DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-09510
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

December 15, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written record in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence. Her eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 5, 2008. On June 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence. 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 August 4, 2009, Applicant answered the SOR in writing and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) and provided the FORM to Applicant on September 9, 2009. The FORM contained documents identified as Items 1 through 7. In addition, the Government compiled facts about Israel from ten official U.S. government publications and requested that I take administrative notice of those facts. By letter dated September 9, 2009, DOHA forwarded a copy of the FORM, the factual summary containing information about Israel, and the source documents from which those facts were derived to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on September 15, 2009. Her response was due on October 15, 2009. She did not submit any information or raise any objections within the required time period. On December 7, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains four allegations that raise security concerns under Guideline C, Foreign Preference (SOR ¶¶ 1.a. through 1.d.) and five allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 2.a. through 2.e.). In her Answer to the SOR, Applicant admitted all Guideline C and Guideline B allegations. Her admissions are admitted herein as findings of fact.

Applicant is 37 years old, married, and the mother of a minor child. Since 2005, she has been employed as an assistant professor at a university in the United States. In November 2007, she also accepted a position as a consultant to a defense contractor. She seeks a security clearance for the first time. (Item 5 at 12-14, 19-20, 23.)

Applicant was born in the Soviet Union in 1972. In 1990, as a young adult, she was granted an emigration visa by the Soviet government, which permitted her to immigrate to Israel. Upon entry to Israel, she was eligible to receive Israeli citizenship under the Law of Return. She acquired an Israeli passport in 1994, which she used to travel to the United States in 1995. From 1996 to 2002, Applicant pursued graduate studies in the United States, and she was awarded a Ph.D. from a U.S. university in 2002. Between 2002 and 2005, she was a post-doctoral fellow in computer science and mathematics at higher education institutions in the United States. (Item 5 at 13-18; Item 6 at 3, 6.)

Applicant became a U.S. citizen in May 2002, and she acquired a U.S. passport in December 2003. She claims dual citizenship with Israel. In 2004, she renewed her Israeli passport, which is valid until May 2014. While possessing a valid U.S. passport, Applicant used her Israeli passport to travel to Israel in 2004 and 2007. She also used her Israeli passport to travel to Brazil in 2006. By using her Israeli passport in lieu of her U.S. passport on these occasions, Applicant exercised her Israeli citizenship after becoming a U.S. citizen in May 2002. (Item 5 at 8, 27, 29; Item 6 at 2, 6; Item 7 at 3, 7.)

In an interview with an authorized investigator from the Office of Personnel Management (OPM) in April 2008, Applicant expressed a willingness to renounce her Israeli citizenship if required to do so as a condition for access to classified information. However, in January 2009, in response to DOHA interrogatories, she answered "Yes" when asked if she intended to renew her Israeli passport, and she explained that she wanted to use her Israeli passport to travel to Israel to visit her family there. (Item 6 at 3; Item 7 at 3.)

Applicant and her husband were married in Israel in 1992. Applicant's husband was born in the United States and is a dual citizen of the United States and Israel. Applicant's eight-year-old daughter was born in the United States and is a dual citizen of the United States and Israel. Applicant's husband and daughter reside with her in the United States. Applicant's father-in-law is a dual citizen of Israel and the United States, and he resides in the United States. (Item 5 at 20, 23, 24.)

Applicant's father, mother, and sister are citizens and residents of Israel. Applicant's mother is a retired eldercare worker; her father is a retired bookbinder; and her sister is a nurse. Applicant's parents and sister are not affiliated with the Israeli government. Her relatives are aware of her position and have not requested that she reveal classified information to them. (Item 5 at 21-26; Item 6 at 3-4.)

Applicant communicates frequently with her parents and her sister. She talks with them on the telephone two or three times a month. (Item 6 at 3, 6.)

I take administrative notice of the following facts about Israel, as contained in official U.S. government documents provided by Department Counsel to Applicant in the FORM:

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 allegations of mistreatment of Palestinian detainees and discrimination against Israel's 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. In 1948, the United States was the first country to officially recognize Israel. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest trading partner. As of 2006, 38.4% of Israel's exports went to the United States while 12.4% of its imports came from the United States. In 2007, Israel imported $7.8 billion of goods from the United States and exported $18.9 billion to the United States.

Israel is a prominent recipient of U.S. aid. Since 1949, the United States has provided over $30 billion in economic assistance to Israel. Between 1976 and 2003, Israel was the largest recipient of U.S. foreign aid. In April 1988, the United States and Israel established a Joint Economic Development Group to develop the Israeli economy by exchanging views on economic policy planning, stabilization efforts, and structural reform. The United States 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.

Although the United States has often publicly committed to Israel's security and well-being, Israel and the United States do not have a mutual defense agreement. 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 United States 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 United States 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 United States 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. Israeli is permitted to use part of its foreign military assistance grant for procurement spending from Israeli defense companies.

Israeli and U.S. military and diplomatic goals are not always consistent. Although arms agreements between Israel and the United States limit the use of U.S. military equipment to defensive purposes, the United States has rebuked Israel for possible improper use of U.S.-supplied military equipment. The United States 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. In 2000, Israel was listed as one of the nations aggressively targeting U.S. economic intelligence. There are several cases of U.S. citizens convicted for selling, or attempting to sell, classified documents to Israeli Embassy officials. There have also been investigations of the illegal export, or attempted illegal export, of United States’ restricted, dual-use technology to Israel.

Improper release of sensitive and proprietary information potentially threatens U.S. national security in both military and economic terms. 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 may target commercial secrets of a civilian nature, or commercial secrets that have military applications, resulting in disclosure of sensitive technology that can be used to harm the United States and its allies, and/or disclosure of classified information.

Terrorist attacks are a continuing threat to Israel and to American interests in Israel. Terrorists in Israel, the West Bank and Gaza have injured or killed U.S. tourists, students, residents, and mission personnel. Due to the volatile security environment in Gaza and the West Bank, the United States continues to warn against any travel to those areas. In June 2007, Hamas, a State Department-designated foreign terrorist organization, assumed control over Gaza and, in 2008, conflict between Hamas and Israel resulted in the loss of hundreds of lives.

In 1996, Israel and the United States 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 United States. The United States 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 was active in attempting to negotiate agreements between Israel and the Palestinian authority. The Obama administration has promised to continue to work for peace in the Middle East.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain 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

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." Such an individual "may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

> (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;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(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.

Applicant acquired a U.S. passport and renewed her Israeli passport after becoming a U.S. citizen in 2002. She then used her Israeli passport to enter Israel in 2004 and 2007, and she used her Israeli passport to enter Brazil in 2006. In 2009, she stated that she intended to renew her Israeli passport in the future. Applicant's acquisition of an Israeli passport after becoming a U.S. citizen raises a concern that she actively exercises dual citizenship with Israel. Her use of her Israeli passport, instead of her U.S. passport, to enter Israel and Brazil also raises security concerns. Her expressed intent to renew and to use her Israeli passport in the future suggests a preference for a foreign country over the United States. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶ 10 (a)(1) and ¶ 10(b).

Under AG ¶ 11(a), dual citizenship might be mitigated if "it is based solely on [an applicant's] parents' citizenship or birth in a foreign country." Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she "has expressed a willingness to renounce dual citizenship." Under AG ¶ 11(c), an individual's "exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor." Under AG ¶ 11(d), an

individual's use of a foreign passport might be mitigated if it were "approved by the cognizant security authority." Under AG ¶ 11(e), an individual's use of a foreign passport might be mitigated if he or she presents credible evidence that "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Applicant acquired Israeli citizenship as a young adult when she emigrated from the Soviet Union to Israel. After acquiring U.S. citizenship in 2002, she renewed her Israeli passport in 2004. While she stated to an OPM investigator in 2008 that she would renounce her Israeli citizenship if required to do so for access to classified information, she also stated in 2009 that she intended to renew her Israeli passport when it expired in the future. Nothing in the record supports a conclusion that Applicant's use of her Israeli passport was approved by her cognizant security authority. Accordingly, I conclude that AG ¶¶ 11(a), 11(b), 11(c), 11(d), and 11(e) do not apply in mitigation in this case.

Guideline B, Foreign Influence

Under Guideline B, Foreign Influence, "[f]oreign 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." AG ¶ 6.

Additionally, adjudications under Guideline B "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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism." AG ¶ 6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts in this case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: "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." AG ¶ 7(b) reads: "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."

While the United States and Israel share common democratic values, religious and cultural affinities, and security interests, the United States has concerns about Israel's inadequate protection of U.S. intellectual property. Moreover, Israel is an active collector of proprietary information and has targeted major U.S. government organizations in order to acquire U.S. technology. Attempts have been made to illegally

export U.S. restricted, dual-use technology to Israel. American citizens with immediate family members who are citizens or residents of Israel could be vulnerable to coercion, exploitation, inducements, or pressure by those seeking to acquire proprietary or otherwise restricted U.S. technology.

Applicant's husband and child are dual citizens of Israel and the United States and reside in the United States with her. Applicant's mother, father, and sister are citizens and residents of Israel. Applicant's father-in-law is a dual citizen of Israel and the United States and resides in the United States. Additionally, Applicant has regular and frequent telephone contact with her parents and her sister in Israel.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant's relationships with her spouse, her daughter, her parents and sister, and her father-in-law are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. She resides in the United States with her husband and daughter, who are dual citizens of the United States and Israel. Her husband's father is also a dual citizen of the United States and Israel.

Applicant maintains an active Israeli passport so that she can travel to Israel to visit her parents and sister, who are citizens and residents of Israel. Her family members have some idea of the nature of her work as a federal contractor, and this could raise additional concerns that might also threaten U.S. security interests. Applicant failed to provide information to rebut or mitigate these security concerns. I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested she was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant, who is a university professor, is an intelligent and well-educated professional with a specialty in computers and mathematics. After becoming a U.S. citizen, she renewed her Israeli passport and used it to enter Israel and Brazil. She intends to keep and renew her Israeli passport and use it when she wishes. She is in frequent contact with her family members who are citizens and residents of Israel.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign preference and foreign influence adjudicative guidelines.

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. through 1.d.: Against Applicant

Paragraph 2, Guideline B: AGAINST APPLICANT

Subparagraphs 2.a. through 2.e.: Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Joan Caton Anthony
Administrative Judge