DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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SSN: ----------	)	ISCR Case No. 08-07059
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is denied.

On January 3, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required in connection with his research work for a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories[1] to obtain clarification of and/or additional information about potentially disqualifying information in his background. After reviewing the results of the background investigation, including his responses to the interrogatories, DOHA adjudicators were unable to make a preliminary

[1] Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

affirmative finding[2] that it is clearly consistent with the national interest to allow Applicant access to classified information. On November 14, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the revised Adjudicative Guidelines[3] under Guideline B (foreign influence) and Guideline C (foreign preference).

On December 1, 2008, Applicant responded to the SOR, admitted without explanation all of the SOR allegations, and requested a hearing. On January 14, 2009, Department Counsel made a pre-hearing submission through which the government asked that administrative notice be taken of certain facts germane to the issues presented by the pleadings. The submission consisted of a five page memorandum to which 15 documents (I - XV) were attached.

The case was assigned to me on February 23, 2009, and I convened a hearing on March 31, 2009. DOHA received the transcript of hearing (Tr.) on April 10, 2009. The parties appeared as scheduled. The government presented three exhibits – Applicant's e-QIP (Gx. 1) and his responses to interrogatories (Gx. 2 and 3). They were admitted without objection. I also granted the government's pre-hearing administrative notice request. The entire administrative notice request is included in the record as Judicial Exhibit (Jx. 1); however, for reasons discussed at the hearing (Tr. 24 - 27), I have not considered the information contained in Jx. 1, Attachments XII - XIV.

Findings of Fact

Under Guideline C, the government alleged that Applicant exercises dual citizenship between the U.S. and Israel (SOR ¶ 1.a); that, as of August 2008, he possessed an active Israeli passport (SOR ¶ 1.b); that, despite the fact he is a native-born U.S. citizen, in 2005, he renewed his Israeli passport for 10 years (SOR ¶ 1.c); that he used his Israeli passport instead of his U.S. passport for travel to Israel (SOR ¶ 1.d); that he used his Israeli passport instead of his U.S. passport for travel to India in 2008 (SOR ¶ 1.e); that he voted in elections in Israel three times (SOR ¶ 1.f); that he served in the Israeli army in 1984 and 1985 as required of all Israeli citizens (SOR ¶ 1.g); and, as also alleged in SOR ¶ 2.h, that he and his wife have owned a condominium in Israel since 2000 (SOR ¶ 1.h).

Under Guideline B, the government alleged that Applicant's mother-in-law is a citizen of and resides in Israel (SOR ¶ 2.a); that Applicant traveled to Israel at least four times between 2000 and 2008 (SOR ¶ 2.b); that his travel to Israel from 2000 to 2007 was for scientific collaborations and to give lectures (SOR ¶ 2.c); that he was a professor at an Israeli institute from 1989 until 1991 (SOR ¶ 2.d); that he was an associate professor at an Israeli university in 1984 and 1985 (SOR ¶ 2.e); that he was a

[2] Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

[3] Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005,which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

lecturer at an Israeli institute from 1980 to 1982 (SOR ¶ 2.f) and from 1976 to 1978 (SOR ¶ 2.g); and that he and his wife jointly own a condominium in Israel (SOR ¶ 2.h). As noted above, Applicant admitted without explanation each of these allegations. I have also made the following findings of relevant fact

Applicant is 58 years old and is a tenured professor of electrical and computer engineering at a major U.S. university. In 1976, he received his doctorate in mathematics from a prestigious U.S. university and has taught in universities in the U.S. since 1986. (Gx. 1) Applicant also has an extensive record of research consulting work for companies working on defense-related projects. His request for a security clearance is for his mathematical analysis and research work for a company sub-contracted to a large defense contractor. (Tr. 29 - 33)

Applicant was born and raised in the United States. His mother, was born and raised in Palestine before the 1948 creation of the state of Israel. She and Applicant's father came to the United States in about 1950. In about 1972, they divorced and she returned to Israel, where she lived until she died. Applicant's father is also deceased. Applicant moved to Israel after finishing his graduate education in 1976. By virtue of his mother's Israeli citizenship, Applicant is also an Israeli citizen. He first received an Israeli passport for travel with his parents when he was about six years old. As an adult, he has held and maintained an Israeli passport for at least 30 years. His current Israeli passport is valid until 2015. Applicant has traveled often to Israel, most recently in March 2009. He traveled there at least five times in 2008. All of Applicant's travel to Israel and to other countries has been pursuant to his work as an academician and lecturer in mathematics and engineering, and has been paid for by the universities for whom he has worked. (Gx. 1; Gx. 2; Gx. 3; Tr. 57)

By Israeli law, Applicant must use an Israeli passport to enter and leave that country. (Jx. 1, Attachment II) For all other travel, and to leave and enter the United States, he uses his U.S. passport. On one occasion, when traveling from Israel to India for a personal matter, he needed a visa from the Indian consulate in Tel Aviv. He presented his U.S. passport, but Indian consular officials asked for his Israeli passport, in which they stamped their visa. (Gx. 2; Tr. 37) Applicant intends to retain his passport, both for reasons of emotional ties to Israel and to comply with Israeli law when entering or leaving that country. He is likewise unwilling to renounce his Israeli citizenship. (Gx. 2; Tr. 43)

Applicant and his wife were married in Israel in June 1977. They raised two children, now ages 32 and 27. Their children were born in Israel, but raised and educated in the United States. Their children have lived in Israel as post-graduate students, hold Israeli citizenship and Israeli passports, and, in the case of Applicant's son, served in the Israeli army as required of all Israeli citizens. (Gx. 1; Gx. 2; Gx. 3; Tr. 59 - 61)

Applicant's wife was born in Romania, but raised in Israel. She became a naturalized U.S. citizen in September 2007. Her 88-year-old mother, a retired chemist, still lives in Jerusalem. Applicant has incidental telephone contact with her every week, and his wife speaks to her daily. His wife travels to Israel three times each year to visit,

and his mother-in-law visits them in the U.S. for several weeks each year. She is applying for permanent resident alien status in the U.S.. Applicant has no contact with his wife's extended family overseas. Applicant also has extended family on his mother's side still in Israel, but he has no contact with any of them. Aside from compulsory military service, none of Applicant's own family or his wife's family has ever been employed by or is an official of the Israeli government. (Tr. 50 - 55)

Applicant voted in Israeli elections in 1992, 1999 and 2004. He did not travel to Israel so he could vote, but voted because he happened to be in Israel on those occasions. Applicant intends to vote in future Israeli elections if the opportunity again presents itself. (Tr. 43 - 45, 58)

In August 1984, Applicant returned to Israel with his wife and children, in part, because her father had suffered a heart attack. Applicant also took a teaching position at an Israeli university. However, when he entered the country, officials noted he had not fulfilled the military service required of all Israeli citizens. In October 1984, he was drafted into the army and served until being released from military service in February 1985. He then apparently resumed his teaching until August 1985. (Gx. 1; Gx. 2; Tr. 45 - 49)

In addition to his academic positions in the U.S., Applicant has taught and lectured for extended periods at universities and scientific institutes in Israel. From August 1976 through July 1978, and again from September 1980 until August 1982, Applicant was first a lecturer, then a senior lecturer in mathematics at a science research institute near Tel Aviv. From August 1984 until August 1985, as discussed above, he was an associate professor of mathematics at an Israeli university. In October 1989, he took a two-year leave of absence from his professorship in electrical and computer engineering at a large state university in the U.S. to teach electrical engineering at a technological institute in Israel. (Gx. 1)

Applicant and his wife jointly own a condominium in Jerusalem. She bought it in 2000 for her mother to use; however, Applicant believes one of her cousins is using it now. Applicant has never seen the property and believes the purchase price was about the equivalent of $200,000. All of the financing for the property was done in the United States through U.S. banks. All payments and related matters are handled solely in the U.S.. Applicant has no financial interests in Israel save for the vestiges of payroll and retirement accounts from his employment at the universities and institutions discussed above. (Gx. 1; Gx. 2; Tr. 34 - 35, 48 - 50)

Israel has an advanced, industrial market economy, and its government is characterized as a multi-party parliamentary democracy. (Jx. 1, Attachment III) Since its founding in 1948, Israel and the United States have had close political, economic, and military ties based, in large measure, on common democratic values and mutual security interests in the Middle East. Israel has an independent judiciary and the government's human rights record is generally free of reports of widespread abuse by government officials. What human rights concerns there are stem predominantly from reports of discrimination and arbitrary detention in the course of Israeli counter-terrorism efforts. Israel is also one of the most active countries engaged in military and industrial

espionage. Their efforts have been directed at hostile and friendly countries alike, including the United States. Overall, however, their interests are generally aligned with ours, especially where matters of regional security are concerned. (Jx. 1, Attachments I - III, VI, VII)

Applicant was, at all times during the investigation and adjudication process, candid and forthcoming about his ties to Israel and about all information relevant to his application for a security clearance. He avers that he is a loyal U.S. citizen who does not place the interests of Israel or any other country ahead of the United States. His parents immigrated to the United States with little in their possession and made a good life for their family. Applicant grew up in modest circumstances and is grateful for the opportunities he has been given, especially his education. (Tr. 39) While his career has generally been in the world of university academics, Applicant also has been directly involved in a number of defense industry research and development efforts, albeit on an unclassified basis. (Tr. 63 - 67) He insists he would not do anything to undermine the U.S. national interests because he is a loyal, trustworthy American and because he understands that Israel's existence and national security are dependent on the United States. (Tr. 37 - 40)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,[4] and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

> (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 6, Guideline B (Foreign Influence), and AG ¶ 9, Guideline C (Foreign Preference).

[4] Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest[5] for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.[6]

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.[7]

Analysis

Foreign Preference.

The government presented sufficient information to support the facts alleged in SOR ¶ 1. Those allegations, which Applicant admits, raise security concerns about whether Applicant may place the interests of another country ahead of those of the United States. Specifically, the security concern stated in AG ¶ 9 (*Guideline C: Foreign Preference*) is that, "[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." The facts established show that Applicant is a native-born U.S. citizen, who also has Israeli citizenship through his mother. By itself, such status is not disqualifying.[8] However, since 1976 Applicant has actively exercised his Israeli citizenship through his possession and use of an active Israeli passport, at times instead of his U.S. passport. Applicant also served in the Israeli military and voted in three Israeli elections. These facts require application of the disqualifying conditions listed under AG ¶ 10(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; and... (7) voting in a foreign election*).

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

[6] *See Egan,* 484 U.S. at 528, 531.

[7] *See Egan;* Revised Adjudicative Guidelines, ¶ 2(b).

[8] AG ¶ 11(a) provides for mitigation where an applicant's "dual citizenship is based solely on parents' citizenship or birth in a foreign country."

The government's information also established that Applicant and his wife jointly own real estate in Israel possibly valued at about $200,000. This fact may be a financial interest in Israel; however, for that fact to be disqualifying under Guideline C, it must also be shown that Applicant is using his foreign citizenship to protect that interest. (AG ¶ 10(a)(5)) Such is not the case here.

By contrast, the record does not support any of the mitigating factors under AG ¶ 11. Applicant derived his Israeli citizenship from his mother. However, he has actively exercised his foreign citizenship since at least 1976. Further, he has not expressed a willingness to renounce his foreign citizenship.[9] Because he was born a U.S. citizen, AG ¶ 11(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*) is not applicable. His possession and use of an active foreign passport, which Applicant will not surrender and which he intends to renew in 2015, has not been sanctioned by any cognizant security authority. Finally, there is no information that shows that the U.S. government encouraged Applicant to vote in Israeli elections on three occasions when he happened to be in the country on election day.

In response to the government's information, Applicant avers he has no preference for Israeli interests over the U.S. As to his use of an Israeli passport, he is unwilling to relinquish it because he is required to use it when he travels to Israel. His position is, in part, that Israeli law left him no choice in the matter of his passport or his military service. As to the latter, Applicant had lived in Israel for several years beginning in 1976, and it is reasonable to assume he knew or should have known what Israeli law required in this regard. Accordingly, I conclude he knowingly made himself available to this and all other requirements of Israeli law.

Applicant also acknowledged that he maintains his passport and, by inference, his Israeli citizenship for emotional reasons, as well. All of the information bearing on this issue shows that Applicant has willingly subjected himself to Israeli laws and other requirements of Israeli citizenship. Despite his sincere expressions of preference for U.S. interests, Applicant's actions in furtherance of his Israeli citizenship raise legitimate security concerns expressed through Guideline C about his ability to protect U.S. interests in preference to all others. The information Applicant presented in response to the government's case was not sufficient to mitigate these concerns.

Foreign Influence.

The government also presented sufficient information to support the factual allegations in SOR ¶ 2. Those allegations, which Applicant admits, raise security concerns about Applicant's personal relationships and other interests in Israel. Specifically, as stated in AG ¶ 6,

[9] While the government does not require renunciation of one's foreign citizenship, an expressed willingness to do so would inure to his benefit through application of AG ¶ 11(b).

> [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. 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.

At the outset, the government's information about Applicant's joint ownership of a condominium in Israel is not disqualifying. Apart from his admission that he has an interest in the property, it appears it is used by either his mother-in-law or a relative with whom he has no contact. The purchase financing was conducted in the U.S., and the government has presented nothing to show how, if at all, it constitutes "a *substantial* business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, *which could subject the individual to heightened risk of foreign influence or exploitation*." (AG ¶ 7(e); emphasis added)

As to his other foreign interests, although not alleged in the SOR, Applicant's wife, children, and mother-in-law are all Israeli citizens. His wife was only recently naturalized as a U.S. citizen, and their children are native-born Israeli citizens who derive U.S. citizenship from Applicant. His elderly mother-in-law resides in Israel full time, and his wife and children reside in the U.S.. However, like Applicant, they spend considerable time in Israel each year for professional and personal reasons. His wife has weekly, if not daily contact with her mother, who visits the U.S. for several weeks each year. Applicant's wife travels to Israel for extended visits annually as well. These facts require consideration of the disqualifying condition at 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*).

There is no question that Applicant has close ties to foreign citizens through his family. However, for AG ¶ 7(a) to apply, it must be determined whether their presence in Israel "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Israel is an open democratic society with a good human rights record and close ties to the U.S. based on generally similar political, military and cultural interests. However, in pursuit of its own interests, Israel is also known to aggressively engage in industrial and economic espionage targeted against, inter alia, the U.S. Thus, it must be acknowledged, especially in light of Applicant's previous work with U.S. defense projects, that such a heightened risk exists. AG ¶ 7(a) applies.

As to potential application of the Guideline B mitigating conditions at AG ¶ 8, despite Applicant's assertions to the contrary, his relationship with his mother-in-law is presumed to be close by virtue of his close relationship with his wife. Further, although not specifically alleged in the SOR, the fact that his wife and children, to whom he is even more closely bound, also are Israeli citizens and spend significant time in Israel

precludes application of the mitigating condition at AG ¶ 8(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.*). For the same reasons, AG ¶ 8(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*) does not apply.

Application of AG ¶ 8(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*) is likewise precluded because Applicant clearly has emotional ties to Israel and has divided his interests between Israel and the U.S. throughout most of his adult life.

Executive Order 10865, Section 7, specifically excludes the use of a determination about an applicant's loyalty (or disloyalty) to the U.S. as a basis for determining one's suitability for access to classified information. However, the language of AG ¶ 8(b) specifically requires a comparison of an applicant's "sense of loyalty or obligation" to foreign interests with his "relationships and loyalties in the U.S." Here, the Applicant was sincere when he expressed his loyalty and commitment to the United States as a native-born citizen, who is grateful for the opportunities he has received, and claimed that he would do nothing to undermine the national interest in the event of a potential conflict. As a native born U.S. citizen whose livelihood and assets are in the U.S., Applicant has longstanding loyalties and relationships here. However, his statements about his loyalty to the U.S. are also probative of the applicability of AG ¶ 8(b), because they are couched in his awareness that protection of U.S. interests is, among other things, necessary for the continued viability Israel. Thus, it is still unclear whether Applicant can be expected to resolve in favor of the U.S. any conflict of interests arising from his foreign ties and relationships.

The mitigating conditions at AG ¶¶ 8(d)(*the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority*) and 8(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*) are inapposite to the facts of this case. The applicability of AG ¶ 8(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*) is rendered moot by the lack of information that would establish Applicant's property interest in Israel bears any security significance under this guideline.

In summary, however, I conclude that Applicant's personal and professional contacts in Israel raise reasonable security concerns. The government's information also showed that Applicant travels to Israel several times each year for professional purposes, and that from 1976 until 1991, he lived and worked in Israel off and on for

seven years. As allegations of fact, his travel and work in Israel are not, under this guideline, disqualifying in and of themselves. They merely plead evidence of facts relevant and material to an informed decision about Applicant's suitability for access to classified information. Accordingly, I conclude, having considered all of the available information bearing on the issue of possible foreign preference, that Applicant has failed to mitigate this security concern.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is a mature, responsible, and highly accomplished 58-year-old academician who has an extensive history of valuable consulting work with defense contractors. Further, he has been a model of stability, as he and his wife, who holds a doctorate in chemical engineering, have been married for more than 30 years and have raised two children, who are professionally and academically accomplished in their own right. For much of his adult life his personal interests have been divided between Israel and the U.S. Certainly, there has been no misconduct here and there is nothing inappropriate or illegal about Applicant's dual citizenship status and his interests overseas. However, in the context of deciding whether to allow him access to classified information, the totality of Applicant's circumstances place on him the heavy burden of demonstrating that he would not be vulnerable to coercion by a foreign government or that he would be compromised by conflicting interests. Insofar as it is unlikely that Applicant's circumstances will change in the foreseeable future, a fair and commonsense assessment[10] of all available information shows Applicant has not overcome the doubts about his suitability under these circumstances. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.[11]

Formal Findings

Formal findings 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
Subparagraph 1.a - 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a - 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant

[10] *See* footnote 4, *supra*.

[11] *See* footnote 7, *supra*.

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge