



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



In the matter of:)
)
) ISCR Case No. 08-05034
)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole L. Noel, Department Counsel
For Applicant: *Pro Se*

March 10, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant is a naturalized U.S. citizen who possesses and regularly uses her Israeli passport, and intends to retain it. Her contact with four siblings who are citizens and residents of Israel is neither casual nor infrequent. Three of these siblings work for the Israeli government. From 1982 through 2007, Applicant visited Israel every two or three years. Applicant has failed to rebut or mitigate the government’s security concerns under foreign preference and foreign influence. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance*

Statement of Reasons (SOR) on August 13, 2008, detailing security concerns under foreign preference and foreign influence.

On August 29, 2008, Applicant answered the SOR, and requested a hearing. On October 29, 2008, DOHA assigned the case. On November 6, 2009, DOHA issued a notice of hearing scheduling the hearing held on November 19, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through L, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional matters. On December 1, 2008, additional documents were received. There being no objection, the material was admitted into evidence as Ex. M. On November 26, 2008, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant admits the factual allegations of the SOR. Applicant is a 61-year-old senior principal software engineer who has worked for a defense contractor since July 1979, and is seeking to maintain a secret security clearance she has had for 24 years. (Tr. 13) She is a wife, mother, and grandmother. Since being hired in 1979, Applicant has never changed jobs, but has worked for six different companies. (Tr. 15)

Applicant's manager, co-workers, and acquaintances state Applicant is responsible, reliable, conscientious, competent, hard working, trustworthy, of high character, and one of the best software engineers. (Ex A, B, L) She is enthusiastic, diligent, and willing to put in extra hours to get the job done. (Ex C) She has received five awards for outstanding achievement and two certificates of excellent for her job performance. (Ex D-H) Between 1993 and 2006, her job performance has been rated as "Exceeds Performance Expectations" and "Continually Exceeds Expectations." (Ex I, J)

Applicant's mother was a British citizen and her father was a French citizen. Applicant was born in Libya. Neither her parents nor Applicant were ever Libyan citizens. (Tr. 32) Her parent moved to Israel and became Israeli citizens when Applicant was six months old. (Tr. 33) (Gov Ex 1) From 1967 to 1974, Applicant attended university in Israel. In 1974, she received a master's degree in physics. (Tr. 15) From 1970 to 1975, Applicant worked for the Meteorological Service in Israel and from 1975 through 1979, worked for an Israeli military industry.

In 1979, she immigrated to the U.S. because her husband wanted to return to the U.S. Applicant has been married to a native U.S. citizen since May 1976. Her husband is retired. (Tr. 45) Applicant's daughter born in 1977 in Israel is a dual Israeli – U.S.

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.

citizen. (Tr. 30) Her daughter is married to a lieutenant commander in the U.S. Navy and is currently living in Japan. (Tr. 35 – 36) In May 1984, Applicant became a naturalized U.S. citizen. (Gov Ex 1)

Applicant's parents are deceased. Her mother died in 2000. Applicant has five siblings and maintains contact with four of them. (Tr. 24) Her older brother, two younger brothers, and two younger sisters are citizens and residents of Israel. Her older brother, a scientist researching air pollution, was born in Libya, but moved to Israel at age two. He is an Israeli government employee and has been such for 30 to 35 years. (Tr. 28) Another brother is an artist and graphic designer, and the third brother is a computer engineer, who is an Israeli government employee and has been so for 25 years. (Tr. 28) This brother works for the defense ministry. (Tr. 34)

One sister works part-time as an office worker for the Israeli equivalent of the social security administration and is an Israeli government employee. (Tr. 28) This sister has been an Israeli government employee for 15 years. (Tr. 28) Her other sister is a bookkeeper who she has not had contact with since 2001.

Applicant contacts her brothers and one sister monthly by email every month or every other month and visits them in person every two years. (Tr. 37) She has no telephone contact with them. (Tr. 29)

In 1979, Applicant obtained an Israeli passport when she left Israel to allow her to enter and exit Israel. She renewed that passport in 1989 and 1999. (Tr. 26-27) The passport expires in November 2009. (Gov Ex 2) Applicant visited Israel in 2007, 2006, 2004, 2002, 2000 when she visited her mother's grave side service. Applicant tries to go to Israel every two years. (Tr. 25) She visited between one week and one month on each trip. She used her Israeli passport on these trips and only uses it to enter or leave Israel. All other travel is done on her U.S passport. (Tr. 42) Between 1984 and 1999, she visited Israel every two to three years. (Tr. 26) She came to the U.S. in 1979 and visited Israel in 1982, 1985, 1989, 1991, when her father died, 1994 and 1997.

Applicant is not willing to renounce her Israeli citizenship. (Tr. 30) In September 2007, during a personal subject interview, Applicant stated she would renounce her Israeli passport if needed for her employment and security clearance because her employment was most important. (Gov Ex 2) At the hearing, Applicant stated she would destroy or turn over her passport to her company security officer, if that was necessary. (Tr. 31) There is no evidence this was done.

Applicant owns a home in the U.S. with a fair market value of \$161,000. Applicant has \$456,000 in her company 401(k) retirement plan. Applicant maintains a bank account² in Israel that is in excess of \$10,000, which she inherited from her mother. (Tr. 29)

² The exact size of this account was not established in the record.

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. 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

Revised Adjudicative Guideline (AG) ¶ 9 articulates the security concerns relating to foreign preference problems:

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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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 and/or use of a 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 the 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.

In 1979, Applicant left Israel. Before she left, she obtained an Israeli passport, which she has renewed in 1989 and 1999. Her current Israeli passport, which she still possesses, does not expire until November 2009. Until 1984, when she became a U.S. citizen, it was appropriate for Applicant to maintain her Israeli passport. Between 1984 and 2007, she visited Israel every two to three years. She entered and exited Israel

using her Israel passport. Applicant asserts she can not use her U.S. passport to enter or exit Israel. Her only use of her Israeli passport is for travel to and from Israel. All other travel is done on her U.S. passport.

During a 2007 personal interview, Applicant said she would surrender her Israeli passport if she needed to do so in order to keep her job and clearance. At the hearing, Applicant stated she was unwilling to surrender her Israeli citizenship, but would surrender her Israeli passport if she had to in order to keep her clearance. However, the Israeli passport was never surrendered.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) 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 dual citizenship is not based solely on her parent's citizenship. ¶11(a) does not apply. Applicant is unwilling to renounce her dual citizenship. ¶11(b) does not apply. Her renewal and use of her Israeli passport occurred after becoming a U.S. citizen and as recently as 2007 when she visited Israel. ¶11(c) does not apply. Her use of the Israeli passport is not approved by a cognizant security authority. ¶11(d) does not apply. Applicant still maintains possession of the Israeli passport. ¶11(e) does not apply. There is no evidence of Applicant never having voted in a foreign election so ¶11(f) does not apply.

I find against Applicant as to foreign preference because Applicant renewed her foreign passport after becoming a U.S. citizen, used it to travel numerous times to Israel, and maintains an Israeli passport, and is reluctant to renounce her Israeli citizenship.

Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is substantiated. Applicant has five siblings who are citizens and residents of Israel. Applicant lives with her husband in the U.S. and her daughter is a dual U.S.—Israeli citizen.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are AG ¶ 7(a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” and AG ¶ 7(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” apply.

AG ¶ 8 provides conditions that could mitigate security concerns:

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

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligations 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.

None of the mitigating factors apply. In 1979, Applicant left Israel and in 1984, became a U.S. citizen and obtained a secret security clearance. She has been with the same employer since 1979 and her work performance has been outstanding. Between 1984 and 2007, she visited Israel every two to three years. She entered and exited Israel using her Israel passport, which she renewed it in 1989 and 1999 and which does not expire until November 2009.

Adjudicative Guideline (AG) ¶¶ 8(a) does not apply except as to her sister with whom Applicant no longer has contact. Applicant emails her other siblings every month or every other month and has personal contact every two years. In the future, she intends to continue visiting Israel every two or three years. Her contact with her siblings is neither casual nor infrequent. AG ¶¶ 8(a) and 8 (c) do not apply.

The positions of her siblings must also be considered. Three of her siblings currently worked for the Israeli government and have done so for 15, 25, and 30—35 years. Her sister works part-time as an office worker for the Israeli equivalent of the social security administration and has worked there for 15 years. Her one brother is a scientist researching air pollution who has been Israeli government employee for 30 to 35 years. Another brother works as a computer engineer for the defense ministry and been an Israeli employee for 25 years. These Israeli government employees provide concern.

Applicant has lived in the U.S. 29 years and lived in Israel 32 years. She owns a home in the U.S. worth \$161,000 and has a sizable 401(k) retirement account. She maintains a bank account in Israel, which contains an amount in excess of \$10,000. How much in excess of \$10,000 is unknown. Not knowing the value of the property in Israel, I am unable to find the value of her financial interest in Israel is as minimal as it is unlikely to result in a conflict or could influence Applicant. I find ¶¶ 8(f) and 8 (b) do not apply.

Contact with her siblings was not the result of U.S. Government business. ¶¶8(d) does not apply. There is no evidence as to whether Applicant has or has not promptly complied existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country. ¶¶ 8(e) does not apply.

Her close contact with four of her siblings, three of whom work for the Israeli government, with no applicable mitigating factors, I find against Applicant as to foreign influence.

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. The "whole person" analysis in a Guideline B and C case should include the totality of an applicant's conduct and circumstances.

As indicated in the statement of facts, there are countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh towards granting a clearance. Applicant has close ties to the United States. She has had the same job for 29 year and held a clearance 24 years. Her closest family member is her husband, a U.S. citizen, who lives with her. Her daughter, a dual U.S.—Israeli citizen is married to a U.S. Naval officer stationed in Japan.

Applicant was born in Libya and spent her formative years and early adulthood living in Israel. In 1974, she obtained her master's degree in physics in Israel. She worked for the Israeli Meteorological Service and for an Israeli military industry before coming to the U.S in 1979, at age 32.

She has five siblings in Israel, four whom she contacts regularly. She intends to visit Israel every two or three years. Three of Applicant's siblings work for the Israeli government. Her sister works part-time as an office worker for the Israeli equivalent of a social security and has worked there for 15 years. Her contact with her four siblings is neither casual nor infrequent. Additionally, she maintains an Israeli passport.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence.

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, Foreign Preference:	AGAINST APPLICANT
Subparagraph 1.a -1.d:	Against Applicant
Paragraph 2, Foreign Influence:	AGAINST APPLICANT
Subparagraph 2.a and 2.b:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge