



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



In the matter of: )  
)  
) ISCR Case No. 07-17558  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: Sheldon I. Cohen, Esq.

January 26, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

On June 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, foreign influence, and E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on May 30, 2008, admitting the allegations and requesting a hearing. The case was originally assigned to another administrative judge on October 8, 2008, and scheduled for October 29, 2008. On October 16, 2008, Applicant retained counsel who filed a motion for continuance and change of venue. The originally-assigned administrative judge granted the motion, and the case was transferred to me on October 22, 2008. DOHA issued a notice of hearing on October

30, 2008, and I convened the hearing as scheduled on December 15, 2008. During the hearing, I received two government exhibits, 11 Applicant exhibits, and the testimony of two Applicant witnesses. DOHA received the transcript on December 23, 2008. Based upon a review of the record evidence, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

Department Counsel requested that I take administrative notice of the facts set forth in 13 source documents marked and identified as government's exhibits (GE) I through XIII. I took administrative notice of the facts set forth in GE I through VIII, and did not take administrative notice of the facts set forth in GE IX through XIII

Applicant's counsel requested that I take administrative notice of the facts set forth in 13 documents marked and identified as Exhibits C through K, and O through R.<sup>1</sup> I took administrative notice of the facts set forth in Exhibits E through K, O, and P. I declined to take administrative notice of the facts contained in Exhibits C, D, Q and R.

Department Counsel moved to amend the SOR to revise subparagraph 1.e and add a new subparagraph, 2.b, as follows:

1.e. You traveled to Israel in September of 2005, September 2006, *July of 2007, June of 2008, and December 2008,*<sup>2</sup> and

2.b. You falsified material facts on security clearance applications submitted by you in about 1984 and in January 1992 when, in response to questions concerning your past use of illegal drugs, namely, marijuana, you answered, "no," whereas in truth, you had previously used marijuana in high school, and in 1994.

Applicant's counsel did not object to the proposed amendment of SOR subparagraph 1.e, and opposed the proposed addition of SOR subparagraph 2.b. I granted the motion in part, amending subparagraph 1.e, as Department Counsel proposed, and adding subparagraph 2.b, as proposed, except for the phrase "*in about 1984*", and "*and in 1994.*"

### **Findings of Fact**

Applicant is a 53-year-old married man with one adult child whom he adopted about 20 years ago. He has approximately a year of college credits earned taking information technology-oriented courses. For the past 15 years, he has worked for a

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<sup>1</sup>These source documents were part of a larger group of documents that counsel had marked as exhibits A through Y before the hearing.

<sup>2</sup>The italicized text is the language Department Counsel sought to add to the allegation.

defense contractor as a network administrator (Tr. 155). His duties include customer support and the maintenance of network operating systems.

Applicant has a vast knowledge of applications and “sets the standard” for business network management throughout the entire branch of the armed services that he serves (Exhibit S). According to a senior-level supervisor, he is one of the highest complimented employees on staff (Tr. 143-144).

Applicant’s mother is a dual citizen of the U.S. and Israel. She lives in Israel, and is 83 years old. She supports herself through his deceased father’s life insurance policy. Applicant provides no additional financial support. She was born in the U.S., and emigrated to Israel in 1994 to be closer to her grandchildren<sup>3</sup> (Tr. 170). He talks to his mother approximately two times per month (Tr. 215).

Applicant’s sister is a dual citizen of U.S. and Israel. She lives in Israel with her husband. She works part-time as a dress maker (Tr. 163). She was born and raised in the U.S., and attended college in Israel from 1982 to 1985. She returned to the U.S. after graduating, married an American, and emigrated to Israel in 1989 for religious reasons. Applicant talks with her approximately three times per month and shares an occasional e-mail (Tr. 215).

Applicant’s brother-in-law, his sister’s husband, is a dual U.S./Israeli citizen. He is unemployed, and supports his family through his father’s inheritance. Applicant talks with him “on the rare occasion when he happens to answer the phone” (Tr. 210).

Applicant’s sister has five children, two boys and three girls, ranging in age from 15 to 22. The boys, ages 17 and 22, have serious mental illnesses, do not work, and live in a residential treatment facility (Tr. 211). Their disabilities prohibited them from being eligible for the Israeli draft. Applicant talks with them if they happen to be at his sister’s house when he calls (Tr. 212).

Applicant’s oldest niece is 21 years old. She is an Israeli citizen and resident. He is unsure if she is currently working (Tr. 213). In December 2008, she got married. Applicant traveled to Israel to attend the wedding. She has visited Applicant in the U.S. approximately three to four times over the past four years, most recently in August 2008 (Tr. 214).

Applicant’s next oldest niece is 19. She is an Israeli citizen and resident. She works as a beautician (Tr. 168). She got married in June 2008, and Applicant traveled to Israel to attend the wedding (Tr. 215). She visited him in the U.S. in August 2008 (Tr. 215). Both nieces stayed with Applicant and his wife during their U.S. visit. Other than a congratulatory call after he was informed of her wedding plans, Applicant has only talked to his niece by phone when he calls for his sister and his niece happens to answer the phone.

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<sup>3</sup>The grandchildren are Applicant’s nieces and nephews as described later in the Decision.

Applicant's youngest niece is 15 years old. He periodically talks to her when he calls his sister.

In addition to the trips to Israel in 2008, Applicant has traveled there to visit his family in September 2005, September 2006, and July 2007. He stays at his mother's home during his visits (Tr. 171). Each trip lasted 10 to 14 days (Exhibit 2 at 4). He has no bank accounts or other property interests in Israel (Tr. 175).

Israel is a parliamentary democracy with strong historic and cultural ties with the U.S. (Exhibit I at 2). Commitment to Israel's security has been a cornerstone of U.S. Middle East policy since Israel's inception (*Id.* at 10). The U.S. is strongly committed to Israel's viability as a Jewish state (Exhibit E at 7). Both countries have a mutual interest in a peaceful, secure Middle East. The threat of terrorist attacks in Israel is ongoing, and is particularly acute in regions controlled by Hamas (Exhibit 4 at 2; Exhibit II at 4). The U.S. government warns that American interests could be the focus of such attacks (Exhibit IV). Approximately 2.3 million tourists visit Israel each year (Exhibit O).

Under Israeli law, criminal suspects are innocent until proven guilty, have the right to habeas corpus, to remain silent, to be represented by an attorney, to contact family members, and to have a fair trial (Exhibit III at 3). The judicial system has an oversight mechanism to investigate suspected abuses (*Id.*). There have been some cases of individuals prosecuted and convicted of spying against the U.S. for Israel (Exhibit VI at 33).

Applicant completed a security clearance application on September 22, 2004. He answered "no" in response to "Question 27—Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics . . . , amphetamines . . . , depressants, or prescription drugs?" This was not accurate. He smoked marijuana once with friends at a gathering in 2002 (Tr. 171).

In August 2006, Applicant met with a security clearance investigator from the U.S. Office of Personnel Management (OPM). The subject of illegal drug use did not arise (Exhibit 2 at 3). Applicant met with another agent on May 21, 2007 (*Id.* at 5). When asked, he told the agent that he had never used drugs (*Id.*). Four days later, he contacted the investigator, admitted the 2002 marijuana use, and told him it was the only time he ever had used it (*Id.* at 6). At the hearing, he testified to using marijuana during high school in the 1970s, and once in 1994 while playing golf (Tr. 186).

Applicant testified that he falsified the security clearance application because a facility security officer had told him years earlier never to admit illegal drug use on a security clearance application (Tr. 182). Over the years, he did not disclose it on successive security clearance applications in order to keep his responses "consistent" (Tr. 182). He disclosed it to the investigator who met with him in May 2007, because he was "sick of lying" (Tr. 178).

## **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."

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.

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, "foreign contacts and interests may be a security concern if an 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 interests" (AG ¶ 6). Applicant's family members residing in Israel raise the issue of whether 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."

Israel's status as a staunch U.S. ally, and the only stable democracy in a region dominated by authoritarian governments and terrorist organizations does not eliminate the risk of coercion generated by the past episodes of espionage. It does, however, pose less of a risk than that posed by hostile, totalitarian countries seeking to

undermine the interests and security of the U.S. worldwide through any means necessary. Absent these negative characteristics, I conclude the presence of Applicant's relatives in Israel creates a risk of coercion, but not a heightened risk of coercion. AG ¶ 7(a) does not apply.

In reaching this conclusion, I considered the risk of terrorism prevalent in Israel. Terrorism is indiscriminate by nature. Consequently, anyone in Israel including the 2.8 million people who visit annually is at risk of being victimized by terrorism.

Conversely, the possibility that terrorism may be employed against specific individuals, such as the family member of a security clearance holder, is higher in countries that openly espouse it, are hostile to the U.S., or are controlled partially by terrorist organizations. None of these characteristics apply to Israel. Although Gaza and the West Bank are either controlled or influenced by terrorist organizations, Applicant has no family living in these areas. Consequently, the risk of terrorism in Israel is an ongoing challenge to its viability, but is not a factor that heightens the risk of coercion in this specific case.

Applicant's Israeli relatives do not generate a foreign influence security concern.

### **Guideline E, Personal Conduct**

Under this guideline, "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" (AG ¶ 15). Applicant's admitted security clearance application falsification triggers the application of AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

I have considered the relevant mitigating condition, AG ¶ 17(a),<sup>4</sup> and conclude it does not apply. Applicant intentionally omitted his past drug use from his security clearance application in 2004, and denied ever having used marijuana during a meeting with an investigator approximately two and a half years later. This interview was the second interview he had undergone during the investigative process. When he eventually disclosed it, he falsely added that it was a one-time occurrence.

### **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

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<sup>4</sup>The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

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.

Applicant is a talented worker who is highly respected by his client and his employer. These attributes are insufficient to overcome the security risk generated by his intentional failure to disclose marijuana use, as required, on his security clearance application.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant

### **Conclusion**

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

MARC E. CURRY  
Administrative Judge