DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-14500
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro Se*

November 24, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant immigrated to the United States from what was then the Soviet Union in 1978. She moved to Israel with her spouse in 1993 for his academic position, and she worked there as a software engineer from 1994 to 1999. She acquired Israeli citizenship in 1999 in lieu of having to leave Israel when her temporary residency expired. However, she returned to the U.S. permanently six months later. Foreign preference concerns are mitigated by the revocation of her Israeli citizenship. Foreign influence concerns raised by her residency and employment in Israel, and by her spouse's former academic position and his present pension assets in Israel, are mitigated by countervailing strong ties to the U.S. Clearance is granted.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on April 3, 2007. On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the

security concerns under Guideline C and Guideline B that provided the basis for its preliminary decision to deny her a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant submitted an undated answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 26, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 10, 2009, I scheduled a hearing for July 29, 2009.

At the hearing, three government exhibits (Ex. 1-3) and four Applicant exhibits (Ex. A-D) were admitted in evidence. Applicant and her spouse testified, as reflected in a transcript (Tr.) received on August 7, 2009. I also agreed to take administrative notice of certain facts pertinent to Israel and its foreign relations, including with the U.S., *infra*.

While the decision on Applicant's security eligibility was still pending, I reopened the record on October 30, 2009, at Applicant's request and with no objection from Department Counsel. Applicant submitted a document from Israel's Ministry of the Interior, dated October 20, 2009, which was received in evidence as Exhibit E without any objections.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On June 25, 2009, Department Counsel requested administrative notice be taken of certain facts relating to Israel and its foreign relations, including with the United States (U.S.). The request, which was received on July 6, 2009, was based on publications from the U.S. State Department, the Congressional Research Service, the National Counterintelligence Center, the Office of the National Counterintelligence Executive, the Interagency OPSEC Support Staff, and the U.S. Department of Commerce's Bureau of Industry and Security. The government's formal request and the attached documents were not admitted into evidence but were included in the record. Applicant was given an opportunity to respond at her hearing, and she did not object to my taking administrative notice. Those facts accepted for administrative notice are set forth in the Findings of Fact, *infra*.

Motion to Amend SOR

After Applicant presented her evidence at the hearing, the government moved under ¶ E3.1.17 of the Directive to add a new allegation under Guideline B, as follows:

> d. Your spouse maintains a retirement account in Israel in the approximate amount of $20,000.

I granted the motion based on the testimony submitted and the government's lack of knowledge about the retirement account before the hearing. In response, Applicant recalled her spouse to testify about his reasons for maintaining the account and his intent to withdraw the funds when he can do so without incurring significant financial penalties.

Jurisdiction

On November 2, 2009, I was notified by DOHA that Applicant had been terminated by her employer on September 4, 2009, due to a reduction in force. During a subsequent conference call with the parties, Applicant indicated that she had been laid off but she was attempting to secure a position with another defense contractor. Under ¶ 4.4. of DoD Directive 5220.6, actions under the Directive are to cease upon termination of an applicant's need for access to classified information except in certain enumerated cases, including where a hearing has commenced (¶ 4.4.1). Since Applicant's hearing had been conducted and completed, jurisdiction to determine her security eligibility is retained.

Findings of Fact

In the amended SOR, DOHA alleged under Guideline C, foreign preference, that Applicant exercised dual citizenship with Israel and the U.S. (SOR 1.a); that she resided in Israel from 1993 to 1999 (SOR 1.b) where she worked as a software engineer from about 1994 to 1999 (SOR 1.c); that she sought and obtained Israeli citizenship in 1999 despite her naturalization in the U.S. in 1983 (SOR 1.d); and that she was issued temporary travel documents by the Israeli Consulate for travel to Israel (SOR 1.e). Applicant's residency and employment in Israel (SOR 2.a), as well as her travels to Israel in at least April 2001 and August 2005 (SOR 2.c), were alleged as raising Guideline B, foreign influence concerns. Additionally, DOHA alleged under Guideline B that Applicant's spouse, a dual citizen of Israel and the U.S., had a postdoctoral fellowship at an Israeli university from about 1993 to 1999 (SOR 2.b), and that he maintains a retirement account worth $20,000 in Israel (SOR 2.d).

In her Answer received by DOHA on March 30, 2009, Applicant denied SOR 2.b because her spouse's postdoctoral fellowship was from 1993 to 1995. She admitted the other allegations, but explained that she had no choice but to obtain Israeli citizenship or leave the country. Applicant and her spouse decided to return to the U.S. as soon as he was offered an academic position here. They traveled to Israel only twice thereafter,

for their son's bar mitzvah in 2001 and their daughter's bat mitzvah in 2005, and have applied to renounce their Israeli citizenship. After considering the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 45-year-old software engineer, who had been employed by a defense contractor from January 2007 until September 2009, when she was apparently laid off due to a reduction in force. She had held an interim secret-level clearance and handled classified information appropriately until her clearance was withdrawn on issuance of the SOR (Ex. D, Tr. 22).

Applicant was born in what was then the Soviet Union in 1964 to Russian parents. When she was 13, Applicant and her parents left the Soviet Union. The government required that they renounce their Soviet citizenship. In 1978, they immigrated to the U.S. as refugees. In October 1983, Applicant and her parents became naturalized U.S. citizens (Ex. 1). Applicant attended high school and college in the U.S. (Ex. C, Tr. 31). In June 1987, she was awarded her master of science degree in computer science (Ex. 1).

In April 1986, Applicant married a native of the Ukraine. He had immigrated to the U.S. from the Soviet Union with his family in 1978 when he was 18, and he attended college in the U.S., eventually earning his doctorate degree in computer science in 1993 (Ex. C). Applicant's spouse acquired his U.S. citizenship in January 1984 (Ex. 1). Applicant and her spouse have four children (ages 21, 16, 9, and 6), each of whom are U.S. citizens from birth (Exs. 1, C).

In October 1993, when their second child was only a few months old, Applicant and her spouse went to Israel on a student visa. He had accepted a one-year postdoctoral fellowship at a government-owned technological university (Exs. 3, C, Tr. 54, 66, 101) at the invitation of one of the top scientists in his field (Tr. 32, 66, 101). Applicant's spouse became acquainted with this Israeli academic while he was pursuing his doctorate degree at the U.S. university, and they collaborated on an academic paper (Tr. 98-99). At the time, Applicant was working for a U.S. defense contractor on unclassified, civil aviation projects. (Tr. 32, 45). She took a year of maternity leave rather than quit her job, as they planned to spend only the one year in Israel (Tr. 32). After her spouse's fellowship was extended for a second year, Applicant left the employ of the U.S. defense contractor and went to work in Israel to help the family's finances. In 1994, Applicant and her spouse applied for, and obtained, temporary residency status, which was valid for three years and required for employment in Israel (Tr. 54). In December 1994, Applicant commenced employment as a software engineer for a commercial developer of database software for accounting systems (Exs. 1, 3, C, Tr. 32-33, 42).

In 1995, Applicant's spouse's postdoctoral fellowship ended, and he began searching for a permanent teaching position in the U.S. After receiving a few rejection letters from U.S. academic institutions, he began to look for work in Israel. He received job offers from the few resumes that he sent out, including offers from two large U.S.

computer companies. Applicant's spouse elected to work for a multinational commercial media company that offered him a higher salary in a research position that allowed him to shift emphasis from pure theory to more marketable theoretical application (Tr. 34, 112-14). Applicant started working for the same company as a software engineer in November 1995 (Ex. 1, Tr. 64). Their work with the company did not have military or government application (Tr. 115). While in Israel, they filed and paid taxes on their income to Israel and the U.S. (Ex. 2, Tr. 55). In 1997, they were granted a one-year extension of their temporary residency status in Israel with the understanding that on its expiration, they would have to acquire Israeli citizenship or leave the country (Ex. C, Tr. 35).

As of late 1998, Applicant's spouse had no success in finding a permanent academic position in the U.S., and their temporary residency was about to expire. They needed employment income to support their children. So, believing they had no reasonable alternative, Applicant and her spouse acquired Israeli citizenship in March 1999 (Exs. 1, 3, C, Tr. 35, 42-44). Israeli citizenship was conferred automatically on their children when Applicant and his spouse became Israeli citizens. As a result, their two oldest children became dual citizens of Israel and the U.S. as well (Tr. 51). Applicant and her spouse considered the acquisition of Israeli citizenship a bureaucratic formality that allowed them to continue working (Ex. C, Tr. 35, 97). They intended to return eventually to the U.S., and they sent their children to stay with their parents in the U.S. each summer. Their oldest child attended day camp in the U.S. to maintain his fluency in English (Tr. 41).

A few months after they acquired dual citizenship, Applicant's spouse secured a tenure track position at the U.S. university where he had earned his doctorate degree (Tr. 81). In September 1999, the family left Israel for the U.S. (Exs. 1, 3, C, Tr. 54). Since they had not been citizens of Israel for one year, they were ineligible to apply for Israeli passports. Before they were allowed to leave the country, they had to obtain Israeli travel documents (Tr. 52, 77). These travel documents were valid for one year (Tr. 53). Applicant and her spouse gave a friend in Israel (Israeli citizen X) separate powers of attorney to deal with their pension funds in Israel (Tr. 57). This friend withdrew the last of Applicant's pension funds on her behalf in 2008, and her power of attorney expired in the summer of 2009 (Tr. 58). Citizen X still holds a valid power of attorney for Applicant's spouse (Tr. 104, 126).

Except for a brief period of unemployment in November and December 2000, Applicant worked as a software engineer in the U.S. from September 1999 to February 2003. In April 2001, Applicant and her spouse took the two older of their three children to Israel for two weeks for Passover and their son's bar mitzvah (Tr. 36). Applicant gave no thought to renouncing Israeli citizenship because she did not realize that she could do so (Tr. 78). Applicant and her spouse applied for, and obtained, Israeli travel documents that they used to enter and exit Israel (Exs. 2, 3, Tr. 36, 38, 52-53). Applicant understood that as a dual citizen with Israeli citizenship, she would not have been allowed to enter Israel on her U.S. passport (Tr. 38, 43). She used her U.S. passport when traveling abroad except to enter and exit Israel (Tr. 43, 88).

Applicant was unemployed from February 2003 until October 2005 (Ex. 1). During this time, she cared for her children, including her youngest, a son born in 2003 after the trip to Israel. In August 2005, she and her spouse took their older daughter to Israel for her bat mitzvah. They again obtained travel documents from the Israeli Consulate for their trip. Applicant presented her U.S. passport, most recently renewed in December 2004, on her reentry into the U.S. on September 4, 2005. Her travel documents from Israel expired in 2006 (Exs. 3, C).

Applicant had some short-term work from October 2005 to December 2005, and from February 2006 to May 2006, but she was otherwise unemployed until January 2007 when she began working for the defense contractor (Ex. 1). On April 3, 2007, Applicant completed an e-QIP application for a security clearance. She disclosed that she, her spouse, and their two older children were dual citizens of the U.S. and Israel. She indicated that her two younger children were citizens of the U.S. only. They had never been to Israel (Ex. C, Tr. 45). Applicant also disclosed her previous employment in Israel and her travel there in 2001 and 2005 (Ex. 1). Applicant was not told at that time that dual citizenship could pose a problem for her security clearance (Tr. 36).

On May 4, 2007, Applicant was interviewed by a government investigator about issues of potential foreign preference. Applicant denied using her Israeli citizenship to any advantage, and explained that she applied for the foreign citizenship because it was required for further employment in Israel. At the time she applied, she had no definite plans to return to the U.S. She asserted that the U.S. held her ultimate loyalty. She maintained her Israeli citizenship because she wanted to be able to travel to Israel in the future, and believed she would be unable to do so without her Israeli citizenship (Tr. 55). Applicant acknowledged she had email contact once every other month with Israeli citizen X, but she denied contacts with other foreign nationals (Ex. 2).

On March 26, 2008, Applicant was reinterviewed about her ties to Israel, including her previous residency and employment, and her acquisition of Israeli citizenship. She reported contact three or four times yearly by telephone or email with Israeli citizen X's spouse (Israeli citizen Y). Applicant described her affiliation with Israel as "purely religious." She expressed no objections to renouncing her Israeli citizenship, provided she could continue to vacation there (Ex. 3).

On February 20, 2009, DOHA issued an SOR to Applicant, in part due to concerns about her dual citizenship with Israel and the U.S. Applicant was told by her employer that she would have to renounce her Israeli citizenship. Applicant inquired and was assured that she would be permitted to travel to Israel for religious reasons (younger children's bar mitzvah and bat mitzvah) and tourism if she gave up her Israeli citizenship (Tr. 56). On or before March 19, 2009, Applicant and her spouse applied to renounce their Israeli citizenship (Exs. A, B, C, Tr. 49-50) Applicant and her spouse surrendered their Israeli identification cards (Tr. 48) and some expired Israeli travel documents that they had in their possession at that time (Ex. C. Tr. 43, 47). On October 20, 2009, Israel's Ministry of Interior revoked Applicant's citizenship and the Israeli

citizenship of their minor children effective October 19, 2009.[1] They could not apply to revoke the Israeli citizenship of their older son, who is legally an adult. He is a college student in the U.S. and had not applied to renounce his Israeli citizenship as of late July 2009 (Tr. 51-52). Applicant's legal right to reside in Israel expired on March 8, 2009 (Ex. E). Applicant has no present plans to travel to Israel in the next couple of years. She could not rule out future travel to Israel for her younger children's bat mitzvah and bar mitzvah (Tr. 56).

Applicant and her spouse have never owned any real estate in Israel (Tr. 37, 44). They closed their bank accounts when they left the country (Tr. 44, 65). Applicant had some retirement funds from her employment there that Israeli citizen X withdrew for her in 2008, when it could be accomplished without tax penalties (Tr. 44, 57). Applicant's spouse has about $20,000 USD in remaining retirement funds in a specialized pension plan in Israel from his employment for the commercial company. He plans to have Israeli citizen X withdraw the funds for him, and he will deposit the funds in the U.S. as soon as he can do so without significant tax penalties (Tr. 63, 89, 101-03, 137, 140). Applicant and her spouse did not take advantage of certain benefits offered by the government of Israel to its citizens, such as subsidized language instruction or a low interest rate mortgage when they were in Israel (Tr. 38-39).

Applicant contacts Israeli citizens X and Y by telephone or electronic mail every few months ("I would call them or I send them email basically for like birthdays and such, so every few months."). (Tr. 43, 58, 105). Both Israeli citizens X and Y are employed as software engineers in the commercial sector in Israel (Tr. 58), and they have two children who are still minors (Tr. 59). Applicant and her family stayed with these friends for the duration of their stay in Israel in 2001, and for the first week of their trip there in 2005 (Tr. 60). Applicant's spouse used to play soccer with Israeli citizen X when they lived in Israel, but their wives share a closer relationship (Tr. 105). Applicant's spouse exchanges email messages every couple of months, primarily of a religious nature, with an Israeli resident citizen (citizen Z) who emigrated from Russia and is affiliated with a religious organization prominent among expatriate intellectuals in Israel (Tr. 105-07, 125). Applicant's spouse had attended some lectures given by this organization when he lived in Israel (Tr. 124), and he has assisted with the logistics of once yearly lectures held by this organization in the U.S. (Tr. 106-07, 123-24). Applicant has no ongoing contact with anyone from the Israeli university where he served his postdoctoral fellowship (Tr. 107). His last contact was five or six years ago when he was

[1]The "Confirmation for the Waiver of Israeli Citizenship" submitted after the hearing and entered as Exhibit E pertains only to Applicant and her minor children. There is no evidence indicating whether her spouse's application to renounce his Israeli citizenship was likewise approved. There is also a discrepancy in the record concerning their children's citizenship. Applicant testified the revocation applied to her 16-year-old daughter, who had lived in Israel and acquired Israeli citizenship automatically when Applicant and her spouse became Israeli citizens (Tr. 51-52). Applicant's spouse testified they applied to renounce the Israeli citizenship of their three minor children (both daughters and younger son) (Tr. 128). Applicant has indicated that their two younger children (daughter born in 2000 and son born in 2003) possess only U.S. citizenship (Ex. 1).

notified of the death of the professor who had brought him to the Israeli university (Tr. 129).

Neither Applicant nor her spouse has any family in Israel (Tr. 43). Applicant and her spouse have been active volunteers in the schools their children attend in the U.S. and in their synagogue (Tr. 45). Denied tenure by the university where he had been on staff since 1999 (Tr. 121), Applicant's spouse began working for a scientific research laboratory engaged in U.S. defense work in July 2009 (Tr. 92-93, 121). As of July 2009, Applicant was still employed in the defense industry. She followed all rules for handling and safeguarding classified information when she had access. Having come to know her character and strong work ethic, her supervisor recommended her for a security clearance, knowing that Applicant had once lived in Israel (Ex. D).

After reviewing the U.S. government publications concerning Israel and its foreign relations, including with the U.S., I take administrative notice of the following facts:

Israel is a parliamentary democracy of about 7.1 million people. Israel generally respects the human rights of its citizens, although there have been some issues respecting treatment of Palestinian detainees and discrimination against Arab citizens. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. The U.S. was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence in 1948. In 1985, Israel and the U.S. concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The U.S. is Israel's largest trading partner. As of 2007, 35% of Israel's exports went to the U.S., while 13.9% of its imports came from the U.S. Israel is a prominent recipient of U.S. aid. Since 1949, the U.S. has provided more than $30 billion in economic assistance to Israel. Between 1976 and 2003, Israel was the largest recipient of U.S. foreign aid. The U.S. has also provided Israel with $9 billion in loan guarantees since 2003, which enable Israel to borrow money from commercial lenders at a lower rate. The U.S. and Israel established in April 1988 a Joint Economic Development Group to develop the Israeli economy by exchanging views of Israel economic policy planning, stabilization efforts, and structural reform.

Israel and the U.S. do not have a mutual defense agreement, although the U.S. remains committed to Israel's security and well-being. The U.S. is the principal international proponent of the Arab-Israeli peace process, and has been actively involved in negotiating an end to the Israeli-Palestinian conflict. In 1989, Israel was one of the first countries designated a Major Non-NATO ally. As such, Israel receives preferential treatment in bidding for U.S. defense contracts and access to expanded

weapons systems at lower prices. Israel and the U.S. are partners in the "Star Wars" missile defense project, and have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the U.S. have established joint groups to further military cooperation. The two countries participate in joint military exercises and collaborate on military research and weapons development. The U.S. has pledged to ensure that Israel maintains a "qualitative military edge" over its neighbors, and has been a major source of Israeli military funding. The Omnibus Appropriations Act of March 11, 2009, provided $2.38 billion in foreign military financing for Israel. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use one-quarter of its foreign military assistance grant for procurement spending from Israeli defense companies.

Arms agreements between Israel and the U.S. limit the use of U.S. military equipment to defensive purposes. The U.S. has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The U.S. is concerned about Israeli settlements; Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the U.S. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 to be considered 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 overarching adjudicative goal is a fair, impartial and commonsense 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 in 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 that 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

When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the U.S. AG ¶ 9. Applicant became a naturalized U.S. citizen at age 19, having immigrated to the U.S. from what was then the Soviet Union in 1978. In 1993, she went to Israel with her spouse on a student visa when he accepted a postdoctoral fellowship at a government-owned technological university. After his fellowship was extended for a second year, she sought and obtained temporary residency status for employment in Israel (SOR 1.b), and she began working as a software engineer in Israel in December 1994 (SOR 1.c). When she could extend that status no further, she obtained Israeli citizenship in March 1999 (SOR 1.a, 1.d). Applicant's voluntary acquisition of Israeli citizenship raises significant foreign preference concerns. *See* AG ¶ 10(b) (stating, "action to acquire or obtain recognition of a foreign citizenship by an American citizen"). Furthermore, since her Israeli citizenship allowed her to maintain her residency and employment in Israel, AG ¶ 10(a)(5), "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: (5) using foreign citizenship to protect financial or business interests in another country," is also implicated.

Applicant traveled to Israel twice, in 2001 and 2005, after she returned to the U.S. permanently in September 1999. For those trips, she acquired temporary Israeli

travel documents that permitted her to enter and exit Israel (SOR 1.e). Her use of these foreign travel documents served as the functional equivalent of an Israeli passport in her entry to and exiting from Israel on those occasions. Since Applicant never acquired a foreign passport, AG ¶ 10(a)(1), "possession of a current foreign passport," does not apply. However, she actively exercised her Israeli citizenship in preference to her U.S. citizenship under AG ¶ 10(1) when she presented those foreign travel documents for admission to Israel.

Applicant had some retirement assets in Israel from her work with a multinational commercial company, but she withdrew those funds. Similarly, her oldest son attended the local school when they were in Israel but there is no indication that she is currently receiving any benefits from Israel of the type contemplated within AG ¶ 10(a)(3) (stating, "accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country").

Concerning the potentially mitigating conditions, AG ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," applies. After being informed by her security officer at work that she would have to give up her foreign citizenship, she filed her application to renounce promptly in March 2009, and her Israeli citizenship was revoked, effective October 19, 2009. While renunciation of foreign citizenship is not strictly required for access to classified information, the U.S. government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the foreign country. Applicant's renunciation of her foreign citizenship provides substantial assurances that she can be counted on to comply with DoD requirements.

Applicant has no plans to travel to Israel in the near future, although she is likely to take her younger children (daughter age 9 and son age 6) to Israel for their respective bat mitzvah and bar mitzvah. During her initial interview in May 2007, Applicant indicated she did not want to renounce her Israeli citizenship because she wanted to travel to Israel. In March 2008, Applicant expressed no objections to giving up her Israeli citizenship, provided that she could continue to travel there. But any future travel to Israel will be on her U.S. passport. Since she is no longer a citizen of Israel, the need for Israeli travel documents no longer exists. Applicant has demonstrated a clear preference for the U.S. by renouncing her Israeli citizenship. Her conduct in the last ten years has been largely consistent with her U.S. citizenship. Based on all the circumstances, the foreign preference concerns are mitigated.

Guideline B—Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by

> any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant's residency in Israel from October 1993 to September 1999, and her employment there from December 1994 until September 1999, were alleged as raising foreign influence concerns (SOR 2.a). Living and working in a foreign country may raise the potential for foreign influence because of professional and personal contacts established during the residency and employment. There is nothing about Applicant's employment in Israel, which ended some ten years ago and was commercial in nature, that raises concerns under AG ¶ 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information."

However, during her years in Israel, Applicant established personal friendships with Israeli couple, citizens X and Y, that were sufficiently close for her and her spouse to give citizen X separate powers of attorney to handle the withdrawals of their respective retirement accounts in Israel. Applicant's contacts with these Israeli citizens occur every few months, but the timing around birthdays suggests close personal relations, despite her characterization of the contacts as not very close (Tr. 43). Moreover, when Applicant traveled to Israel in 2001 and again in 2005 (SOR 2.c), she stayed at least part of the time at the couple's home. AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," applies.

There is no evidence of conduct by Applicant during her trips to Israel in 2001 and 2005 that would implicate AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country," with the exception of the use of the Israeli travel documents to enter and exit Israel. The security implications raised by her compliance with this obligation of Israeli citizenship were appropriately covered under Guideline C.

Additional foreign influence concerns were alleged related to her spouse's dual citizenship, his postdoctoral fellowship at the government-owned technological university in Israel (SOR 2.b) and his pension assets of about $20,000 in Israel from his former employment with the multinational media company (SOR 2.d). AG ¶ 7(d) applies if these spousal ties to Israel create a heightened risk. *See* AG ¶ 7(d) (stating, "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion"). Certainly from 1993 to 1995, there was a significant risk of undue foreign

influence because of her spouse's fellowship at the university. He was invited to Israel by a preeminent scientist in their field, with whom he had collaborated in the U.S. when he was pursuing his doctorate degree. But Applicant's spouse testified, with no rebuttal from the government, that his last contact with anyone from the university was about five or six years ago, when he was notified of the death of the professor who had brought him to the university (Tr. 129). As for his dual citizenship status, Applicant's spouse applied to renounce his Israeli citizenship in March 1999. Applicant submitted evidence showing that hers and her minor children's citizenship had been renounced. There is no evidence showing final action, if any, taken on her spouse's request. Applicant's spouse testified that the Israeli Consulate gave him no reason to believe his request to renounce Israeli citizenship would be denied (Tr. 122), but I cannot presume that his Israeli citizenship has been revoked. Their older son has taken no action to revoke his dual citizenship. Her spouse's pension asset in Israel heightens the risk of undue influence somewhat; although it is primarily because of the tie to Israeli citizen X through the power of attorney rather than the value of the asset. Considering that all of their other assets are in the U.S., the $20,000 remaining in retirement funds in Israel, which her spouse intends to withdraw and bring to the U.S., is not a substantial foreign asset. Under the circumstances, AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation," does not apply. However, AG ¶ 7(d) is implicated.[2]

Applicant's relationships with her family members, who all reside in the U.S., are understandably closer than her ties to her friends in Israel. Yet, it is difficult to fully satisfy mitigating condition AG ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." Israel and the U.S. have a close friendship. The U.S. is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in the region. Israel receives preferential treatment in bidding for U.S. defense contracts and substantial economic aid from the U.S. Yet the interests of even the closest of allies are not always completely aligned.

The U.S. is concerned about Israeli settlements, Israel's military sales to China, Israel's inadequate protection of U.S. intellectual property, and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the U.S. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000. Her spouse's and older son's U.S. citizenship and residency reduces, but does not eliminate, the risk of undue foreign influence that exists because of their Israeli citizenship. While Israeli resident citizens X

[2]Applicant's spouse testified that he maintains ties with an Israeli citizen who is prominent in a religious organization in Israel. The government could have amended the SOR to allege this conduct and did not do so. Presumably, the government accepted his explanation that the nature of their contacts was religious in nature and did not pose an unacceptable risk.

and Y are employed as software engineers in the commercial sector, I cannot apply either AG ¶ 8(a) or AG ¶ 8(c), "contact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," to those relationships as long as Israeli citizen X holds a valid power of attorney over her spouse's pension funds in Israel.

But the weight of the evidence supports AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant has consistently maintained that her allegiance lies with the U.S., and that she had no realistic alternative to obtaining Israeli citizenship. Applicant and her spouse could have returned to the U.S. after his fellowship ended in 1995, but it is not clear whether they could have financially afforded to do so. By 1999, they had worked for the multinational corporation in Israel for a few years, long enough to earn significant pension assets. Presumably, they were in a better position money-wise, even if they did not have employment opportunities in the U.S. Applicant has not persuaded me that she was without options. But even then, her decision to acquire Israeli citizenship was for economic considerations. She was not motivated by political affiliation or preference for Israel. It was only after she was denied a further extension of her temporary residency in Israel that she applied for Israeli citizenship.

Six months after they were granted Israeli citizenship, Applicant and her spouse moved their family back to the U.S. where they pursued a lifestyle largely consistent with their U.S. citizenship. While they obtained travel documents from Israel in 2001 and 2005, they had no choice if they wanted to enter Israel. All other foreign travel was on U.S. passports. They stayed with Israeli citizens X and Y when in Israel, but their primary purpose was to celebrate their son's bar mitzvah and daughter's bat mitzvah. Applicant was unaware at that time that she could have applied to renounce her Israeli citizenship. This was evident also in May 2007, when she was asked whether she would be willing to renounce her foreign citizenship, as she replied she did not know whether it was possible. Applicant made no effort following that interview to inquire about the possibility of renouncing her Israeli citizenship, but she also had no reason to believe that she would be required to do so for her clearance. After she was told by her employer to give up her Israeli citizenship, she and her spouse followed through promptly by filing their applications to renounce through the Israeli Consulate. Their acquisition of travel documents rather than Israeli passports, and certainly their efforts to renounce Israeli citizenship, confirm their bonds to the U.S., where they have spent not only the last ten years, but the majority of their lives. Had either Applicant or her spouse any intent to return permanently to Israel, it is unlikely that they would have applied to renounce their Israeli citizenship, or that Applicant would have brought all of her pension assets from Israel to the U.S.

Applicant and her family members are firmly rooted in the U.S. All enjoy the protections of U.S. citizenship and residency. Their older son retains dual citizenship

with Israel and the U.S., but he attends college in the U.S. Applicant and her spouse have been active in their children's schools. Her spouse testified credibly that he intends to bring the $20,000 left of his pension funds in Israel to the U.S. They never voted in Israel or acquired real estate in Israel. Their connection to Israel is largely religious at this point.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of the applicant's conduct and all the circumstances in light of 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.

The salient issue in the security clearance determination is not in terms of loyalty or allegiance, but rather what is clearly consistent with the national interest. *See* Executive Order 10865, Section 7. An applicant may have the best of intentions and yet be in an untenable position of potentially having to choose between the interests of a foreign country or foreign national and the interests of the U.S. Applicant had considerable personal ties to Israel from 1993 to 1999, where she lived and worked as a temporary resident from 1994 until March 1999, and for the last six months of her stay as a citizen. In the past ten years, the exercise of her foreign citizenship has been limited to obtaining legally required travel documents so that she could travel to Israel for her son's bar mitzvah and then her daughter's bat mitzvah. Applicant expressed reluctance in 2008 over relinquishing the citizenship tie to Israel out of concern for whether she could vacation there, and whether she would be permitted to take her younger children there for similar religious purposes.

Future travel to Israel by Applicant to celebrate these religious occasions is seen as likely, and during those visits, Applicant may well visit or even stay with Israeli resident citizens X and Y. But Applicant asserted a clear preference for the U.S. by renouncing her Israeli citizenship. Future trips to Israel will be on her U.S. passport. The friendship and religious ties to Israel that she maintains are minimal when compared to her U.S. interests and do not now warrant denial of her clearance eligibility.

Formal Findings

Formal findings on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge