



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
-----)	ISCR Case No. 08-06535
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 18, 2009

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 13, 2007 (Item 5). On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant (Item 1). The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on December 1, 2008, (Item 4), and he included additional documents. He also requested that his case be decided on the written record in lieu of a hearing.

On January 28, 2009, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on March 8, 2009. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on March 4, 2007.

In the FORM, Department Counsel offered six documentary exhibits (Items 1-6). No additional documents were offered by Applicant. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request in the FORM that I take administrative notice of certain facts relating to the country of Israel. The request and the attached documents were included as part of the FORM. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR (Item 4) Applicant admitted all of the SOR allegations under Guidelines C and B with explanations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 58 years old. He was born in the Ukraine in 1950, and he immigrated to Israel in 1969. In 1982 he immigrated to the United States as a permanent resident, and in 1995 he became a United States citizen. He is divorced and he has two children, both of whom reside in the United States. Applicant has no foreign property, business connections, or financial interest in a foreign country, and he has never been employed or acted as a consultant for a foreign government (Item 5).

Applicant works for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Israel and the United States. In his RSOR, Applicant stated that he was not born in Israel, but he became an Israeli citizen when he arrived as a political refugee from Poland.

He averred that as proof of his allegiance to the United States, he has submitted to the Israeli consul, a request to rescind his Israeli citizenship. Included with his RSOR

was a form titled Renouncing Citizenship together with copies of two required forms: Registration form for Israeli nationals abroad and Declaration of renunciation of Israeli nationality, the latter form was printed in Hebrew, but Applicant's completion was in English.

1.b. Applicant served in the Israeli army from 1973 to 1982. In his RSOR, he stated that "service in Israeli Army is obligatory."

1.c. It is alleged in the SOR that Applicant possesses a current Israel passport, which will not expire until October 2013. Applicant stated that he had requested the last renewal of his Israeli passport, which was for 10 years, so that he may enter Israel legally.

1.d. Applicant used his Israeli passport to enter Israel in years 2003, 2005, and 2006.

Applicant stated that when he had attempted to use his American passport to enter Israel, he received a warning and was told by the border police the he was in violation of Israeli law. He was further informed that, as long as he was an Israeli citizen, he would be arrested if he attempted to enter Israel with a U.S. Passport.

Applicant also explained that he traveled to Israel in 2006 to attend his mother's funeral and in 2005, it was upon the request of his sister, to visit his dying mother.

He stated that he used only his American passport for any other foreign travel.

After I had drafted this decision, but before it was issued, I received a letter from Applicant, in which he stated that he had returned his Israeli passport to the Government of Israel, and he was informed his Israeli citizenship had been revoked. He also submitted a document titled "Confirmation for the waiver of Israeli citizenship." These were forwarded to me by Department Counsel with no objections.

Paragraph 2 (Guideline B - Foreign Influence)

2.a. Applicant's son, who lives in the United States as a registered alien, is a citizen of Israel. In his RSOR, Applicant stated that his son, who is 29 years old, has lived continuously in the United States since he was three years of age, never served in the Israeli military and is married to a United States citizen.

2.b. Applicant's sister is a citizen and resident of Israel. Applicant testified that his father and mother were divorced when he was one year of age. Since that time he never lived with her, growing up instead with his father and grandmother.

Applicant added that he also has a daughter, who was born in the United States and continues to live here, and she owns a successful business and several real estate properties.

2.c. Applicant has a niece and nephew who are citizens and residents of Israel .

Current Status of Israel

I take administrative notice of the following facts regarding Israel. Israel is a parliamentary democracy whose prime minister heads the Government and exercises executive power. It has a technologically advanced economy, and the United States is the largest trading partner of Israel.

Despite the close friendship between the United States and Israel, based on common democratic values, religious affinities, and security interests, there have been some conflicts between the two countries. The United States is concerned with Israeli military sales to China, inadequate Israeli protection of United States intellectual property, and espionage-related cases.

The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage, released in 2006, lists Israel as one of the active collectors of proprietary information.

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

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, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s application and receipt of an Israeli passport, especially after he became a United States citizen, and his serving in the Israeli military, raises foreign preference concerns under Disqualifying Condition DC 10 (a), the exercise of the privilege of foreign citizenship.

However, Applicant has submitted documentation in which he is renouncing his Israeli citizenship to the proper Israeli authorities, and I have now learned that his Israeli citizenship has been revoked . Therefore, I find that Mitigating Condition (MC) (b), the individual has expressed a willingness to renounce dual citizenship, applies to this case. MC (e) should be considered for Applicant since his service in the Israeli army was performed long before he became a United States citizen. Finally, MC (e) could be argued to apply, since Applicant’s Israeli citizenship is revoked, and his Israeli passport is invalidated. After considering all of the evidence of record on Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying (DC). Those that could be applicable in this case include 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. Applicant's relatives, including his sister, niece and nephew, who are citizens and residents of Israel, make DC (a) a concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns (MC):

(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.

I find that MC 8. (b) is applicable to this Applicant and strongly controlling for the following reasons: Applicant, who is 58 years old, immigrated to the United States in 1982 and has lived here for almost 27 years. He has been a United States citizen since 1995. Both his son and daughter are U.S. residents, and his daughter is a United States citizen. He has now renounced his Israeli citizenship, which has rendered his Israeli passport invalidated. Finally, he owns no property nor does he have any financial interest in Israel. I therefore, conclude Guideline B for Applicant.

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 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. Based on all of the reasons cited above as to why MC (b) applies, I also find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a. -1.d.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a.-2.d.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge