DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 07-18024
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Personal Representative[1]

March 16, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the foreign influence and foreign preference security concerns arising from his possession of a valid Israeli passport and his relationship and contacts with a family member residing in the Palestinian occupied territory. He mitigated the personal conduct security concern. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 28, 2006. On May 28 and August 28,[2] 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the government's security concerns under Guideline C (Foreign Preference),

[1] The name of the personal representative was omitted from the decision for security and privacy reasons.

[2] Amendment to the Statement of Reasons.

Guideline B (Foreign Influence), and Guideline E (Personal Conduct).[3] The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR on June 24 and September 28, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 24, 2008. DOHA issued a notice of hearing on November 26, 2008, scheduling a hearing on December 17, 2008.

At the hearing, the government offered exhibits (GE) 1 through 4. GEs 1 through 3, were admitted without objection (Tr. 23). GE 4 is a government motion for me to take administrative notice of facts regarding Israel and the Palestinian territories.[4] Applicant objected to the accuracy of some of the motion's proffered facts, but not to me taking administrative notice or considering the attached documents (Tr. 23-25). His objection was sustained. I took administrative notice of facts I personally considered relevant and material to this case. Applicant testified on his own behalf, and presented three witnesses and no exhibits. DOHA received the transcript of the hearing (Tr.) on December 29, 2008.

Procedural Issues

On August 28, 2008, the government moved to amend the May 28, 2008 SOR. The amendment to the SOR deleted all subparagraphs under SOR ¶¶ 1 and 2. It added ¶¶ 1.a through 1.f to SOR ¶ 1, and ¶¶ 2.a through 2.k to SOR ¶ 2. It also added SOR ¶ 3, with three allegations under Guideline E (Personal Conduct).

At the hearing, the government moved to correct the following typographical errors in its motion to amend the SOR: in the section entitled "Guideline B," paragraph 1), first line, "1.a" was changed to read "2.a," twice. In the same section, paragraph 2), first line, "1.b" was changed to read "2.b," twice.

Applicant did not object to the amendments to the SOR, or to the correction of the typographical errors. I granted both motions as requested (Tr. 13-14).

[3] 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.

[4] GE 4 was marked for identification and considered for administrative notice only.

Findings of Fact

Applicant admitted all the factual allegations in amended SOR ¶¶ 1 and 2 (hereinafter "SOR," except for SOR ¶¶ 2.a and 2.c, which he denied. He denied SOR ¶ 2.a because his son is temporarily living in East Jerusalem (Palestinian occupied territory), not in Israel. He denied SOR ¶ 2.c because his daughter is a citizen of Canada, and a legal U.S. resident. He admitted SOR ¶ 3.c. He denied SOR ¶¶ 3.a and 3.b. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 62-year-old senior maintenance engineer working for a defense contractor. He was born, raised, and educated in Israel (GE 1, Tr. 169). He considers himself a Palestinian Christian, and acquired his Israeli citizenship because he was born and lived within Israel when it became a state. He completed two years of college in Israel (1968-1970) where he learned construction. After college, he worked in construction for a number of years. He was then hired by the Israeli government as a driver for the British ambassador to Israel, and worked that post for two years. He believes that while in that job he possessed some type of an Israeli security clearance (Tr. 125). He never served in the Israeli army or otherwise worked for the Israeli government because of his heritage as a Palestinian Christian.

Applicant met his Jordanian born wife in Israel (Tr. 140). She is a distant relative, who came to Israel during the war and was educated in Israel. They were married in 1973. Their two sons (G) and (R) were born in Israel. In 1978, at age 32, Applicant immigrated with his family to Canada seeking better opportunities for his children and to avoid the ongoing hostilities between Israel and Muslim states (Tr. 119-120). Applicant's parents had immigrated to Canada around 1973, and he followed them. Applicant's daughter was born in Canada.

Applicant became a Canadian citizen in early 1981 and received a Canadian passport shortly thereafter. He used his Canadian passport to travel to France in 2000, Jordan, and numerous times to Israel. Applicant's Canadian passport expired in 2003, and he does not intend to renew it (Tr. GE 3). While in Canada, he worked in construction and building maintenance. He also worked approximately 10 years for a Canadian airline (Tr. 181). He voted two or three times in Canadian elections (Tr. 135). Applicant immigrated to the United States in December 1981, because of the better working and living opportunities. He moved to the United States alone to work with his brother-in-law, while his family remained in Canada. He used to own two construction/management companies, one in Canada and one in the United States (Tr. 121). He would spend the work week in the United States and travel during the weekends to visit with his family in Canada.

In 1990, Applicant and his wife purchased a home in Canada. He considered that home his residence and lived in it until 2002, when he separated from his wife and moved back to the United States. He divorced his wife in 2006 (Tr. 29). As part of the divorce settlement, Applicant sold his interest in the marital home to his oldest son (G).

However, his name will remain in the property title until the mortgage is paid off in August 2009 and the property is formally transferred to his ex-wife and G. In 2007, he used the proceeds from the sale of his interest in the Canadian home to buy a home in the United States with his younger son (R) (Tr. 29, 58). Applicant owns no property, business, or any financial interests outside of the United States (Tr. 30).

Applicant became a naturalized U.S. citizen in 1999. His ex-wife is a Jordanian citizen and naturalized Canadian citizen residing in Canada. He testified she is also a naturalized U.S. citizen, but it is not clear when she was naturalized. Applicant's ex-wife has numerous extended family members who are citizens and residents of Jordan. Before his divorce, Applicant had infrequent contact with his wife's relatives and travelled to Jordan to visit her relatives. After 2002, when he separated from his wife, Applicant has maintained infrequent contact with her relatives in Jordan.

Applicant's sons, G and R, were born in Israel, and immigrated to Canada with his parents. They grew up, were educated in Canada, and became Canadian citizens. G became a Canadian citizen in 1981-1982, and has a valid Canadian passport (Tr. 35). He also has a valid Israeli passport. He resided in the United States for two years while attending a prominent U.S. law school where he received a master's degree in international law (Tr. 32, 56). After receiving his degree, G returned to Canada and worked four years for a commercial law firm and one year as a private practitioner (Tr. 56).

G became a naturalized U.S. citizen in 2003, and has a valid U.S. passport (Tr. 35). He testified he holds American values and considers himself a U.S. citizen (Tr. 31). The longest period of time he has lived in the United States is two years. However, while growing up he travelled frequently to the United States during vacations and holidays and stayed for weeks at a time with relatives living in the United States (Tr. 58).

In 2007, G was hired by an European organization to provide legal advice to the Palestinian leadership responsible for certain peace negotiations with Israel (Tr. 38). In this capacity, G interacts, represents and provides advice to the Palestine Liberation Organization (PLO) and its leadership, including the Chairman of the PLO (Tr. 39). He has access to PLO classified information (Tr. 51). He denied any known contact with HAMMAS or its members (Tr. 42). Since 2007, he has been residing in the Palestinian occupied territory.

G believes he is part of a close-knit family. He calls and has contact with Applicant at least twice a week (Tr. 63). G visits his extended family members living in Israel on a monthly basis. He has close daily contact and friendship with Palestinians who work for the Palestinian authority (Tr.52-53). His employment contract will expire in 2009, at which time he intends to move permanently to the United States (Tr. 28). G uses any of his three passports to travel abroad for personal or business reasons based on convenience and expediency (Tr. 33-35).

Applicant's younger son, "R," has a valid Canadian passport. He also has an expired Israeli passport which he does not intend to renew (Tr. 89). He attended college in the United States and became a naturalized U.S. citizen in 2000 (Tr. 88). He joined his father in the United States because of the better economic opportunities and his preference for the American culture. He has a general contracting business in the United States and travels to Canada frequently to visit his mother and other relatives.

R's younger sister lives with him in the United States. She is a legal U.S. resident and is applying for U.S. citizenship. R is in the process of organizing his family's third family reunion, which is held every four years. His father and mother have approximately 150 family members living in the United States and Canada, including his mother's parents and his father's mother. He testified the number of family members residing in the United States and Canada by far outweighs the number of their relatives living in Israel and the Palestinian occupied territory.

Applicant's 86-year-old mother and his four siblings are dual citizens of Israel and Canada, and reside in Canada (Tr. 144-147). His mother receives a pension from the Canadian government. Applicant has telephone contact with his mother and siblings approximately three times a week. He travels to Canada to visit his relatives twice a month.

Applicant's brother-in-law (Z) (ex-wife's brother) was born in Jordan and immigrated to the United States in 1972 (Tr. 75). He is a successful entrepreneur and owns a real state company as well as a construction and facility management company in the United States (Tr. 68-69). His construction company specializes in the construction of secured facilities for government agencies (Tr. 68).

Applicant has worked for Z since the mid-1990s in construction work and managing facilities both as an employee and as an independent contractor. From 2002 to 2006, he was the senior engineer and facility manager in charge of all the building systems, including the security system, for the building Applicant currently manages. When the building was turned over to the government contractor, Applicant was hired by the government contractor to remain in the position of senior engineer. He has been doing the same job, initially for his brother-in-law, and now the government contractor, during the last five years without any security problems or concerns (Tr. 109).

Applicant was described as honest, completely trustworthy, and as a person with high integrity and judgment. His brother-in-law assessed him as conscientious, and responsible. He is highly respected for his knowledge and job performance (Tr. 71-71).

As of the time of his hearing, Applicant possessed a valid Israeli passport that he renewed in 2003, and will not expire until 2013 (Tr. 138, GE 2). He renewed and used his Israeli passport for personal convenience (Tr. 134). He pays less tax when visiting Israel, and does not have to wait in long lines at the airport. Applicant travelled to Israel six times since August 2000, for family related matters, i.e., funerals and to visit family and friends (Tr. 132). He travelled to Israel using his Israeli passport three times since

2003. He travelled to Jordan in 2003 using his Israeli passport. Applicant has a valid U.S. passport that he renewed in 1999 and will not expire until March 2009.

Applicant testified he has no intention to renew his Israeli passport (GE 3). He is a proud American, loves the United States, and only wants to be a U.S. citizen (Tr. 104-105). He loves his job and it is important for him to possess a security clearance to retain his job. In his March 2008 response to DOHA interrogatories, Applicant stated his willingness to surrender his Canadian and Israeli passports (GE 3). At that time, he asked for guidance on how to surrender his Israeli passport. At his hearing, Applicant expressed his willingness to surrender his Canadian and Israeli citizenships (Tr. 104-105). Applicant testified all his immediate family members reside in the United States or Canada. He has telephone contact with his extended family member residing in Israel once or twice a month or when he travels to Israel approximately once every two years (Tr. 146).

The government alleged Applicant falsified his 2006 e-QIP because he failed to disclose in his answer to question 8.d.1, that he was a citizen of Israel. Applicant disclosed in his answer to the question that he was a citizen of Canada, but failed to disclose he is an Israeli citizen. The e-QIP also shows Applicant disclosed he was born in Israel (e-QIP, question 1), that he had foreign connections and contacts with Israel, and that he had an active Israeli passport (e-QIP, question 17).

The government also alleged Applicant falsified his 2006 e-QIP because he failed to disclose in his answer to question 17.d, that he had an active Canadian passport. In his answer to the question, Applicant disclosed that he had an active Israeli passport, but failed to disclose his Canadian passport. Applicant disclosed in his e-QIP that he was a dual citizen of the United States and Canada that he owned property in Canada, and the periods during which he resided in Canada. Moreover, Applicant's Canadian passport expired on July 24, 2003, prior to him filling out his e-QIP (GE 3).

The government further alleged Applicant falsified his 2006 e-QIP because he failed to disclose in his answer to question 18, that he had traveled to Israel and Canada in multiple occasions. Applicant disclosed that he travelled to Jordan and Israel in 2004, but failed to disclose he travelled to Canada once or twice every month to visit his family, and that he travelled to Israel six times after 2000, including three trips since 2004.

Applicant admitted he failed to disclose the number of times he travelled to Canada and Israel, but credibly explained he misunderstood the question, and that his omissions were an innocent mistake. Considering the record evidence as a whole (the e-QIP, his answer to the DOHA interrogatories, and his demeanor and testimony), I find Applicant's omission were not made with the intent to mislead the government or falsify his security clearance application. He disclosed almost all the information requested in his answers to other e-QIP questions.

I take administrative notice of the following facts. The government of Israel is a parliamentary democracy. The Israeli government generally respects the human rights of its citizens, but there are some issues with respect to treatment of Palestinian detainees, conditions in some detention and interrogation facilities, and discrimination against Israel's Arab citizens. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Israel has a diversified, technologically advanced economy and the United States is Israel's largest trading partner. Since 1976, Israel has been the largest recipient of U.S. foreign aid. The two countries also have very close security relations.

U.S. - Israeli bilateral relations are multidimensional and complex. Israel has given a high priority to gaining wide acceptance as a sovereign state and to ending hostilities with Arab forces. Israel and the United States participate in joint military planning and combined exercises, and have collaborated on military research and weapons development. Commitment to Israel's security and well being has been a cornerstone of U.S. policy in the Middle East since Israel's creation in 1948, and the two countries are bound closely by historic and cultural ties as well as mutual interests.

Notwithstanding, there are several issues of concern regarding U.S. relations with Israel. These include Israel's military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. There are several cases of U.S. citizens convicted of selling, or attempting to sell, classified documents to Israeli Embassy officials, as well as cases of Israeli nationals indicted for espionage.

Israel is one of the most active collectors of proprietary information. Israeli military officers have been implicated in this type of technology collection in the United States. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel.

The theft of sensitive and proprietary information threatens U.S. national security in both military and economic terms, and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies. Industrial espionage is intelligence-gathering "conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining commercial secrets." Industrial espionage is not limited to targeting commercial secrets of a merely civilian nature, but rather can include the targeting of commercial secrets that have military applications, sensitive technology that can be used to harm the United States and its allies, and classified information.

I also take administrative notice of the following facts. Palestine is a territory, created following World War I, as a result of a British mandate. The territory included land that is within the current borders of Israel, Jordan, the West Bank and the Gaza strip. In 1948, the British withdrew from the Palestinian territory and Jews proclaimed an independent State of Israel. Escalating violence forced Arabs living in the Palestinian territory to move to the Egyptian controlled Gaza Strip, the Jordanian ruled West Bank, Jordan, Syria, and Lebanon.

In the January 2006 Palestinian legislative election, an opposition political party, Hamas, formed a government without Fatah, the former ruling party within Palestine and the largest faction within the Palestinian Liberation Organization (PLO). Hamas combines Palestinian nationalism with Islamic fundamentalism. The group is committed to the destruction of Israel and the establishment of an Islamic state in all of historic Palestine. It has waged an intermittent terrorist campaign to undermine the peace process and has carried out hundred of terrorist attacks since 1993. The United States has designated Hamas and six other Palestinian groups as Foreign Terrorist Organizations.

In February 2007, Hamas and Fatah signed an agreement to form a national unity government. However, in June 2007, factional fighting broke out and Hamas took complete control of the Gaza strip. Fatah retained control over the West Bank. There are approximately 60,000 Palestinian Christians living in the occupied territories, about 2% of the population. Palestinian Christians once made up to some 8-10% if the Palestinian Arabs, but their numbers have been shrinking as a disproportionate number of them have fled for economic or security reasons.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.[5]

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's controlling adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."[6] In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on

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

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

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

Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

Under AG ¶ 10(a)(1) Applicant may be disqualified for the "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (3) accepting educational, medical, retirement, social welfare, or other such benefits;" and (4) voting in a foreign election.

Applicant renewed and used his Israeli passport after becoming a U.S. citizen. As of the day of his hearing, he possessed a valid Israeli passport that will not expire until 2013. He and his family members accepted educational, medical, retirement, social welfare, and or similar benefits from the Canadian government, and he voted in Canadian elections after becoming a U.S. citizen. AG ¶¶ 10(a)(1), (3), and (4) apply.

AG ¶ 11 provides six conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

None of the mitigating conditions apply.

Applicant's security concerns arose, in part, out of the exercise of his dual citizenships with Israeli and Canadian citizenships. In March 2008, Applicant stated he was willing to surrender his Israeli and Canadian passports. At his hearing, Applicant expressed a willingness to renounce his dual citizenships with Canada and Israel. Applicant has travelled to Israel six times since 2000, including three times after 2003 to visit family members in Israel. In all his travels to Israel, he either used his Canadian or Israeli passport in preference to his U.S. passport. As of his hearing day, Applicant enjoyed all the privileges and rights of Israeli citizens, including the possession of a valid Israeli passport in preference of his U.S. passport. AG ¶ 11(a) does not apply.

The security concerns raised by Applicant's possession and use of his Canadian passport are diminished because the passport expired and Applicant has no intention to renew it. Applicant and his family received Canadian government benefits after he became a naturalized U.S. citizen (i.e., he voted in Canadian elections, his children attended Canadian schools, he owned property and interest in a business). Applicant's actions showed he exercised his Canadian citizenship and preference for Canada.

Applicant moved to the United States in 2002, after separating from his wife. He sold his interest in the marital home to his older son and purchased his own home in the United States with his younger son. He has made the United States his home. His younger son and daughter live in the United States, and his older son intends to establish himself in the United States after he completes his employment contract abroad. Applicant intends to retire in the United States and his financial and economic

ties are in the United States. Applicant's behavior since 2002 mitigates the security concerns raised by his past exercise of his Canadian citizenship. His actions no longer indicate a preference for Canada over the United States. These facts warrant partial application of foreign preference mitigating conditions AG ¶¶ 11(b) and 11(e). AG ¶¶ 11(a), 11(c), and 11(d) are not applicable.

Notwithstanding, he failed to mitigate the foreign preference security concerns raised by his exercise of his Israeli citizenship after he became a naturalized U.S. citizen. He failed to surrender his Israeli passport and has not mitigated the passport specific issues.

Guideline B, Foreign Influence

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

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 6.

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

> (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
>
> (e) a substantial business, financial, or property interest in a foreign country, or in any foreign own or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[7] Applicant has frequent contacts and a close relationship of affection and/or obligation with his older son, who is an Israeli citizen (as well as a Canadian and U.S. citizen), residing in the Palestinian occupied territory. The closeness of the relationship is shown by Applicant's frequent telephone, e-mail, and personal contacts with his son, and the fact that his son travelled back to the United States to assist his father during the hearing.

This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli or Palestinian agents and terrorists operating in Palestine may exploit the opportunity to obtain sensitive or classified U.S. information. Israel is one of the most active collectors of sensitive and proprietary information from the United States. Israeli military officers have been implicated in the collection in the United States of classified and proprietary technology. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel.

Hamas and five other designated terrorist organizations operate within the Palestinian occupied territory, and Hamas controls part of the territory. This creates a dangerous situation for all American and American interests within the territory. Applicant's son living and working in the Palestinian occupied territory creates a potential conflict of interest because his relationship is sufficiently close to raise a security concern about Applicant's desire to help his son by providing sensitive or classified information.

Applicant and his ex-wife own a home in Canada, which is valued at approximately $410,000.

The government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

> (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign

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

individual, group, organization, or government and the interests of the U. S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that AG ¶ 8(a) and 8(c) do not apply and do not mitigate the security concerns raised. Appellant did not establish it is unlikely he will be placed in a position of having to choose between the interests of his son and the interests of the U.S. His frequent contact and close relationship with his son could potentially force him to choose between the United States, Israel, and the Palestinian interests.

Considering Israel's aggressive posture in the collection of sensitive and proprietary information in the United States, Applicant's close relationship with his son creates a higher risk of foreign inducement, manipulation, pressure or coercion by the Israeli government.

The nature of the political situation in the Palestinian occupied territory and the relationship of the Palestinian authority with the United States are relevant in assessing the likelihood that Applicant's son is vulnerable to government or terrorist coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the government (in this case, the controlling Palestinian organization) has interests inimical to the United States.

Hamas and five over terrorist designated organizations operate freely within the Palestinian territory, and the Palestinian authority has no control over certain areas of the territory. These circumstances raise the burden of persuasion on Applicant to

demonstrate that his son living and working in that area does not pose a security risk and that Applicant will not be placed into a position of being forced to choose between loyalty to the United States and his family members.

AG ¶ 8(b) partially applies because Applicant has developed a sufficient relationship and loyalty to the United States and should be given credit for his connections to the United States. He has lived in the United States of and off for approximately 28 years. He has been a naturalized U.S. citizen for around 10 years. His sons are U.S. citizens and his daughter is applying for U.S. citizenship. Both his younger son and daughter live in the United States. He has worked hard and is successful in his trade. However, when his favorable information is balanced against his contact with his older son, there remains a potential conflict of interest.

AG ¶ 8(b) does not mitigate the security concerns raised because Applicant has significant contacts with his son who is a resident of the Palestinian occupied territory and a citizen of Israel. Such contact creates a risk of foreign exploitation because of the Israeli government's active collection of sensitive U.S. economic, industrial, and proprietary information. He also has significant contacts to Israel. Moreover, there is a higher risk is created by Hamas and other terrorist organization operating in the Palestinian occupied territory.

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

I considered Applicant's extensive contacts with his immediate and extended family members who are citizens and residents of Canada, and some of them who are citizens of Canada but U.S. residents. I also considered that Applicant is still in the title of the marital home he purchased with his ex-wife, that his passport expired and he does not intend to renew it, and his expressed willingness to surrender his Canadian citizenship. Applicant credibly testified that 50% of the interest in the marital home was awarded to his wife as a result of their divorce. He sold his 50% interest in the property to his older son. A new property title excluding Applicant will be issued when the mortgage is paid off in 2009. He has no other property of financial interests in Canada.

In light of Canada's democratic form of government, its stable political situation, and the historically strong friendly relationship between Canada and the United States, it is not likely that Applicant or his family will be targeted by the Canadian government to obtain U.S. protected information. Applicant mitigated the Canada foreign preference security concerns.

Guideline E, Personal Conduct

Under Guideline E, the security concern is that 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 omitted in his answers to his security clearance application that he was a citizen of Israel, that he had an active Canadian passport, and that he had traveled to Israel and Canada in multiple occasions. He failed to provide information that was material to making an informed security decision. Notwithstanding, I find Applicant's omissions were not deliberate or with the intent to mislead the government.

The e-QIP shows Applicant disclosed he was born in Israel, that he had foreign connections and contacts with Israel, and that he had an active Israeli passport. Applicant also disclosed he was a dual citizen of the United States and Canada, that he owned property in Canada, and that he resided in Canada for many years. Moreover, Applicant's Canadian passport expired on July 24, 2003, prior to him filling out his e-QIP, and there is no evidence to show he renewed his Canadian passport.

Applicant credibly explained he misunderstood the question, and that his omissions were an innocent mistake. This is corroborated by his disclosure of almost all the omitted information in other sections of the e-QIP. Considering the record evidence as a whole (the e-QIP, his answer to the DOHA interrogatories, and his demeanor and testimony), I find Applicant's omissions were not deliberate, or made with the intent to conceal information, or to falsify his security clearance application. None of the disqualifying conditions apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

On balance, Applicant's favorable information is summarized as follows. Applicant is a loyal and proud American with an excellent work reputation. He has lived in the United States, on and off, for 28 years and has been a naturalized U.S. citizen for 10 years. When he became a U.S. citizen, he swore allegiance to the United States. Two of his children are also naturalized U.S. citizens. His daughter lives in the United States and is in the process of applying for U.S. citizenship. Applicant and his sons credibly testified that they intend to permanently live in the United States. Applicant intents to retire in the United States, and all his financial interests, including his job are in the United States. He also expressed his intention to surrender his Canadian and Israeli citizenships to avoid any possible conflict of interest.

There is no evidence he has ever taken any action which could cause potential harm to the United States, or that he lacks honesty and integrity. He has the respect and trust of his references who recommended him for a security clearance without reservations.

On the other hand, there are circumstances that weigh against Applicant in the whole person analysis: Applicant did not surrender his valid Israeli passport; his frequent use of his Canadian and Israeli passports, in preference of his U.S. passport, to travel to Israel; Israel's aggressive pursuit of sensitive or protected U.S. information; his oldest son living in the Palestinian occupied territories; and Applicant's significant contacts with Israel and Israeli citizens.

These circumstances create a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli agents or terrorist in the occupied territory may attempt to use Applicant's son to obtain information about the United States. "Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant failed to mitigate the foreign preference and foreign influence security concerns arising from his possession of a valid Israeli passport and his relationship and contacts with Israeli citizens and residents. He mitigated the personal conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a-1.c; and 1.e and 1.f:	Against Applicant
Subparagraphs 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a; and 2.g-2.j:	Against Applicant
Subparagraphs 2.b-2.f; and 2.k:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant

Conclusion

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

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JUAN J. RIVERA
Administrative Judge