



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



In the matter of:)	
)	
)	ISCR Case No. 08-01980
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

March 24, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86), on May 3, 2007. On November 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence; Guideline C, Foreign Preference; and Guideline M, Use of Information Technology for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 3, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 14, 2009. The case was assigned to me on January 23, 2009. On February 6, 2009, a Notice of Hearing was issued scheduling the hearing for February 24, 2009. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 5, which were admitted without objection. The Government requested that

administrative notice be taken of one document with 15 attachments. The document was marked as Hearing Exhibit I (Hearing Ex I) without objection. Applicant testified and submitted three exhibits which were admitted as Applicant Exhibits (AE) A – C without objection. Applicant presented a typed copy of his opening and closing statements. This was marked as Hearing Exhibit II. Applicant testified and called five witnesses on his behalf. DOHA received the transcript of hearing on March 4, 2009. The record was held open until March 10, 2009, to allow Applicant to submit additional documents. No additional documents were submitted. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Administrative Notice

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified technologically advanced economy that is growing at five percent annually. The United States is Israel's largest trading partner.

The threat of terrorist attacks in Israel is an on-going concern. Terrorist organizations have launched rockets and mortars from the Gaza Strip. The U.S. government has previously issued warnings that American interests could be the focus of such terrorist attacks. 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. As a result, American citizens have been urged to exercise a high degree of caution when visiting places associated with U.S. interests and/or located near U.S. official buildings.

The U.S. and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. There are some issues in U.S. – Israeli relations. The U.S. is concerned with Israeli military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases involving Israeli citizens.

(All sources for the above information are contained in Hearing Exhibit 1.)

Findings of Fact

In his Answer to the SOR, dated December 3, 2008, Applicant admits to all SOR allegations.

Applicant is a 57-year-old senior mechanical engineer employed with a Department of Defense contractor. He has worked for his current employer from 1985 to 1992, and from 1996 to present. He has a Bachelor of Science degree in mechanical engineering. He is married and has four daughters, ages 29, 27 and 12 year-old twins. He has held a SECRET clearance since 1985. (Tr at 7, 74-77; Gov 1)

Applicant was born and raised in Israel. He moved to the United States in February 1976. He completed his college education at a U.S. university. He attended the first two years of college in Israel. He met his wife on a previous trip to the United States. After a long distance courtship, they became engaged and he moved to the United States on a fiancé visa. Applicant became a United States citizen on June 27, 1980. (Tr at 48-49; Gov 1; Gov 2)

Applicant's wife moved with her family to the United States when she was four-years-old. She became a U.S. citizen in 1968 and has continuously lived in the U.S. She has no relatives living in Israel. All of their daughters were born and live in the U.S. (Tr at 74-77) His wife is a dual citizen of Israel and the U.S. by virtue of her birth in Israel. His children are considered dual citizens of Israel and the U.S. by virtue of their parents' Israeli citizenship. Prior to traveling to Israel to visit family in June 2007, the entire family applied for Israeli passports. The Israeli Consulate did not issue his wife a passport. Applicant is not sure why but thinks it was because she lived in the U.S. for such a lengthy period of time and never applied for an Israeli passport. Applicant and his children were each issued Israeli passports. They used the passports only to travel to Israel. His wife traveled to Israel on her U.S. passport and had to go through the line for non-Israeli citizens when entering Israel. (Tr at 17, 45-46, 56)

Applicant is a dual citizen of the U.S. and Israel. He possesses a valid Israeli passport. It was issued on March 12, 2007, and does not expire until March 11, 2017. He held a previous Israeli passport which was issued on June 19, 1996, and expired on June 18, 2001. He renewed his Israeli passport because he believes it was the only way he could travel to Israel. (Tr at 52-53, 72) Applicant has a valid U.S. passport. Under cross-examination, Applicant admitted that he could travel as a non-Israeli citizen to Israel. He would have to wait in the non-Israeli citizen line while arriving in the country. (Tr at 64)

In June 2007, Applicant and his family traveled to Israel on a two-week sightseeing tour. In October 2000, he traveled to Israel alone to visit family, staying for approximately 10 days. In the past, Applicant's employer sent him to Israel on business trips. His employer had a partnership with an Israeli defense company to develop a missile for the U.S. Air Force. Applicant traveled to Israel on company business from June 1996 to December 1996, from October 2001 to December 2001, and for one week in July 2003. (Tr at 44-47, 89; Gov 3)

Neither Applicant nor his wife and children receive benefits from Israel. He has no investments in Israel. He owns a home in the U.S. and all of his investments are located in the U.S. (Tr at 20, 72-73, 89; Gov 3; Gov 4)

At hearing, Applicant stated he is willing to renounce his Israeli citizenship and surrender his Israeli passport. Prior to the hearing, he inquired about the process at the Israeli consulate. They informed him that it would take approximately one year. Applicant believes that he cannot surrender his Israeli passport to the Israeli Consulate until after the renunciation of his Israeli citizenship is complete. Applicant had not

started proceedings to renounce his Israeli citizenship and/or surrender his Israeli passport prior to the hearing. He was willing to surrender his Israeli passport to the company Facility Security Officer (FSO) during the process of the revocation of his Israeli citizenship. (Tr at 18, 21, 58-68)

Applicant is concerned that he may need his Israeli passport to visit his mother should she become ill. If something should happen to his mother, he may ask the FSO to have his passport returned to him. He intended to surrender his passport to the FSO the following week. He claims the FSO told him that in other cases, applicants surrendered their foreign passports to him and the passport was physically destroyed. The FSO apparently stated that he could not destroy Applicant's Israeli passport because it is the property of the Israeli government. The FSO did not testify about the passport issue at hearing. The record was held open for two weeks, to allow Applicant to submit evidence that he gave his passport to the FSO and that he started the process to renounce his Israeli citizenship. Applicant did not submit additional evidence after the hearing. (Tr at 18, 21, 59-68)

Applicant's mother and two brothers are citizens of and reside in Israel. His mother is 85 and in poor health. She is a Holocaust survivor. She was a housewife. She owns her home and lives on payments from the Israeli government. She also receives reparation payments from the German government. His father died at age 55. (Tr at 74, 78-79; Gov 3) He telephones his mother every two to three weeks. (Tr at 85)

Applicant's older brother is 62. He is retired from an Israeli defense contractor. His employer is the same Israeli defense contractor that Applicant's company entered into a joint partnership several years ago. Applicant is not exactly sure what his brother's job title was but believes he was a technician in the defense procurement area working with suppliers and vendors. He occasionally does consulting work for his former employer. He talks to his brother every one to two weeks. (Tr at 81-85)

Applicant's twin brother is in poor health. He works as a carpenter. He is married and has a daughter. He talks to his twin brother every two to three weeks. (Tr at 80-81, 85) Because of his medical condition, Applicant's mother has designated his twin brother as the sole beneficiary of his mother's property when she passes away. (Tr at 73-74)

Applicant has other extended relatives who are citizens of and reside in Israel. Applicant does not believe any of his relatives have worked for the Israeli government, aside from the mandatory military service. (Tr at 86-87) Applicant also communicates with three Israeli citizens who he befriended when he worked on the joint venture with his employer and the Israeli defense contractor. (Tr at 87-88)

Applicant served in the Israeli military when he was younger. He was a radio communication expert and was discharged after three years at the rank of Sergeant. He no longer has contact with anyone who he served in the Israeli military. He has never worked for the Israeli government. (Tr at 50-51; Gov 4)

In December 2004, Applicant's work computer was searched in relation to another investigation involving an individual who was sending inappropriate chain e-mail to other company employees. A high quantity of the e-mail containing inappropriate chain e-mails, videos displaying female nudity, political humor, and jokes were discovered on Applicant's computer. The investigation revealed that Applicant violated several company policies involving the use of company assets, e-mail use and Internet and Intranet usage. On January 15, 2005, Applicant was suspended without pay for 30 days for the inappropriate use of his company computer. (Gov 3; Gov 5; AE E)

Applicant disputes the company's account of what transpired. During the period of time when this occurred, he was traveling daily to another company work location that was over 90 miles away. A retired employee sent him a lot of e-mails. Applicant would save the e-mails to read later but never got a chance to read and/or delete them because he was too busy. He never forwarded the inappropriate e-mails to other people. He learned a valuable lesson. He now reads his e-mail daily and deletes every e-mail that is sent to him by third parties that might be considered inappropriate. He tells his friends not to send him any non-work related e-mails to his company account. (Tr at 91-99; Gov 3) No subsequent incidents have occurred involving Applicant.

Five co-workers and/or supervisors testified on Applicant's behalf at the hearing. They all referred to him as a hard worker who provides for his family. They described him as "trustworthy," "honest," and "positive." (Tr at 99 – 134) Four additional co-workers also wrote reference letters on Applicant's behalf attesting to his favorable character and work ethic. (AE D) He has received several special recognition awards. (AE A; AE B) His performance reviews indicate that he is a valued employee. (AE C)

Policies

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

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 B, Foreign Influence

The security concern relating to the guideline 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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant’s case.

FI DC ¶ 7(c) (*contact with a family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies because Applicant's mother and two brothers are citizens of and reside in Israel.

FI DC ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason. Applicant's relationship with his family members in Israel create a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help his family members residing in Israel.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. While Applicant has a close relationship with his relatives who reside in Israel, the people he is closest to, his wife and four children, reside in the U.S. Applicant has lived in the U.S. for over 33 years. He became a U.S. citizen in 1982. He completed his college education in the U.S. He has worked for U.S. defense contractors for most of his career. He has held a SECRET security clearance since 1985 with no apparent security violations. The majority of his significant personal and professional associates are located in the U.S. He owns no property and has no investments in Israel.

Applicant's closest family ties, professional ties, and assets are located in the U.S. His deep and longstanding relationships in the U.S. support the premise that he can be expected to resolve any conflict of interest in favor of the U.S.

For these reasons, I conclude Applicant mitigated the concerns raised under Foreign Influence.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

When 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.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant renewed his Israeli passport after becoming a U.S. citizen. The record evidence indicates Applicant renewed his Israeli passport on June 19, 1996. This passport expired on June 18, 2001. He renewed his Israeli passport on March 12, 2007. The passport does not expire until March 11, 2017. It is not clear whether there were times that Applicant let his Israeli passport lapse after becoming a U.S. citizen or whether he renewed the passport on other occasions. He renewed his Israeli passport in order to travel to Israel. He believed that the only way he could travel to Israel was through the use of an Israeli passport because he is a dual citizen of the U.S. and Israel. Regardless, renewing a foreign passport after becoming a U.S. citizen is considered an exercise of foreign citizenship.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FP MC)potentially apply:

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*)

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*)

During the hearing, Applicant expressed his intent to renounce his Israeli citizenship and to surrender his Israeli passport. Prior to the hearing, he consulted with his FSO and the Israeli Consulate to inquire about the process of renouncing his Israeli citizenship and surrendering his passport. There was a lot of discussion during the hearing about Applicant's possession of a valid passport. Applicant's intention was to begin the process of renouncing his Israeli citizenship after the hearing. He would surrender his Israeli passport to his FSO until he was required to submit the passport to the Israeli Consulate upon completion of the renunciation process. The record was held open to allow Applicant the opportunity to submit proof that he followed through with his intended actions. Nothing was offered after the hearing. As such, FP MC ¶ 11(e) does not apply. At the close of the record, Applicant still possessed a valid foreign passport. This remains a security concern.

Guideline M, Use of Information Technology Systems

The trustworthiness concern relating to the guideline for Use of Information Technology Systems is set out in AG ¶ 39 which states, “Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.”

The following disqualifying conditions apply under Guideline M (M DC) in Applicant’s case:

M DC ¶ 40(e) (*unauthorized use of a government or other information technology system*)

M DC ¶ 40(f) (*introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations*)

While Applicant disputes some of his company’s conclusions pertaining to this incident, numerous inappropriate e-mail files were found on his company computer. The e-mails violated company policies which resulted in Applicant’s 30-day suspension.

However, the issues pertaining to Use of Information Technology Systems can be mitigated (M MC).

M MC ¶ 41(a) (*so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*) applies to Applicant’s case. More than three years have passed since this incident. Since that time, Applicant has not been involved in any similar incidents. I considered that the inappropriate e-mails were sent to Applicant from third parties. He did not forward the e-mails. Applicant now takes precautions to make sure all of the incoming e-mails he receives are within company guidelines. He immediately deletes the e-mails that appear to be inappropriate. He told his friends to no longer send personal e-mails to his work computer. It is unlikely Applicant will be involved in similar conduct in the future.

Applicant mitigated the Guideline M concern.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant’s ties to the U.S. as well his relationship with his mother and two brothers who are citizens of and reside in Israel. I considered the favorable comments from Applicant’s current and former co-workers. After evaluating all of the evidence in the context of the whole person, I conclude Applicant mitigated the concerns under foreign influence and use of information technology. Although Applicant expressed a willingness to renounce his Israeli citizenship and surrender his foreign passport during the hearing, he was given two weeks after the hearing to provide proof that he followed through with his intentions. He did not submit any proof. The evidence shows that Applicant still possessed a valid foreign passport. He has not mitigated the concerns raised under foreign preference. Clearance is denied.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge