DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-08477
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

April 2, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, a native-born U.S. citizen, failed to mitigate the foreign influence and foreign preference security concerns arising from becoming an Israeli citizen, his exercise of this dual citizenship, and his close relationship and contacts with family members who are citizens and residents of Israel. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 18, 2008. On October 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the government's security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence).[1] The SOR detailed reasons why DOHA could not make the

[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

preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR on October 30, 2008, and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2008. DOHA issued a notice of hearing on December 8, 2008, scheduling a hearing on January 6, 2009. The hearing was conducted as scheduled.

At the hearing, the government offered exhibits (GE) 1 through 4, which were admitted without objection (Tr. 18). GE 4 is a government motion for me to take administrative notice of facts regarding the government of Israel.[2] Applicant testified on his own behalf, and presented one exhibit (AE 1), which was admitted without objection (Tr. 21). DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

Findings of Fact

Applicant admitted the factual allegations in the SOR allegations with some corrections and explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 66-year-old business continuity planner working for a defense contractor since January 2007. He was born, raised, and educated in the United States to U.S.-born parents (GE 1, Tr. 52). He served in the U.S. Air Force from 1960 to 1962. In 1962, he received an early discharge "for the needs of the service" (Tr. 23). He refused to explain the reason behind his early discharge. His service was characterized as honorable.

He married his first wife in 1972, and they were divorced two years later. He has no children of this marriage (Tr. 27). In 1974, Applicant converted to Judaism (Tr. 71). In May 1975, he relocated to Israel to learn Hebrew and to be able to read religious source documents (Tr. 28-32, 53). He was 32 years old. From May 1975 to May 1979, Applicant lived, worked, and studied in Israel. He worked and studied at a Kibbutz, taught English at Israeli government schools, attended Israeli government sponsored courses, and worked for an Israeli company that makes electronic products for the Israeli military. He received a student stipend of approximately $5,000 from the Israeli government. He believes he is not entitled to an Israeli retirement pension because of the short period he worked in Israel. As an Israeli citizen, however, he is entitled to

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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.

[2] GE 4 was marked for identification and considered for administrative notice only.

Israeli government benefits, such as medical care, welfare, and economic benefits (Tr. 80, 85-86).

During the first three years, Applicant lived in Israel as a temporary resident. At the end of his third year, he was offered his Israeli citizenship and he accepted it. He did nothing to refuse it (Tr. 33). He believes that if he had asked for his Israeli citizenship he would have jeopardized his U.S. citizenship. He did not want to jeopardize his U.S. citizenship, and he took no affirmative action to ask for his Israeli citizenship. He also explained that while living in Israel, he did not vote, run for public office, or volunteer for the Israeli army. He paid his U.S. taxes while in Israel.

In 1976, Applicant met his wife in Israel and they were married in 1977 (Tr. 35). They have three children of this marriage. His first son was born in Israel and is a dual citizen of Israel and the United States (Tr. 36). Applicant returned to the United States in May 1979, because he was disappointed with Israeli politics, could not buy milk for his new born son, and the economic opportunities were better in the United States (AE 1). His second son was born in the United States. Applicant believes he renounced his Israeli citizenship, but does not know when or why. Applicant's 21-year-old daughter is a dual citizen of the United States and Israel. She moved to Israel in 2007, seeking admission at an Israeli university (Tr. 26-27). She works part time in restaurants and teaches English. Applicant's daughter is marrying an Israeli citizen in February 2009 (Tr. 25). According to Applicant, his future son-in-law is a 32-year-old teacher who is also a reservist in the Israeli Defense Forces. Applicant intends to travel to Israel for his daughter's wedding (Tr. 55).

Applicant travelled to Israel in 1986, to celebrate his son's bar mitzvah with his Israeli relatives (Tr. 43). In 2006, he travelled with his wife to visit with her mother and other immediate and extended family members who are residents and citizens of Israel (Tr. 44). Whenever they travel to Israel, Applicant and his family stay with his wife's relatives. Applicant's mother-in-law was born in Morocco. She immigrated to Israel in 1969 (Tr. 46). Applicant's wife talks to her mother every week. She talks to her two sisters, four brothers and other Israeli relatives approximately one or two times a month (Tr. 48). One of Applicant's sisters-in-law works for the Israeli Army as a civilian employee. Two of his brothers-in-law work for the Israeli government: one is a clerk in the city administration, and the other works for the agriculture department (Tr. 49).

He has less contact than his wife with her mother, siblings, and other relatives because of his language limitation (Tr. 48). All of his Israeli relatives are aware Applicant is being considered for a national security position (Tr. 57). His wife became a naturalized U.S. citizen in January 1987 (Tr. 40). Applicant and his wife intend to spend six months of the year in Israel, and six months in the United States after he retires (at age 70) (Tr. 80). For that reason alone, he intends to retain his Israeli citizenship (AE 1).

Applicant testified that he was never issued an Israeli passport (Tr. 50). He was issued an Israeli identification card and a one-year Israeli travel document to leave Israel in 1979 (Tr. 79). He still has a valid Israeli identification card (Tr. 50-51). He was

issued one-year Israeli travel documents to travel in and out of Israel in 1986 and 2006. He used them in preference to his American passport. Both documents expired. He intends to obtain another Israeli travel document to travel to Israel for his daughter's wedding in 2009.

Applicant expressed displeasure at the security clearance process. He found it insulting, and expressed the misconception that his loyalty to the United States was being questioned. He noted that at age 17 he volunteered to serve in the Air Force. He further stated: "seeing the Stars and Stripes after four years overseas brought tears to my eyes. Unlike most citizens, I know the value of this country and I am not about to jeopardize its security." (GE 3). Applicant also stated that he is "still loathe to surrender his Israeli citizenship" (GE 3).

I take administrative notice of the following facts. The government of Israel is a parliamentary democracy. The Israeli government generally respects the human rights of its citizens, but there are some issues with respect to treatment of Palestinian detainees, conditions in some detention and interrogation facilities, and discrimination against Israel's Arab citizens. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Israel has a diversified, technologically advanced economy and the United States is Israel's largest trading partner. Since 1976, Israel has been the largest recipient of U.S. foreign aid. The two countries also have very close security relations.

U.S. - Israeli bilateral relations are multidimensional and complex. Israel has given a high priority to gaining wide acceptance as a sovereign state and to ending hostilities with Arab forces. Israel and the United States participate in joint military planning and combined exercises, and have collaborated on military research and weapons development. Commitment to Israel's security and well being has been a cornerstone of U.S. policy in the Middle East since Israel's creation in 1948, and the two countries are bound closely by historic and cultural ties as well as mutual interests.

Notwithstanding, there are several issues of concern regarding U.S. relations with Israel. These include Israel's military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. There are several cases of U.S. citizens convicted of selling, attempting to sell, or providing classified documents to Israeli Embassy officials, as well as cases of Israeli nationals indicted for espionage.

Israel is one of the most active collectors of proprietary information. Israeli military officers have been implicated in this type of technology collection in the United States. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel.

The theft of sensitive and proprietary information threatens U.S. national security in both military and economic terms, and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies. 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 is not limited to targeting commercial secrets of a merely civilian nature, but rather can include the targeting of commercial secrets that have military applications, sensitive technology that can be used to harm the United States and its allies, and classified information.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.[3]

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 controlling 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 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."[4] 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

[3] *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

[4] *Egan, supra,* at 528, 531.

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

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."

Under AG ¶ 10(a)(1) Applicant may be disqualified for the "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: (3) accepting educational, medical, retirement, social welfare, or other such benefits." Under AG ¶ 10(b) Applicant may be disqualified for "action to acquire or obtain recognition of a foreign citizenship by an American citizen."

Applicant was born in the United States to U.S. born parents. In 1975, he travelled to Israel to study Hebrew under an Israeli government sponsored program, received an educational stipend from the Israeli government, and worked indirectly for the Israeli government. After three years in Israel, he became an Israeli citizen. As of the day of his hearing, he possessed an Israeli identification card. As an Israeli citizen, he is entitled to Israeli travel documents and to Israeli government benefits. After he retires, he and his wife intend to live 50% of the time in Israel and 50% in the United States. AG ¶¶ 10(a)(3) and 10(b) apply.

AG ¶ 11 provides six conditions that could mitigate the foreign preference security concerns:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the 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 security concerns arose, in part, out of his acquiring Israeli citizenship and his exercise of his dual citizenships with Israeli. In December 2008, Applicant stated he would loathe surrendering his Israeli citizenship. At his hearing, Applicant expressed similar feelings, along with his intent to live in Israel, at least 50% of the time. Applicant has travelled to Israel two or three times since 1979. In all his travels to Israel, he used his Israeli travel document. He intends to travel on an Israeli travel document in February 2009. As of his hearing day, Applicant enjoyed all the privileges and rights of Israeli citizens, including the possession of a valid Israeli identification card, and the ability to use Israeli travel documents.

Guideline B, Foreign Influence

Under Guideline B, the government's concern is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 ¶ 6.

AG ¶ 7 sets out three conditions that raise a security concern and may be disqualifying in this case:

(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;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[5] Applicant has frequent contacts and a close relationship of affection and/or obligation with daughter and his in-laws who are Israeli citizens residing in Israel. The closeness of the relationship is shown by Applicant's frequent telephone contacts with them, directly or through his wife, the fact that he is travelling back to Israel for his daughter's wedding, and the love, affection and/or obligation he expressed for his daughter and in-laws.

This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli agents may exploit the opportunity to obtain sensitive or classified U.S. information. Israel is one of the most active collectors of sensitive and proprietary information from the United States. Israeli military officers have been implicated in the collection in the United States of classified and proprietary technology. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel.

The government produced substantial evidence raising these three potentially disqualifying conditions (AG ¶¶ 7(a), (b), and (d)), and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

[5] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 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;

(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.

Considering the record as a whole, I conclude that none of the mitigating conditions fully apply. Appellant did not establish it is unlikely he will be placed in a position of having to choose between the interests of his daughter and his in-laws and the U.S. interests.

In light of Israel's aggressive posture in the collection of sensitive and proprietary information in the United States, Applicant's close relationship with his daughter and in-laws creates a risk of foreign inducement, manipulation, pressure or coercion by the Israeli government. His frequent contact and close relationship with his daughter and in-laws could potentially force him to choose between the United States and Israeli interests.

AG ¶ 8(b) partially applies because Applicant is a U.S. born citizen. He served in the Air Force two years, and except for the four years he lived in Israel, he has lived in the United States all his life. However, AG ¶ 8(b) does not mitigate the security concerns raised. When balancing Applicant's favorable information against his acquiring Israeli citizenship at age 32, his continuous exercise of Israeli dual citizenship, and his intent to live in Israel (albeit 50% of the year), there remains a potential conflict of interest.

Applicant's behavior shows preference for Israel. His close contact with his daughter and in-laws creates a risk of foreign exploitation because of the Israeli government's active collection of sensitive U.S. economic, industrial, and proprietary information. Available information sustains a conclusion that there is a risk that the Israeli government may attempt to exploit Applicant directly, or by exploiting Applicant's relatives. Applicant's situation creates a potential conflict of interest between Applicant's obligations to protect sensitive information and his desire/obligation to help himself, or his family were they under exploitation by a foreign interest.

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.

On balance, Applicant's favorable information is summarized as follows. Applicant is a loyal and proud American. He served in the U.S. Air Force two years, and except for the four year period he lived in Israel, he has lived in the United States all his life. Available evidence suggests he is a valuable employee of a government contractor providing important services for government agencies. There is no evidence Applicant has ever compromised or caused others to compromise classified information. There is no evidence he has ever taken any action which could cause potential harm to the United States, or that he lacks honesty and integrity.

On the other hand, there are circumstances that weigh against Applicant in the whole person analysis: Applicant received educational and economic benefits from the Israeli government, and became an Israeli citizen. As of the day of his hearing, he was exercising several of the rights and privileges of an Israeli citizen, including possessing an Israeli identification card and access to Israeli travel documents. He also is entitled, among other benefits, to educational, medical, social welfare, and economic benefits from the Israeli government. After he retires, he and his wife intend to live 50% of the

time in Israel and the other half of the year in the United States. Applicant stated he would "loathe" surrendering his Israeli citizenship.

Considering the record as a whole, Applicant's behavior and close relationship with his relatives in Israel raise a doubt about his preference for Israel over the United States and create a risk of foreign pressure or attempted exploitation. "Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant failed to mitigate the foreign preference and foreign influence security concerns arising from his becoming an Israeli citizen, exercising his Israeli citizenship, and his relationship and contacts with Israeli citizens and residents.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraphs 2.a, 2.e, and 2.f:	Against Applicant
Subparagraphs 2.b-2.d:	For 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's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge