heart and mind he knows he is only a U.S. citizen. Since 1988, he has made the United States his home. His four children were born and are being educated in the United States. He intends to retire in the United States (Tr. 228). He has stated his willingness to renounce his Israeli citizenship, if necessary (Answer to the SOR).

As an Israeli citizen, Applicant possessed an Israeli passport most of his life. Applicant used his Israeli passport to travel in and out of Israel from 1982 to April 2008. He averages five or six trips to Israel a year (Tr. 237). He traveled to Israel seven times in 2004; five times in 2005; eight times in 2006; seven times in 2007; and twice in 2008 (Tr. 236). He last renewed his Israeli passport in May 2006, and it had an expiration date of May 2016. Applicant used his Israeli passport in preference to his U.S. passport because Israeli law required him to have an Israeli passport to enter and leave Israel.

Applicant was made aware of the security concerns raised by his possession of a valid Israeli passport when he received his March 2008 SOR. He surrendered his Israeli passport to the Israeli Embassy in Washington, D.C., in April 2008 (Tr. 229, AE A). Applicant was informed by the Israeli Embassy that for him to enter Israel using his U.S. passport, he is required to inform, ahead of time, the Israel border police, through the Israeli consulate, of his intentions to travel to Israel (Tr. 231, 233). Applicant intends to continue his frequent travels to Israel to be able to run his businesses in the United States and Israel, and to visit his family. He volunteered to restrict his travels as necessary or to report to the proper U.S. authorities all trips to Israel to minimize any possible risks arising from his numerous trips to Israel (Tr. 191, 378). He also destroyed his Israeli identification card by cutting it in half. He then returned it to the Israeli Embassy (Tr. 157).

Applicant's father was a car salesman (Tr. 117). In 1979, he gave Applicant a small apartment in Israel (Tr. 157, 237). He sold the apartment in 1990, and purchased another apartment, which he now uses as a rental property. He estimated the value of this apartment at around $400,000 (GE 18). He is in the process of selling this apartment and expects to conclude its sale around March 2009 (Tr. 240). In June 2007, Applicant purchased a second apartment for his personal use when he travels to Israel. He estimated the value of this apartment at $850,000 (Tr. 238, GE 18). He volunteered to sell both apartments in order to alleviate security concerns (Tr. 240). Applicant also had an Israeli bank account that he used to conduct business in Israel. The bank account had a balance of about $100,000. After receipt of the SOR, Applicant closed the bank account to alleviate security concerns (Tr. 241). He no longer has any cash or cash equivalent in Israel (Tr. 159).

Applicant owns two homes in the United States, his primary residence and a vacation/retirement home (Answer to SOR). He believes his U.S. cash net worth to be between $60 to $70 million (Tr. 159, Answer).

His mother is 76 years old. She is a retired elementary school teacher and principal. He calls his mother every Friday night to wish her blessing before the Sabbath (Tr. 254). Whenever he is in Israel, they always have dinner together on Friday nights. Applicant has two siblings. His brother is a well known physician in Israel. They communicate telephonically at least once every two weeks (Tr. 255). His brother's wife is a retired economic advisor to a non-profit organization (Tr. 117). Applicant's sister is a school teacher. They communicate telephonically once every two months (Tr. 257). His brother-in-law works in a pharmacy.

Applicant has four aunts and uncles in Israel. He has almost no contact with them (Tr. 259-260). Applicant's mother, siblings, in-laws, and extended relatives are residents and citizens of Israel (except his mother-in-law). He stated that none of his relatives have been or are connected with the Israeli government, intelligence, or security services, except for having complied with their compulsory military service obligations (Answer to SOR, Tr. 116-118).

Applicant's mother-in-law is a resident of Israel; however, she is not an Israeli citizen. He communicates with his mother-in-law approximately once a month (Tr. 258). His wife has three siblings all of whom are residents and citizens of Israel (Tr. 259). He communicates with them approximately once every two months.

Applicant's references included: (1) a U.S. retired lieutenant general,[8] (2) a former Director of two U.S. law enforcement organizations,[9] (3) an attorney who has

[8] Currently, senior vice president for strategic planning for M, one of Applicant's companies (Tr. 220).

[9] Employed by M as a consultant for the last six years.

been Applicant's friend and neighbor for 20 years, and (4) a friend and employee[10] who has known Applicant for 20 years.

Applicant was described as honest, completely trustworthy, and as an upstanding person with high integrity. His references and friends assess him as conscientious, and responsible. He is a highly successful and astute business man, dedicated father and husband, and extremely loyal U.S. citizen. One of his references remembered Applicant stating at his naturalization ceremony that his naturalization as a U.S. citizen was one of the most important things he had done in his life (Tr. 348). The former Director of the federal law enforcement agency considers Applicant to be an American patriot who has contributed more to the United States and its safety than he had in his 40 years of service (Tr. 340).

Applicant's references consider him an ethical person with unique skills who has made invaluable contributions to the safety of U.S. servicemen and the United States. His references recommend him for a security clearance without reservations.

I take administrative notice of the following facts. The government of Israel is a parliamentary democracy. 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. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Israel has a diversified, technologically advanced economy 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.

U.S. - Israeli bilateral relations are multidimensional and complex. Israel has given a high priority to gaining wide acceptance as a sovereign state and to ending hostilities with Arab forces. 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.

Notwithstanding, 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. There are several cases of U.S. citizens convicted for selling, or attempting to sell, classified documents to Israeli Embassy officials, as well as cases of Israeli nationals indicted for espionage.

Israel is one of the most active collectors of proprietary information. Israeli military officers have been implicated in this type of technology collection in the United

[10] Currently, senior vice president and COO for M.

States. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel.

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.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.[11]

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 controlling adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."[12] 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

[11] *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

[12] *Egan, supra,* at 528, 531.

responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified 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. 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

Under Guideline B, the government's concern is that:

> Foreign contacts and interests may be a security concern 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 ¶ 6.

AG ¶ 7 sets out three conditions that raise a security concern and may be disqualifying in this case:

> (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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign own or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

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.[13] Applicant has frequent contacts and a close relationship of affection and/or obligation with his mother, siblings, and his in-laws; all of whom are citizens and residents of Israel (except for his mother-in-law). The closeness of the relationship is shown by Applicant's frequent telephone, e-mail, and personal contacts with them during his frequent trips to Israel.

Applicant also has long-time friends, business partners/associates in Israel, some of whom are or were members of the ISA and of the Israeli intelligence service. Additionally, he owns two apartments in Israel worth approximately $1.2 million, and several profitable companies with yearly revenue around $2 to $3 million. Applicant's multi-million dollar business in the United States depends largely on his personal contacts with the Israeli government, companies, friends and business associates. These close relationships and contacts create a potential conflict on interest between his obligation to protect U.S. sensitive information and his desire to help the government of Israel, a person, or a company by providing that information.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli agents, a person, or a company may exploit the opportunity to obtain information about the United States. Israel is one of the most active collectors of sensitive and proprietary information from the United States. Israeli military officers have been implicated in the collection in the United States of classified and proprietary technology. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel. His connection to his in-laws and long-time Israeli friends, business partners and associates also creates a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them by providing sensitive or classified information.

[13] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The government produced substantial evidence raising these three potentially disqualifying conditions, 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.

Six Foreign Influence Mitigating Conditions under AG ¶ 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.;
>
> (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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that AG ¶ 8(a) and 8(c) do not apply and do not mitigate the security concerns raised.

Appellant did not establish it is unlikely he will be placed in a position of having to choose between the interests of his Israeli family, friends, and business associates and the interests of the U.S. His frequent contacts and close relationships with his Israeli family members, long-time friends, and business associates could potentially force him to choose between the United States and Israel.

His connections and relationships are sufficiently close to raise a security concern about his desire to help his family, friends, and associates by providing sensitive information. Applicant's frequent travel to Israel also creates a higher risk of foreign inducement, manipulation, pressure or coercion by the Israeli government, friends, and business associates working for the government of Israel or its defense contractors.

Applicant's multi-million dollar business in the United States depends largely on his close personal relationships with the Israeli government and defense companies – his clients in Israel. Considering Israel's aggressive posture in the collection of sensitive and proprietary information in the United States, these relationships, and Applicant's business' dependence on those business relationships, create a higher risk of foreign inducement, manipulation, pressure or coercion by the Israeli government, his friends, and business associates. AG ¶ 8(f) does not apply.

The nature of Israel's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States. I considered that the Israeli government is a parliamentary democracy with a close friendship and cooperative relationship with the United States based on common democratic values, religious affinities, and security interests. Israel generally respects the human rights of its citizens. The United States and Israel enjoy good relations and the United States is Israel's largest trading partner. Also, Israel is the largest recipient of U.S. foreign aid.

Notwithstanding, Israel's aggressive collection of sensitive and proprietary information raises the burden of persuasion on Applicant to demonstrate that his immediate family members, friends, and business associates in Israel do not pose a security risk and that he will not be placed into a position to be forced to choose between loyalty to the United States and his family members.

Applicant was born and grew up in Israel. He served in the Israeli Army; worked for the Israeli Port Authority (where he received training by the ISA); worked as an Israeli Embassy security guard and received additional training by the ISA; worked at the Israeli Embassy as a research and development assistant defense attaché and possessed an Israeli security clearance; and he worked for an Israeli company selling Israeli defense related products to the United States. Applicant's background allowed him to establish his close relationships and business associations with the Israeli government, its companies, and the Israeli defense industry. Applicant has continued his contacts and relationship with long-time ISA friends and with a retired general, chief of the Israeli Aman intelligence service. He also maintains a close association with the Israeli Embassy in the United States. Considering Applicant's background, his friends and associates, and his business, the Israeli government may be monitoring Applicant's work, his trips to Israel, and his communications with family and friends.

AG ¶ 8(b) partially applies because Applicant has developed a sufficient relationship and loyalty to the United States and should be given credit for his connections to the United States. He has lived in the United States for approximately 26 years. He has been a naturalized U.S. citizen for around 10 years. His children have inculcated U.S. values. Applicant and his wife have established themselves as successful American citizens. He has worked hard and his company is highly successful. However, when his favorable information is balanced against his contact with foreign persons, which is substantial, there remains a potential conflict of interest.

AG ¶ 8(b) does not mitigate the security concerns raised because Applicant has significant contacts with family members, friends, and professional associates who are residents and citizens of Israel. Such contacts create a risk of foreign exploitation because of the Israeli government's active collection of sensitive U.S. economic, industrial, and proprietary information. This is documented by cases involving the illegal export, or attempted illegal export of U.S. restricted, dual use technology to Israel.

Available information sustains a conclusion that there is a risk that the Israeli government, or Applicant's contacts in Israel may attempt to exploit Applicant directly, or by exploiting Applicant's family and friends in Israel. Applicant's situation creates a potential conflict of interest between Applicant's obligations to protect sensitive information and his desire/obligation to help himself, or his family and friends were they under exploitation by a foreign interest.

Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[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 United States."

Under AG ¶ 10(a)(1) Applicant may be disqualified for the "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; and (3) accepting educational, medical, retirement, social welfare, or other such benefits." Applicant renewed and used his Israeli passport and identification card after becoming a U.S. citizen and he owns property in Israel.

Under AG ¶ 10(c) Applicant may be disqualified for "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." Applicant has deep, long-standing symbiotic business relationships with the government of Israeli and approximately 10 Israeli clients companies. He has been doing business with some of these companies for close to 20 years. He has been a trusted representative and advisor for these Israeli companies. In some cases, he manages the day-to-day operation of subsidiary companies, or particular programs, of his Israeli

clients in the United States. Applicant's multi-million dollar business in the United States depends largely on his personal contacts with the Israeli government, companies, friends and business associates. Additionally, he has frequent contact and communication with the Israeli Embassy in the United States, and serves as a liaison between the Embassy, Israeli companies, and the U.S. government and defense industry. AG ¶ 10(c) applies.

AG ¶ 11 provides six 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.

None of the mitigating conditions apply.

Up to April 2008, Applicant enjoyed all the privileges and rights of Israeli citizens. Applicant's possession and use of an Israeli passport in preference of his U.S. passport, as well as his use of the Israeli identification card, banking system, and ownership and property in Israel show he is exercising his Israeli citizenship and preference for Israel.

In 1982, at age 25, he travelled to the United States to work at the Israeli Embassy and attend college. He applied for residence in 1988 and became a U.S. naturalized citizen in 1998. He and his immediate family have made the United States their home. His children are being raised as Americans, and he intends to retire in the United States. A substantial portion of Applicant's financial and economic ties are in the United States. However, because his business in the United States depends largely on his close contacts with the Israeli government, companies, his business in Israel, as well as his contacts with Israeli citizens, he also has significant financial, economic, and proprietary interests in Israel.

Applicant has made impressive contributions to the protection and security of the United States. His contributions have significantly improved the protection, survivability, and effectiveness of U.S. tactical forces in combat, and assist U.S. law enforcement personnel in the fight against terrorism and drugs. Applicant surrendered his Israeli passport, destroyed his identification card, expressed his willingness to renounce his Israeli citizenship, if necessary, and volunteered to disclose and allow monitoring of his trips to Israel.

These facts warrant partial application of foreign preference mitigating conditions AG ¶¶ 11(b): "the individual has expressed a willingness to renounce dual citizenship;" and 11(e): "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Notwithstanding the applicability of these mitigating conditions, they do not fully mitigate the foreign preference security concerns. Applicant's security concerns were raised by his exercise of his Israeli citizenship after he became a naturalized U.S. citizen. He surrendered his Israeli passport and identification card and that mitigated the passport specific issues. However, Applicant continues to exercise his Israeli citizenship through his business and properties in Israel. Considering the record as a whole, Applicant's continued exercise of his Israeli citizenship fails to mitigate the foreign preference security concerns.

Guideline L, Outside Activities

Under AG ¶ 36, the government's concern is that "[i]nvolvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information."

AG ¶ 37 sets out two conditions that may be disqualifying in this case:

(a) any employment or service, whether compensated or volunteer, with:

> (1) the government of a foreign country;
> (2) any foreign national, organization, or other entity;
> (3) a representative of any foreign interest;
> (4) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology; and

(b) failure to report or fully disclose an outside activity when this is required.

Applicant has deep, long-standing symbiotic business relationships with the government of Israeli and approximately 10 Israeli clients or client's companies. He has been doing business with some of these companies for close to 20 years. He has been

a trusted representative and advisor for these Israeli companies. In some cases, he manages the day-to-day operation of subsidiary companies, or particular programs, of his Israeli clients in the United States. Applicant's multi-million dollar business in the United States depends largely on his personal contacts with the Israeli government, companies, friends and business associates. Additionally, he has frequent contact and communication with the Israeli Embassy in the United States, and serves as a liaison between the Embassy, Israeli companies, and the U.S. government and defense industry.

Considering the record as a whole, I find Applicant provides services to Israel-related entities and their representatives, companies, and to Israeli defense contractors. AG ¶ 37(a)(2), and (3) apply.

AG ¶ 38 outlines conditions that could mitigate the above security concerns including:

> (a) evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States; and
>
> (b) the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Applicant's favorable information fails to raise the applicability of these mitigating conditions. There is no evaluation by a security or counterintelligence office indicating that Applicant's activities do not pose a conflict with his anticipated security responsibilities or with the national interests of the United States. There is no evidence Applicant discontinued his activities of concern.

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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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.

On balance, Applicant's favorable information is summarized as follows. Applicant and his family are loyal, proud Americans; they have woven themselves into the fabric or America through their long-term participation in the community and their jobs. Applicant and his wife have lived in the United States for 26 years and have been U.S. naturalized citizens for 10 years. When he became a U.S. citizen, he swore allegiance to the United States. Their children are native-born U.S. citizens, and have been raised and educated in the United States as Americans. Applicant credibly testified that he and his wife intend to retire in the United States.

Applicant has made impressive contributions to the protection and security of the United States. His contributions have significantly improved the protection, survivability, and effectiveness of U.S. tactical forces in combat, and assisted U.S. law enforcement personnel in the fight against terrorism and drugs. Applicant surrendered his Israeli passport, destroyed his identification card, expressed his willingness to renounce his Israeli citizenship (if necessary), and volunteered to disclose and allow monitoring of his trips to Israel. There is no evidence he has ever taken any action which could cause potential harm to the United States, or that he lacks honesty and integrity. He has the respect and trust of his impressive references who recommended him for a security clearance without reservations.

On the other hand, numerous circumstances weigh against Applicant in the whole person analysis: Israel's aggressive pursuit of sensitive or protected U.S. information; Applicant was born and educated in Israel, and emigrated at age 25; almost all of his relatives and in-laws (except his mother-in-law, wife and children) are residents and citizens of Israel. He served in the Israeli Army, worked for the Israeli government until 1988, and received training by the ISA in several of his jobs. He held the position of research and development assistant defense attaché at the Israeli Embassy, and possessed an Israeli security clearance.

Applicant current business is directly derived from the jobs he held at the Israeli Embassy. He has maintained contact with Israeli friends who are or were members of the ISA, as well as with a retired general who was the head of one of Israel's intelligence sections. Applicant's lucrative U.S. business is directly tied to his close contacts with the Israeli government and defense industry. He represents both companies owned by the government of Israel and Israeli defense contractors in their business with the U.S. government and defense industry. Applicant's multi-million dollar business in the United States depends largely on his personal contacts with the Israeli government, companies, friends and business associates.

In sum, he had significant connections to Israel before he immigrated to the United States – connections that he continues to maintain. Applicant has frequent and

non-casual contact with his family members, friends, and business associates living in Israel. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli agents or defense contractors may attempt to use Applicant's family members, friends or business associates living in Israel, as well as his business interests to obtain technological information. His financial and economic interests could be used to reward or pressure him to obtain information about the United States.

"Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant failed to mitigate the security concerns pertaining to foreign preference, foreign influence, and outside activities.

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.d, 1.f, and 1.g:	Against Applicant
Subparagraphs 1.b, 1.e and 1.h:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Paragraph 3, Guideline L:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA
Administrative Judge