



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



In the matter of:)
)
) ISCR Case No. 07-11429
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Jason Thomas, PhD, Personal Representative

March 6, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

History of Case

On April 21, 2004, Applicant submitted her Security Clearance Application (SF 86). On August 18, 2004, she re-signed it. On September 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 October 31, 2007. She answered the SOR in writing on November 9, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 15, 2007. Department Counsel was prepared to proceed on November 29, 2007, and I received the case assignment on December 3, 2007. DOHA issued a Notice of Hearing on December 20, 2007, and I convened the hearing as scheduled on January 23, 2008. The Government offered Exhibits (GE) 1 through 3, which were received into evidence without objection. Applicant testified and submitted Exhibits (AE) A through C into the record without objection. DOHA received the transcript of the hearing (Tr.) on February 1, 2008. The record remained open until February 14, 2008, to give Applicant additional time to submit documents. She timely submitted five exhibits that I marked as AE D through I and admitted into evidence without objection.

Procedural and Evidentiary Rulings

Motion to Amend SOR

After Applicant testified, Department Counsel moved to amend the SOR by adding ¶1.g, alleging Applicant maintains an Israeli identification card. (Tr. at 46.) Applicant did not object to the motion. Said motion was granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Israel. (Tr. 11). The request and the attached documents were included in the record as Administrative Exhibits (AE) I through VIII. Applicant did not object to my consideration of those exhibits. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, dated November 9, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f and 1.g of the Amended SOR, with explanations. She denied the factual allegations in ¶ 1.e of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 35 years old and was born in the United States. She graduated from a U.S. university in 1994. She earned her last semester of undergraduate college in Israel in 1993. After completing that semester, she traveled around Europe for a semester before going home. (Tr. 20). In June 1996, she returned to Israel to attend graduate school. In November 1999, she earned a Master's Degree in Israeli Politics, with a focus on counter-terrorism. She chose to attend the Israeli university because of its renowned faculty and reduced tuition. After graduating, she came home for a couple months and then moved back to Israel to live and work, while pursuing a romantic interest with an Israeli man. (Tr. 22). For the next two years she worked for a

communications company. (Tr. 24). She returned home in April 2002 where her family lives. Recently, she became engaged to an American citizen.

Based on her Jewish background, Applicant obtained Israeli citizenship in July 2000. As a result of that citizenship, she received some tax advantages related to salary and health benefits. (GE 2 at 2; Tr. 32 and 37). In February 2001, she voted in the prime minister election, basing her candidate decision on the United States' interest. (Tr. 33 and 36). That was the only time she voted in an Israeli election. (*Id.*). She never obtained an Israeli passport, but traveled with her U.S. passport. (Tr. 31). She still has an Israeli identification card that she used to travel within the state because she thinks she may need it to renounce her citizenship. (Tr. 39). (At the hearing, she offered to tender the document for destruction.) (Tr. 45). The only property she held in Israel was a checking account for purposes of convenience. (GE 2).

After working for the wireless communications company for a year, Applicant began searching for another job in September 2001. She saw a newspaper ad by an unnamed company that piqued her interest because it advertised for analysts, a position more suited to her background. (Tr. 25). She and some of her friends thought the company might represent the Israeli Intelligence Service (Mossad). She decided to submit a resume. Four months later, she received a call in response to her application and made an appointment for an interview. The caller did not disclose the name of the company. In the interim, her relationship with her boyfriend was not working out. After giving that situation more thought and considering the possibility that the potential job, if Mossad, could jeopardize her future and work at home, she decided to return home. She called the company and cancelled the appointment. (Tr. 27 and 34; GE 2 and 3; Answer). In April 2002, she returned home. (Tr. 23). She never intended to live in Israel permanently. (Tr. 38). She has not visited Israel since then and has no plans to return. She maintains limited contact with four friends living in Israel, three of whom are U.S. citizens. (Answer).

Since April 2004, Applicant has worked as a research analyst for a federal contract that provides assistance to the U.S. Navy and Marine Corps. (Tr. 30). She works on projects involving terrorism and natural disaster responses by the federal government. (Tr. 31). She speaks a foreign language fluently and has done extensive work and research in the area of terrorist organizations, as noted in her extensive Master's thesis on counter-terrorism. (AE A).

Applicant submitted four letters of recommendation from colleagues in support of her security clearance application. One individual, a Director for a program with the U.S. Department of Homeland Security, has worked with her over a year. He wrote that Applicant "demonstrated strong traits of leadership during this process and also maintained a high degree of loyalty toward the best interests of the U.S. Government." (AE E). Another colleague at that office, a retired Air Force member with 24 years of active duty service who held a Top Secret security clearance during his career, refers to Applicant as trustworthy and "a loyal U.S. citizen [who is] extremely passionate about her projects that support US homeland security." (AE F). He perceives no security

threats by her. (*Id.*). The president of a research institute, her current employer for the past three and a half years, noted in his letter that Applicant has been given principal roles in projects involving national planning and preparation for terrorist attack or natural disasters “because of her demonstrated ability, integrity, and interest in helping secure the nation’s homeland.” (AE G). A vice-president of that organization mirrored the president’s recommendation and confidence in her loyalty. He has “no qualms whatsoever in recommending [Applicant] for a Secret clearance.” (AE H).

Throughout the investigation and during the hearing, Applicant indicated that she would willingly formally renounce her Israeli citizenship. (Answer; Tr. 32 and 53). In her May 2005 Affidavit she stated, “If asked by the United States Government or a perspective employer, I am willing to denounce my Israeli citizenship.” (AE 3). In March 2007, she affirmed in her affidavit “I am willing to relinquish my Israeli citizenship if asked. I have never been asked to do so by anyone and as such have never taken any steps to relinquish my Israeli citizenship.” (AE 2 at 2). Her November 2007 Answer reiterated her willingness to renounce the Israeli citizenship. “I told each interviewer that if my clearance was contingent on surrendering my Israeli citizenship, then I would gladly do so. However, I was told that citizenship itself is not the problem and that usually the issue is having dual passports.” At the hearing, she stated it was her intention to renounce her citizenship. (Tr. 49). On February 5, 2008, she flew to another city to file her renouncement papers with the Israel Consulate General. (AE H and I). She was informed that the process could take a year to complete. (AE D).

Applicant stated that her decision to travel to Israel was based on her desire to help the United States in its fight on counter-terrorism in the Middle East. “This is why I went to Israel to study, this is why. I was interested in counter-terrorism. It’s all because I want to perform a service for the United States, and I think at every turn I tried to do what you’re supposed to do to get that done.” (Tr. 58).

I take administrative notice of the following facts. Israel is a stable 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 and does not support or sponsor terrorism or terrorist organizations. It is a strong U.S. ally in fighting terrorism. 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.

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(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 the 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." 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 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 C, 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.”

AG ¶ 10 describes four conditions that could raise a security concern, two of which may be disqualifying in this case and are noted below:

(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; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in the United States. From approximately 1996 until 2002, she lived and attended school in Israel. While there, she became a citizen, in order to receive educational, medical and economic benefits. She voted in one election and obtained citizenship identification. Based on that evidence in the record, including Applicant’s admissions to six of the SOR allegations, the Government produced substantial evidence of disqualifying conditions under AG ¶ 10(a)(3) and 10(a)(7), and ¶10 (b).

After the Government produced substantial evidence of those conditions, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶

11 provides eleven conditions that could mitigate security concerns. Only one of the conditions is potentially applicable to the disqualifying conditions. AG ¶ 11(b) applies when “the individual has expressed a willingness to renounce dual citizenship.”

Applicant expressed her willingness to renounce her Israeli citizenship after completing the security clearance application and learning that it could adversely affect her application. She repeated that willingness in May 2005, March 2007, November 2007, and during the hearing in January 2008. Shortly after the hearing, she flew to another state to begin the renunciation process. Prior to that time, she did not fully appreciate the significance of formally renouncing her citizenship rather than informally volunteering to do so. She understood that it was important to surrender a passport, if she possessed one, but not the importance of formally renouncing citizenship for this application.

In addition to taking formal steps to renounce citizenship, Applicant has demonstrated her loyalty to the United States, based on many strong connections to it, intention to live here permanently, and a persistent desire to use her background and training to assist in the war on terror. As a result of her consistent willingness to renounce the Israeli citizenship and her longstanding ties to the United States, I conclude AG ¶ 11(b) applies.

In support of its application, I cite the Appeal Board’s opinion in ISCR Case No. 03-4300 at 3 (App. Bd. Feb. 16, 2006) that held the following:

In concluding Applicant had mitigated the security concerns raised by her acts of foreign preference by application of Guideline C Mitigating Condition 4, the Administrative Judge articulated a rational explanation for her determination—basing it on such factors as the Applicants’ strong ties and loyalties to the United States, the extensive effort undertaken by the Applicant to surrender her passport and renounce her Russian citizenship before the close of the record, and the fact that Applicant’s lack of awareness concerning the requirements expressed in the ASDC31 memo and the Guideline C Mitigating Conditions may have affected the timing of her renunciation actions. There are no stated requirements in Guideline C Mitigating Condition 4 concerning when an applicant is required to comply with its provisions.¹

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

¹ Foreign Preference Mitigating Condition 4 under the previous adjudicative Guideline C, stated as follows: “Individual has expressed a willingness to renounce dual citizenship.” E2.A3.1.3.4. The ASDC31 memo referenced does not have applicability to this case and pertained to the surrender of foreign passports.

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 by her while in graduate school and during a previous romantic relationship. She was 24 years old when she decided to move to Israel and 30 years old when she returned home. For the past five years she has lived and worked in the United States her home country. One of the reasons she chose to attend school in Israel was its reputation and faculty that is world renowned for its expertise in counter-terrorism, her chosen area of study. Her decision to obtain Israeli citizenship related to economic, educational and medical benefits afforded to her as a student and young person living there. She voted in one Israeli election and had the U.S. interests in mind. While her inquiry into employment with a company that “could have been” the Mossad, may not have been prudent, given her goal to secure employment in the field of counter-terrorism and the United States, she cancelled her interview and returned to the United States before taking additional steps in that regard. Recently, she formally renounced her Israeli citizenship by filing appropriate documents with the Israeli embassy. Currently, four colleagues and supervisors, who have worked with her since she returned return, support her assertions of commitment to her job and preference for the United States. I do not believe she is a threat to the United States, but rather an honest, hard-working woman, who possibly made uninformed decisions early in her career, which she will never repeat.

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 under foreign preference.

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
Subparagraphs 1.a through g:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge