DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-15463
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: Anna C. Ursano, Esq.

October 8, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 18, 2006. On May 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Guideline B, and Guideline E that provided the basis for its decision to deny him 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, acting *pro se*, answered the SOR on May 28, 2008, and requested a hearing before an administrative judge. The case was assigned to me on June 18, 2008, to consider whether it is clearly consistent with the national interest to grant or

continue a security clearance for Applicant. Counsel for Applicant entered her appearance on July 7, 2008. On July 17, 2008, I scheduled a hearing for August 27, 2008.

The parties appeared as scheduled. Twenty-one government exhibits (Ex. 1-21) were admitted (Ex. 2 and 14 over Applicant's objections), including as Exhibits 8 through 20 the source documents relied on by the government in a request for administrative notice, *infra*. Applicant offered 46 exhibits (Ex. A-TT, Ex. R over the government's objections), including as Exhibits X through TT the source documents relied on by Applicant in his response to the government's request for administrative notice, *infra*. I withheld ruling on proposed exhibits K and X through TT pending post-hearing submissions from Applicant addressing the government's concerns. The documents were subsequently admitted (*see infra*) without any objections. Applicant and two witnesses testified on his behalf at the hearing, as reflected in a transcript (Tr.) received on September 5, 2008. Based on review of the pleadings, exhibits, and testimony, and the facts accepted for administrative notice, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On June 16, 2008, 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 was based on publications from the U.S. State Department, the Congressional Research Service, the National Counterintelligence Center, the Centre for Counterintelligence and Security Studies, and the U.S. Department of Commerce's Bureau of Industry and Security. These publications were admitted as exhibits 8 through 20.

On June 24, 2008, I issued an order notifying both parties of those facts that would be administratively noticed, subject to revision based on the evidence admitted at Applicant's hearing and valid objections. The parties were granted until July 11, 2008, to file any objections, and for Applicant to also propose facts for administrative notice. On July 8, 2008, Applicant was granted an extension of the response deadline to August 4, 2008.

On August 4, 2008, Applicant filed his objections to certain facts for administrative notice and he proposed facts for notice. His request for administrative notice was based on publications from the National Counterintelligence Center and the Congressional Research Service, on U.S. government press releases and statements, and on several agreements and treaties between the U.S. and Israel. After considering Applicant's objections and proposed facts for administrative notice, I issued an order on August 18, 2008, notifying the parties of the facts accepted for administrative notice.

Before the taking of any evidence at the hearing, the parties were provided an opportunity to comment on the facts for administrative notice set forth in the August 18, 2008, order. Department Counsel argued for the inclusion of the following additional facts: Israel has been known to target U.S. economic intelligence. Israeli citizens, including dual nationals, are required to enter and depart Israel using an Israeli passport. Israeli authorities may require persons whom they consider to be Israeli citizens by birth to obtain an Israeli passport before departing Israel. Applicant renewed his objections. Israel was not specifically identified as an active collector in the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005* (Ex. 15), and it would be impermissible to include Israel among the major collectors that have reportedly been repeatedly identified as targeting multiple U.S. government organizations since at least 1997, especially where the 2005 report specifically identifies only China and Russia as aggressive collectors. Applicant conceded that it remained the U.S. government's official position that Israeli citizens who are dual nationals are required to enter and depart Israel using an Israeli passport but his experience proved otherwise. I withheld ruling on the disputed facts for administrative notice pending review of the evidence admitted.

Facts for administrative notice are those easily verifiable by resort to authoritative sources. After review of the evidence admitted into the record, including exhibits 8 through 20 and X through TT, I agree to take administrative notice of the facts that Israeli citizens, including dual nationals, are required to enter and depart Israel using an Israeli passport, and that Israeli citizens may be required to obtain an Israeli passport before departing Israel. Although Applicant was allowed to depart Israel in April 2005 on his U.S. passport, the certification was "in an irregular and one-time case" (Ex. R, English translation). A one-time exception does not invalidate the general rule. To the extent that the *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000* (Ex. 14) represented the official position of the government at that time, I agree to take administrative notice of the fact that Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000. Ongoing U.S. concern over espionage-related cases implicating Israeli officials, reported as recently as June 2008 by the Congressional Research Service (Ex. BB), is a separate matter that has also been administratively noticed, as set forth in my order of August 18, 2008. The facts accepted for administrative notice are set forth in pages 12-14, *infra*.

Motion to Amend SOR

At the close of the evidentiary record at the hearing, the government moved under ¶ E3.1.17 of the Directive to add a new allegation under Guideline C, to wit:

1.d. You voted in an Israeli election in 2001.

Applicant offered in response that he holds dual U.S.-Israeli citizenship because of his parents' citizenship and his birth in Israel. I granted the amendment based on

Applicant's testimony that he had in fact voted in an Israeli election in 2001. Applicant was offered, but declined, any additional time to respond.

Post-hearing Submissions

At the hearing held on August 27, 2008, I withheld ruling on admission of proposed Applicant Exhibit K pending receipt of a signed copy on or before September 10, 2008. Based on expressed concerns of the government, Applicant was granted the opportunity as well to submit on or before the September 10 deadline a translation into English of the Hebrew document admitted as Exhibit R, and to identify the origins of proposed Applicant exhibits DD, EE, FF, KK, PP, SS, and TT.[1] A signed copy of Exhibit K, received on September 3, 2008, was admitted and substituted for the unsigned version marked for identification. Applicant also submitted an English translation of Exhibit R, and renewed his motion for admission of the documents that provided the basis for his request for administrative notice. The government having failed to file any objections by the September 17, 2008 deadline, the English translation of Exhibit R was admitted and incorporated within Exhibit R, and Applicant exhibits X through TT were admitted into evidence.

Findings of Fact

In the amended SOR, DOHA alleged under Guideline C, foreign preference, that as of December 2007, Applicant possessed an Israeli passport that expired in October 2006 (SOR ¶ 1.a), that he applied for, and was issued Israeli passports in 1992 and in 2001 after he had become a naturalized U.S. citizen (SOR ¶ 1.b), that he used his Israeli passport to enter Israel in at least 2002, 2003, 2005, and 2006 (SOR ¶ 1.c), and that he voted in an Israeli election in 2001 (SOR ¶ 1.d). DOHA alleged under Guideline B, foreign influence, that Applicant's spouse is an Israeli citizen living in the U.S. (SOR ¶ 2.a), that his stepchildren (SOR ¶ 2.b) and brother and sister (SOR ¶ 2.c) are resident citizens of Israel, and that he traveled to Israel in 2000, 2001, 2002, 2003, 2005, and 2006 (SOR ¶ 2.d). DOHA alleged under Guideline E, personal conduct, that Applicant deliberately falsified his December 2006 e-QIP by denying that he had an active foreign passport in the last seven years.

Applicant admitted the Guideline C allegations, averring that he had been unaware until November 2003 that possession of a foreign passport was an issue. He added that he had attempted unsuccessfully to surrender it to the Israeli Consulate in December 2003. Informed by the Israeli officials that he had to keep it until it expired, he presented both passports on trips to Israel in 2005 and 2006, and has not renewed his Israeli passport since it expired in October 2006. Applicant admitted the Israeli citizenship and/or residency of family members, but he denied any vulnerability to foreign influence or duress because of these foreign family ties. Applicant also denied

[1]The documents subject to government inquiry were numbered 7, 8, 9, 14, 19, 22, and 23, in Applicant's Objections to Proposed Administrative Notice and Request for Administrative Notice, dated August 4, 2008.

any intentional falsification of his e-QIP. He had submitted an edited version of his August 1999 security clearance application to his employer which contained an affirmative response to the foreign passport inquiry, and surmised that the information was transcribed incorrectly. Applicant apologized for having failed to note the discrepancy before signing the security clearance application prepared from the form he submitted.[2] After considering the evidence of record, I make the following findings of fact.

Applicant is a 64-year-old vice president at an independent, not for profit research and development laboratory involved in defense work for the U.S. government (Ex. 1, Tr. 53-54, 109-11). He started there as a doctoral student in June 1972 and was hired as an employee after he earned his Ph. D degree. He has held a U.S. security clearance at the level of secret or higher since July 1978 (Ex. 3, Tr. 106). He seeks to retain the top secret-level security clearance that he presently holds (Tr. 105), so that he can freely interact with the laboratory's staff involved in the redesign of a missile guidance system (Tr. 63), and oversee final implementation within the company of a systematic process of program organization and execution designed to ensure timely assessments and optimum performance for the U.S. government (Tr. 112-14).

Applicant was born in January 1944 in Israel to emigres from Poland. His parents, who acquired Israeli citizenship, had another son in 1948 and a daughter in 1952 (Ex. 1, 2). After he graduated from high school, Applicant attended an engineering college in Israel (Ex. D, Tr. 215). His mandatory military service was deferred under a highly selective program whereupon after graduation he would fulfill his military duties in a technical capacity (Tr. 100-01). On earning his bachelor's degree in electrical engineering (Ex. D), he served as an officer in the Israeli military from September 1965 to May 1968 (Ex. 1, 2, 3, Tr. 103, 138, 218). He was in charge of a laboratory that maintained airborne radar (Tr. 138). Just before he was discharged, he married his first wife, an Israeli native (Ex. 1, Tr. 180-81). After completing his compulsory three years of military service, he worked for the Israeli government as an engineer (Ex. D, Tr. 133) while taking evening classes toward his master's degree in electrical engineering at the same university where he had pursued his bachelor's degree (Ex. D, Tr. 103). He was awarded his master's degree in 1971 (Tr. 102).

His work for the Israeli military and government focused on navigation systems and he was required to hold an Israeli security clearance for his duties (Tr. 134). After almost three years in the government's employ, Applicant came to the U.S. for doctoral studies in January 1971 (Ex. 1). He elected to forgo any funding for his Ph. D studies from his Israeli employer as he did not want to commit to returning to Israel to work for them (Tr. 104).

[2]Applicant submitted as enclosures with his Answer the draft copy of the security clearance application that he submitted to his employer in December 2006 and a copy of the version prepared by security officials. The documents were not in the file provided to me before the hearing. The documents were admitted into the record as Exhibit 21 and Exhibit 1, respectively.

While pursuing his Ph. D in instrumentation and control (Ex. C), Applicant began working for his present employer in June 1972 (Ex. 1, 2). After he earned his doctorate degree in January 1975, Applicant became a full-time employee of the laboratory. He decided to remain in the U.S. because of better opportunities in his field and he felt he could contribute more than if he returned to Israel (Tr. 144). Applicant acquired U.S. permanent residency in 1976 (Tr. 99), and in 1978 he was granted a secret-level security clearance for his duties at the laboratory (Tr. 106). In 1979, Applicant and his first wife had their only child, a daughter. She is a native U.S. citizen from birth (Ex. 1, 2), and likely has derivative Israeli citizenship based on her parents' Israeli citizenship (Tr. 183). Applicant and his first wife made a life together in the U.S., raising their daughter here and educating her in the local public schools, and then at a private college in the U.S. (Ex. C, Tr. 183).

In May 1982, Applicant and his first wife became naturalized U.S. citizens (Ex. 1, 2, M, Tr. 99), taking an oath of allegiance to the U.S. (Tr. 145). He made no effort to renounce his Israeli citizenship. He traveled abroad extensively on his U.S. passport, but also went to Israel to visit family about every four to five years (Tr. 235). After his marriage, he was accompanied by his spouse and daughter (Tr. 184). He retained an Israeli passport that he used exclusively to enter and exit Israel in September 1976, August 1981, February 1985, and June 1989 (Ex. 3),[3] as required of Israeli citizens under Israeli law.

On the death of his mother in 1987, Applicant inherited with his siblings an apartment that they sold. Applicant gave his brother his $30,000 share "as a kind of a loan." Applicant considers it a gift and does not expect to collect the funds from his brother (Tr. 240).

In February 1992, he renewed his Israeli passport (Ex. 2). He traveled to Israel on that passport in August 1992 (Ex. 3). In an upgrade of his security clearance, Applicant executed a Personnel Security Questionnaire (DD Form 398) on July 16, 1994 (Ex. 3).[4] In response to the citizenship inquiry, he disclosed his U.S. naturalization in May 1982 but did not respond to whether he had dual citizenship. He listed his former miliary service for Israel and his foreign travel (Ex. 3).

On December 7, 1994, Applicant was interviewed by a government investigator about his dual citizenship. He explained that acquisition of U.S. citizenship did not operate as a revocation of his Israeli citizenship, but maintained his allegiance was to

[3]When asked about his entry into Israel, Applicant testified, "I always stand in the non, the non-resident line, and I show my American passport first and they stamp it first, but then they said that that's their process, you know, the people that man those booths, they are basically policemen. . . ." (Tr. 171-72). The earliest U.S. passport available for review was issued in April 1997 (Ex. 5, O), although Applicant testified that he first held a U.S. passport in 1982 for travel to Brazil (Tr. 142). It bears Israeli entry and exit stamps for the trips taken to Israel only since April 2005.

[4]The form admitted as Exhibit 3 appears to be missing questions 11 through 15. In a continuation sheet appended to the DD 398, he listed the Israeli residency of his parents-in-law (Ex. 3).

the U.S., where he has been living with his family. Applicant indicated that he held an Israeli passport used only to enter Israel for family visits as required by Israeli law, and that he reentered the U.S. on his U.S. passport. Concerning his military service for Israel, he could possibly no longer be in the reserves since he had reached the age of 50. Applicant denied any willingness to return to serve in the Israeli military or to exercise any right, privilege, or benefit of his Israeli citizenship. Applicant acknowledged he had failed to list his dual citizenship on his DD Form 398, but he denied any intentional omission (Ex. 7). In February 1995, Applicant was granted a top secret security clearance (Ex. 2).

Applicant and his first wife were granted a divorce in the U.S. in November 1996 (Ex. 1, 2). Applicant traveled to Israel alone in February 1997, again entering on his Israeli passport (Ex. 2, Tr. 184). In April 1997, Applicant obtained a U.S. passport valid for foreign travel to April 2007 (Ex. O).

In July 1997, a new president/chief executive officer (CEO) took over responsibility for Applicant's employer. The new CEO had more than 30 years of previous experience with another defense contractor (Ex. B, C, Tr. 75). Within six months of his arrival at the laboratory, it became clear to him that a change in the management structure was needed. Applicant stood out as strong leader with a knack for understanding people's motivations and for identifying talented individuals. He was well respected by the technical staff, and also showed himself willing to make changes (Tr. 81-82). These attributes led the CEO to propose Applicant's promotion. In spring 1998, Applicant assumed a vice president's position with responsibility for the technical direction, personnel evaluation, and hiring of approximately 800 technical staff members (Ex. C, D, Tr. 57-59, 81-82, 107). Applicant proceeded to revitalize the organization, putting in place a system and structure that increased the quality, quantity, and diversity of the laboratory staff. Applicant's technical guidance and oversight of all engineering activities earned him the respect of management and technical staff alike (Ex. A, C, Tr. 59, 82, 89).

In February 1998, Applicant went to Israel for a vacation (Ex. 2). Through his sister, he met his current spouse, an Israeli citizen, who was a professor of Hebrew literature at a private college (Tr. 174, 226). He reentered the U.S. on his U.S. passport in mid-March 1998 (Ex. O).

In an update of his security clearance, Applicant completed a security clearance application (SF 86) on August 25, 1999 (Ex. 21) from which an August 30, 1999, SF 86 was prepared (Ex. 2).[5] He reported his dual citizenship with the U.S. and Israel, the Israeli residency and citizenship of his sister and brother (his parents were already deceased), his military service for Israel from 1965 to 1968, his possession of an active Israeli passport from February 1992 to December 2001, and his foreign travel, including to Israel in February 1997 and February 1998. He responded negatively to question 13

[5]Exhibit 21 as originally completed by Applicant in August 1999 contains the same information as in Exhibit 2.

concerning whether he had ever been employed by a foreign government, firm, or agency (Ex. 2).

In March 2000, Applicant was interviewed by a contract investigator for the government about his dual citizenship status, his use of an Israeli passport, and his former military service for Israel. Applicant indicated he did not consider his naturalization in the U.S. a basis to cancel the Israeli citizenship held from birth. He again affirmed his allegiance to the U.S. and while he continued to use an Israeli passport, it was only to enter and exit Israel as required by the Israeli government. His U.S. passport was used for all other foreign travel. He explained that his retention of Israeli citizenship was solely for emotional reasons and that he did not vote in Israeli elections or have any contacts with Israeli government officials (Ex. 7).

Applicant traveled annually to Israel in January 2000, 2001, and 2002, to visit his future spouse while she was on semester break from her academic duties (Tr. 150, 163, 235). She visited him in the U.S. during the summers. As their relationship progressed, he made it clear to her that any life together would be in the U.S. (Ex. V, Tr. 177). When in Israel in 2001, Applicant voted in an Israeli national election. He considered the election for Israel's prime minister as "very critical" to the history of Israel, and did not realize that voting in a foreign election could be regarded as an exercise of foreign preference (Tr. 149-50).

In October 2001, Applicant renewed his Israeli passport for another five years (Ex. P). He presented this Israeli passport for travel to Israel in January/February 2002 (Tr. 166). His spouse joined him in the U.S. in December 2002 (Tr. 164, 174, 225), and in January 2003, they married in the U.S. (Ex. 1, S, Tr. 172). She acquired U.S. permanent residency in September 2003 (Ex. T, Tr. 175). She has three grown children who are resident citizens of Israel, and Applicant accompanied her on a trip to Israel in October 2003 for her eldest son's wedding (Ex. 1, Ex. P). Again, his Israeli passport was stamped on his entry and exit (Ex. P). Applicant also visited with his brother and sister (Ex. 4).

Sometime between October 2003 and early December 2003, Applicant learned from the Department of Defense that he would have to surrender his current Israeli passport (Tr. 157-58). On December 1, 2003, Applicant sent his Israeli passport to the Israeli Consulate with an expressed intent to surrender it to comply with the requirements of his U.S. security clearance (Ex. 5, Tr. 94-95). The passport was sent via registered mail through his employer's classified document control office and with the full knowledge of the laboratory's security director, whom Applicant had approached for assistance (Ex. W). Following that mailing, the security director informed him that he could respond negatively on his security clearance paperwork concerning possession of a foreign passport (Ex. W). Applicant was subsequently notified by the Consulate that it was not a repository of passports. He would have to retain it and could not destroy it as it was against Israeli law to do so (Tr. 158-59). The security director recalls that when he learned from Applicant that the Consulate refused to accept the passport and wanted $14 to mail it back to him, he told Applicant to not send the money. Furthermore, that if

it was returned to document control, the company would resend the passport to the Consulate (Ex. W). Applicant testified that when he got the passport back, he asked the security office to hold it for him, but he was told that there were no procedures in place under which security could retain it (Tr. 159).

Applicant kept possession of the Israeli passport. At his request, his sister checked with Israeli officials about whether it was possible to enter Israel solely on his U.S. passport (Tr. 167). In April 2005, he traveled to Israel for 14 days with his spouse to visit family members (Ex. 4). He had his Israeli passport as well as he had been told by his sister that he would need it to prove his identity to obtain a form that allowed him to enter/exit on his U.S. passport (Tr. 236). On entering Israel, he stood in the line for nonresidents and presented his U.S. passport. After computer checks disclosed Applicant held a valid Israeli passport, he was permitted entry only after he also had his Israeli passport stamped. (Ex. O, P, Tr. 167-69, 237). Once in Israel, Applicant obtained from the Israeli Ministry of Interior a document that authorized him "in an irregular and one-time case" exit from Israel on his U.S. passport (Ex. R). He exited Israel on his U.S. passport and the document from the Ministry of Interior (Ex. O, Tr. 169).

Applicant traveled to Israel twice in 2006, in January and again in July. One trip was to attend the wedding of his youngest stepson (Tr. 232). He presented his U.S. passport initially and was denied entry even after he showed the form that authorized his exit from Israel on his U.S. passport the year before. Applicant was allowed entry after he showed his Israeli passport, and both his U.S. and Israeli passports were stamped (Ex. 5, O, P). Applicant made no effort to obtain the form that would allow him to exit on his U.S. passport since he had been denied entry on his U.S. passport even with the form from the Ministry of Interior (Tr. 238-39). He stayed with his spouse's family primarily, but in July 2006 he also spent a couple of days at his sister's home (Tr. 164). On October 15, 2006, Applicant's Israeli passport expired (Ex. 5, P). He renewed his U.S. passport for another ten years in November 2006 (Ex.5, N). On August 21, 2008, at the advice of counsel, Applicant mailed the expired passport to the Israeli Consulate notifying the Consulate of his intent to surrender it (Ex. Q). Applicant does not intend to renew his Israeli passport (Tr. 160). Any future travel to Israel will be on his U.S. passport in the hope that he will again be authorized entry and exit by the Ministry of the Interior. He has been led to understand that he will have no trouble obtaining the required documentation (Tr. 171).

In conjunction with a recent update of his top secret clearance, Applicant was asked to complete another security clearance application. In December 2006, he provided his employer with a marked-up copy of his August 25, 1999, SF 86. He made several corrections and/or updates, including that he had a current U.S. passport issued in November 2006; that he married his current spouse, an Israeli citizen, in the U.S. in January 2003; and that he had held an Israeli passport that expired in October 2006 (Ex. 21). An e-QIP version of the form was prepared by the security office and returned to Applicant for his signature (Ex. W, Tr. 202-03). On December 18, 2006, Applicant executed an e-QIP that was forwarded to the government electronically (Ex. 1). It contained the updated information about his marriage, recent travels, and his

stepchildren and in-laws, but also a negative response to question 17.d. "In the last 7 years have you had an active passport that was issued by a foreign government?" (Ex. 1). Applicant did not notice the error before he signed it (Tr. 204).

Applicant was interviewed by a government investigator on February 9, 2007, about his foreign ties. He explained that his dual citizenship with Israel and the U.S. was maintained due to his emotional connection to Israel and not for any advantage. He expressed his willingness to renounce his dual citizenship if necessary as a condition for access to classified information although he would feel bad about it because he was born there and has family there. Applicant indicated that his spouse had acquired U.S. permanent residency and was in the process of acquiring U.S. citizenship. He disclosed ongoing telephone contact with family members living in Israel, once monthly with two of his stepchildren and his brother and twice monthly with his sister. Applicant also visited with them annually in Israel. The youngest of his three stepchildren was in the U.S. on a student visa since August 2006. While these Israeli citizens were aware of his employer, Applicant indicated none were aware of the nature of his work or that he was being considered for a security clearance (Ex. 4). However, he clarified at his hearing that he believes his siblings know he has a U.S. security clearance as he asked his sister to contact Israeli authorities about whether he had to enter Israel on an Israeli passport (Tr. 197).

On December 20, 2007, Applicant responded to interrogatories from DOHA concerning his foreign passport. He provided copies of his U.S. passports issued in April 1997 and in November 2006, his Israeli passport issued in October 2001, and the December 2003 letter to the Israeli Consulate, attempting to surrender his Israeli passport. He denied any action to renew his expired Israeli passport or any intent to renew it, and added:

> I attached my previous USA passport to show that all my entries to foreign countries since my last security audit were done using my USA passport. I also included a letter by our security officer dated Dec 03 showing that my Israeli passport was sent to the Israel Consulate. I was refused and returned to me. As long as the passport is valid (It expired Oct 06) it cannot be destroyed and [has] to be stamped on entry to Israel even when I use the USA passport which I did (Ex. 5).

On August 21, 2008, Applicant mailed his expired Israeli passport to the Israeli Consulate, notifying them he was surrendering it (Ex. Q).

Available information about his family members shows that on August 26, 2008, Applicant's spouse was interviewed by the U.S. Citizenship and Immigration Services in conjunction with her application for naturalization in the U.S. (Ex. U, V, Tr. 175). She is scheduled to take the oath of citizenship on October 29, 2008 (Tr. 175). Applicant's daughter, who earned a degree in classics, worked as an administrator for a U.S. university's art department until summer 2008 when she went to France to take a

painting class. She has been to Israel only twice since her parents divorced, with her mother to see her maternal grandparents (Tr. 184).

Applicant's brother is a resident citizen of Israel. He has worked as a project manager on an urban renewal project for a major municipality in Israel since 2003 or 2004 (Ex. 4, Tr. 230). He is a contractor and not employed directly by the city (Tr. 231). He has never been directly employed by the federal government in Israel. His spouse is a high school English teacher (Tr. 185-86). Applicant's sister is a psychologist affiliated with a private hospital in Israel. Her husband is a physician for the same hospital (Tr. 186-87). Applicant visits his siblings when he goes to Israel. He has a closer relationship to his sister and has stayed with her when he is in Israel (Tr. 164, 187), although he "definitely" has some loyalty and/or sense of obligation to both (Tr. 199). He would consider giving his sister money if she needed it, but understands that he has an obligation to the U.S. government because of his clearance and would report any request for information, even from his sister (Tr. 180, 199). As of August 2008, Applicant had telephone contact with his brother four or five times yearly and with his sister about three times a month, although he had daily contact with his sister following his recent surgery a few months ago (Tr. 187, 192, 228-29, 257). Neither sibling has any contact with the Israeli government or military (Tr. 188).

His three stepchildren were grown (all over 30) when he married their mother (Tr. 189). All three of them served in the Israeli military as required by law (Tr. 190). Applicant has a friendly relationship with them, particularly with the youngest who had studied for his master's degree in the U.S. (Tr. 189, 192), but returned to Israel in February 2008 after he graduated (Ex. 4). His two stepsons are architects who are partners in their own architectural firm started in 2001. Applicant understands they build libraries for universities in Israel (Ex. 1, Tr. 191, 231). Applicant's stepdaughter is a psychiatrist who had been affiliated with a hospital in Israel before starting a private practice following the birth of a child (Ex. 4, Tr. 191, 231). Applicant sometimes speaks with his stepchildren, usually the youngest stepson, when his spouse calls (Tr. 192).

Applicant has an ongoing relationship with only one of his 12 cousins living in Israel. She was his high school classmate who earned her doctorate in civil engineering and pursued a second career as a lawyer. She deals with patent law in a small private firm. They correspond once a year by electronic mail although he recently had surgery and they exchanged several email messages (Tr. 195-96). Her husband teaches biology in a medical school in Israel (Tr. 196). Applicant tries to see this cousin when he is in Israel (Tr. 234).

Applicant has an Israeli friend whom he met while they were both Ph. D students in the U.S. and lived in the same student housing. This friend returned to Israel and worked for about 15 years for the Israeli government. He is currently employed by a private company that manufactures cable television equipment but has been treated for cancer. Applicant tries to visit him when he is in Israel (Tr. 136-38).

Neither Applicant nor his spouse provides financial support for their relatives in Israel (Tr. 196). Applicant is active within his neighborhood in the U.S. (Ex. L). All his financial assets (pension and savings) are in the U.S. (Tr. 200). Applicant pays taxes in the U.S. (Tr. 146) and votes in local, state, and national elections in the U.S. (Tr. 146-47). He has not voted in an Israeli election since 2001 (Tr. 148), and now that he understands it could be considered an act of foreign preference, has no intent to vote in a foreign election in the future (Tr. 151). Applicant considers himself a citizen of the U.S. first. Had his U.S. citizenship been conditioned on him relinquishing his Israeli citizenship, he would have renounced his Israeli citizenship (Tr. 162). For about the past ten years, Applicant has attended annually or sometimes twice annually meetings of a society that raises funds for the Israeli technical university from which he earned his B.S. and M.S. degrees (Tr. 222-23). He contributes financially to the Israeli university through the society, in the past five or six years $1,000 annually (Tr. 221).

Applicant's spouse is part-owner of a house in Israel. Her children stand to inherit the home on her death. Applicant does not expect to inherit anything in Israel (Tr. 200-01, 240). His spouse receives pension payments that are deposited into an account in Israel (Tr. 241-42). She has two brothers and a sister who are resident citizens of Israel. None have any connection to the Israeli government. Two were farmers and the other is a retired photographer (Tr. 242). Applicant's spouse travels to Israel about twice a year to see her children and grandchildren (Tr. 243).

Throughout his long career at the laboratory, Applicant made important original, technical contributions (Ex. G), and he also served as a thesis advisor for graduate students from the university where he earned his doctorate (Ex. H). The current CEO has found him to be an effective vice president, a "key member" of the management team who has had a "very significant impact on the morale, focus and direction of the laboratory." (Tr. 69). Applicant has the respect of former (Ex. C, G, Tr. 89) and present (Tr. 59, Ex. A, Ex. K) colleagues at the laboratory and of very senior U.S. military personnel (Ex. H, I, J). All share confidence in Applicant's personal integrity, trustworthiness, and commitment to the U.S. national security interest, and they urge continuation of the clearance Applicant has held without incident throughout his career (Ex. A, G, Tr. 65, 90). Under the laboratory's corporate bylaws, Applicant must retire in October 2009 (Tr. 69). He intends to stay at the laboratory until then.

After review of 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 6.4 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 2006, 38.4% of Israel's exports went to the U.S. while 12.4% of its imports came from the U.S. In 2007, Israel imported $7.8 billion worth in goods from the U.S. and exported $18.9 billion in goods to the U.S. Israel is a prominent recipient of U.S. aid. Since 1949, the U.S. has provided over $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. 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. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use part 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 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.

Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests. U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza, although successfully perpetrated terrorist attacks declined in 2007 in comparison to previous years. Due to the volatile security environment in Gaza and the

West Bank, the U.S. continues to warn against any travel to those areas. Hamas, a State Department-designated foreign terrorist organization, violently assumed control over Gaza in June 2007. No official travel is permitted inside the Gaza Strip and official travel to the West Bank is restricted to mission-essential business or mission-approved purposes. In 1996, Israel and the U.S. signed a Counterterrorism Cooperation Accord, which established a joint counterterrorism group aimed at enhancing the countries' capabilities to deter, respond to, and investigate international terrorist attacks or threats of international terrorist acts against Israel and the U.S.

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. With the European Union, the United Nations, and Russia, the Bush Administration has been active in attempting to negotiate agreements between Israel and the Palestinian authority.

Under Israeli law, Israeli citizens do not automatically lose their Israeli citizenship when they become U.S. citizens. Israeli citizens, including dual nationals, are required to enter and depart Israel using an Israeli passport. Israeli authorities may require persons whom they consider to be Israeli citizens by birth to obtain an Israeli passport before departing Israel.

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 overarching 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

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). A citizen of Israel from birth and also of the U.S. since May 1982, Applicant continued to renew his Israeli passport to as recently as mid-October 2001. As required by Israeli law, he presented his Israeli passport for entry into Israel to see his siblings, and in recent years, to see his spouse before she emigrated and lately her children as well. The possession and/or use of a current foreign passport raises security concerns of foreign preference (*see* AG ¶ 10(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"), irrespective of whether it is necessitated by foreign law or discretionary.

Applicant is credited with attempting to surrender his Israeli passport in December 2003 once he became aware of the potential security issues, and with trying to enter Israel solely on his U.S. passport on his next trip in April 2005. When then faced with the choice of being turned away at the border or presenting his Israeli passport, he complied with Israeli law, but he also sought and obtained Israeli approval to exit Israel on his U.S. passport. That permission was valid only for exit on or before April 27, 2005 (Ex. R), however. In January 2006, Applicant was rebuffed in his attempt to enter Israel on his U.S. passport and the expired permission form, so he again used his Israeli

passport. When he went to Israel with his spouse in July 2006, he presented both his U.S. and Israeli passports and made no effort to reacquire the exemption from entry/exit on his Israeli passport. With the expiration of his Israeli passport in October 2006, and no renewal, AG ¶ 10(a) does not currently apply. Yet his use of the Israeli passport, especially after he learned of the potential security implications, is an active exercise of his foreign citizenship which raises concerns that he could be prone to make decisions contrary to the interests of the U.S.

Applicant's voting in an election for Israeli prime minister in 2001 was an active exercise of his Israeli citizenship that raises additional concerns of foreign preference. AG ¶ 10(a) (7), "voting in a foreign election," applies, even though Applicant traveled to Israel to visit his spouse before their marriage while she was on break from her academic duties. The election was collateral to his visit, but at the same time, it showed an ongoing interest in Israeli affairs and the future of Israel.

However, the government's case for application of AG ¶ 10(d) ("any statement or action that shows allegiance to a country other than the United States; for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship"), falls short where it is based on statements from Applicant of an "emotional attachment" to Israel free of any statements or actions that diminish the loyalty or allegiance Applicant has held to the U.S. for the past 26 years. While he indicated in February 2007 that he maintained his Israeli citizenship because of the emotional connection and that he would "feel bad" about renouncing his Israeli citizenship, he also expressed a willingness to do so as a condition of access and asserted a primary allegiance ("ultimate loyalty") to the U.S. (Ex. 4). Favorable sentiment toward Israel is understandable, given he spent his formative years there and his siblings are lifelong resident citizens, as well as the special relationship between the U.S. and Israel in matters of defense, foreign relations, and trade.

Concerning the potentially mitigating conditions, AG ¶ 11(a) ("dual citizenship is based solely on parents' citizenship or birth in a foreign country") applies to the extent that Applicant's Israeli citizenship is based on his birth there. While 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, the Department of Defense does not require the renunciation of foreign citizenship to gain access. Nonetheless, there must be adequate assurances that a dual citizen will not actively exercise or seek the rights, benefits, or privileges of that foreign citizenship. Applicant credibly testified that he has no intent of voting in a foreign election in the future, now that he knows it is incompatible with his security clearance. His decision to not renew his Israeli passport carries considerable weight in assessing whether he can be counted on to refrain from the exercise of dual citizenship while he holds a security clearance. Applicant has no current travel plans that include Israel, but travel to Israel cannot be completely ruled out because of his family ties there. His trips taken since his marriage have been event-driven, for the wedding of a stepson and the births of step-grandchildren. He hopes not to have to go to Israel for a funeral (Tr. 236). Since he no longer has an Israeli passport, he could be denied entry at the border. In the event he is

admitted on his U.S. passport, Applicant indicates that he would seek permission from the Ministry of Interior to enter on his U.S. passport (". . . then I come without a passport or an invalid passport and then have to either let me in or send me back. I guess they would let me in and send me back to the Department of the Interior and I said that then I will go and do it. . . . Tr. 238). Had Applicant considered reapplying for his Israeli passport should he be denied entry on his U.S. passport, it is unlikely he would have mailed his Israeli passport to the Consulate in August 2008, surrendering it.

Applicant submits that he is willing to renounce his Israeli citizenship for access to classified information, but he has never been asked to do so (Tr. 99-100). AG ¶ 11(b) ("the individual has expressed a willingness to renounce dual citizenship") applies, but it is entitled to less weight if it is in any way conditional. A promise to renounce is not a substitute for concrete steps taken to achieve that end. While Applicant testified that he has requested a form to renounce his Israeli citizenship (Tr. 252), he had not commenced the process because it was not asked of him. His preference clearly is to retain his Israeli citizenship, but it is not necessarily disqualifying provided he can be counted on to comply with DoD requirements. His recent surrender of his expired passport shows his good faith in that regard and mitigates the foreign preference concerns.

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 has had a close relationship with his sister in Israel since his divorce from his first wife in 1997 (Tr. 257). He contacts her about three times a month and has stayed at her home when in Israel, including during his most recent trip in July 2006. While his bonds to his brother are not as strong, Applicant visits with him when he is in Israel and he telephones him on special occasions (birthday, holidays) about four or five times a year (Tr. 257). Applicant's three adult stepchildren and their families are also resident citizens of Israel. While Applicant testified credibly that he is closer to his siblings, he has cordial relations with his stepchildren, especially with the younger stepson who studied in the U.S. Applicant accompanied his spouse to Israel for his wedding and for the birth of at least one grandchild. With his spouse scheduled to take the oath of citizenship in the U.S. in October 2008, she may well be subject to

obligations particular to her Israeli citizenship, but she will also enjoy the protections of her U.S. citizenship and residency. A heightened risk nonetheless exists through his spouse and her close relationships with her children and their families in Israel. 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") and AG ¶ 7(d) ("sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion") apply.

The government alleged separate foreign influence concerns because of Applicant's travel in recent years to Israel (SOR ¶ 2.d). AG ¶ 7(i) applies where there is "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." There is no evidence of conduct that would implicate AG ¶ 7(i) with the exception of his use of his Israeli passport to enter Israel as required of Israeli citizens, including dual nationals. The security implications raised by his compliance with this obligation of his Israeli citizenship are more appropriately covered under Guideline C. His travel to Israel has current security significance, but primarily because it confirms the ongoing relationships he has personally or through his spouse with family members in Israel, which is covered under AG ¶ 7(a).

The demonstrated ties of affection and/or obligation that Applicant has personally or through his spouse for his siblings, and his stepchildren in Israel make it difficult to 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."). It must be noted that 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.

Nothing about his siblings' or his stepchildren's occupations (project manager in urban renewal, psychologist/psychiatrist, architect) suggests any security, intelligence, or military duties. Nor is there any evidence contradicting Applicant's assertion that his relatives are not connected to the Israeli government. Although his brother is currently a project manager for a municipality, it is in a self-employed, consulting capacity. But the risk of heightened influence is not fully mitigated where so little is known about his

family members' activities and associates, and his siblings are aware that he has applied for renewal of his security clearance.

Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests, and it has not been confined to the West Bank and Gaza. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to minimize the risk presented by terrorism. Yet, given the strength of his ties to his family relations in his native Israel, I am unable to apply AG ¶ 8(a) or AG ¶ 8(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").[6]

Concerns that he could be effectively manipulated to help his relatives and/or Israel in a way that could be contrary to the interests of the U.S. are amply mitigated, however, by his overwhelming commitment to his life in the U.S. (*see* 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 asserts an "ultimate" loyalty to the U.S., where he has maintained his permanent residence for more than 30 years. He voluntarily acquired U.S. citizenship in May 1982, and used a U.S. passport when traveling abroad except to Israel. His use of his Israeli passport after 2003 was always in conjunction with his U.S. passport and because of a requirement of Israeli law rather than of a preference for Israel.

While Applicant married an Israeli citizen in 2003, he made it clear to her from the start of their relationship that she would have to immigrate to the U.S. and she has done so. He is firmly rooted in his community, where he is active in neighborhood activities. He raised his daughter in the local public schools. Applicant has no financial assets in Israel, and his spouse's property in Israel will be inherited by her children.

Also, reflective of a strong commitment to the U.S. are his considerable technical and leadership contributions to his employer and the U.S. defense effort. Professional colleagues and high ranking U.S. military officers familiar with his work, including as a mentor/thesis advisor for graduate students, have the highest regard for his judgment, ethics, and dedication to the interests of the U.S. Both the former and present CEOs of the laboratory are aware of his family ties to Israel and yet recommend him without reservation for continued access. Applicant has held a security clearance continuously since 1978, and shown "great sensitivity" in the handling of classified information (Tr. 61). He also understands that he has "a very specific obligation to the United States government because [he has] this security clearance and nobody is above that." (Tr. 180). In other words, he is well aware of the requirement to report any attempts to gain

[6]AG ¶ 8(c) would apply to his relationship with his friend in Israel, which was not alleged in the SOR.

improper influence and is willing to comply. Work references who know him, and the demands associated with a security clearance, do not doubt his willingness or ability to comply with the fiduciary obligations of a clearance. AG ¶ 8(b) applies.

Personal Conduct

The security concern related to the guideline for personal conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The government alleged that Applicant deliberately falsified his December 2006 e-QIP by responding negatively to whether he had an active foreign passport within the last seven years. Applicant held a valid Israeli passport until October 15, 2006 (Ex. P), and the e-QIP contains a negative response to the passport inquiry. Yet, he presented credible evidence showing that he did not intentionally conceal his possession of the Israeli passport. The e-QIP submitted to the government in December 2006 was prepared by someone in the laboratory's security office from an August 1999 SF 86 that Applicant had updated on its face. The updated August 1999 form (Ex. 21) contains an affirmative response to the foreign passport question and an expiration date of "2006/10/15" for his Israeli passport. Applicant denies any direct knowledge of how a negative response came to be entered to the passport question on the e-QIP. He was perhaps negligent in failing to review the form carefully before he certified that all the information was correct, but he did not act to conceal his possession of a foreign passport. AG ¶ 17(f) ("the information was unsubstantiated or from a source of questionable reliability") applies.

Concerns were raised for the first time at the hearing about Applicant's failure to disclose his employment with the Israeli government some 40 years ago. Both his August 1999 SF 86 (before and after it was updated) and his December 2006 e-QIP contain negative responses to inquiry concerning whether he was now or had ever been employed by a foreign government, firm, or agency. Applicant was unable to explain the negative responses, given he had worked for the Israeli government after he was discharged from the Israeli military. It is not clear what Applicant would have stood to gain from deliberately omitting his past foreign employment, given it is on his resume (Ex. D), and occurred some 40 years ago, its dated nature, and he listed his military service for Israel on his security clearance applications (Ex. 1, 2, 21). Assuming Applicant had elected to not report his foreign employment that occurred before his immigration to the U.S., it would not compel me to conclude that he deliberately falsified his response to the passport question on his December 2006 e-QIP.

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 common sense 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 a dear family member and the interests of the U.S. Applicant maintains sufficiently close relations with his siblings, and with his stepchildren (albeit with them primarily through his spouse) in Israel, to raise a risk of undue foreign influence. His desire to visit them led him to actively exercise his Israeli citizenship through use of an Israeli passport to enter Israel, including after he had been apprised that his possession of an Israeli passport was of concern to the government. Yet, by presenting his U.S. passport as well at the Israeli border, and by taking no action to renew his Israeli passport, he showed a preference for the U.S.

His preference for the U.S. is also exhibited in his marriage to his Israeli citizen spouse in the U.S. and in her immigration and pursuit of U.S. citizenship at his request. Applicant never sought an Israeli passport for his daughter, a native U.S. citizen, even though she likely has derivative Israeli citizenship based on the Israeli citizenship of her parents at the time of her birth. He remains interested in the future of Israel but his ties are largely sentimental, especially when compared to the life he has built in the U.S. since coming here for graduate school in 1971. The U.S. remains concerned about espionage activity directed against the U.S. to the benefit of Israel. At the same time, Applicant has had access to sensitive classified information since 1978 and shown himself worthy of the trust placed in him. After carefully evaluating the evidence in light of the whole person concept, I find it is clearly consistent with the national interest to continue his access to classified information.

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
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
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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