DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-08718
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

December 7, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of the United States and Israel who possesses valid passports from both countries. For about 31 of the past 33 years, he has held a security clearance without adverse incident. He is not likely to succumb to foreign influence that may arise because of his close ties to his sister and her family in Israel. But foreign preference concerns are not fully mitigated because he has taken no steps to relinquish his foreign passport. He did not disclose on his security clearance application that he held a valid foreign passport, but personal conduct concerns are not established since his error was inadvertent. Clearance is denied.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 15, 2008. On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Guideline B, and Guideline E that provided the

basis for its preliminary decision to revoke his security clearance and to refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant answered the SOR on March 26, 2009, and requested a hearing before an administrative judge. The case was assigned to me on June 26, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 4, 2008, I scheduled a hearing for August 18, 2009. Applicant had been consulted about his availability and was willing to waive the Directive's 15-day notice requirement.

At the hearing, three government exhibits (Ex. 1-3) and four Applicant exhibits (Ex. A-D) were admitted in evidence. Applicant testified, as reflected in a transcript (Tr.) received on August 27, 2009. I also agreed to take administrative notice of certain facts pertinent to Israel and its foreign relations, including with the U.S., *infra*.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On June 25, 2009, the government requested administrative notice be taken of certain facts relating to Israel and its foreign relations, including with the United States. The request was based on publications from the U.S. State Department, the Congressional Research Service, the National Counterintelligence Center, the Office of the National Counterintelligence Executive, the Interagency OPSEC Support Staff, and the U.S. Department of Commerce's Bureau of Industry and Security. The government's formal request and the attached documents were not admitted into evidence but were included in the record. Applicant was given an opportunity to respond at his hearing, and he did not object to my taking administrative notice. Those facts accepted for administrative notice are set forth in the Findings of Fact, *infra*.

Findings of Fact

In the SOR, DOHA alleged under Guideline C, foreign preference, that Applicant exercised dual citizenship with Israel and the United States (SOR 1.a); that he applied for, and was issued on September 18, 2006, an Israeli passport despite his U.S. naturalization in 1978 (SOR 1.d); that he possessed a valid Israeli passport as of October 27, 2008 (SOR 1.b); and that he had used it in lieu of his U.S. passport when exiting Israel in September 2006 (SOR 1.c). DOHA alleged under Guideline B, foreign influence, that Applicant's sister is a dual citizen of the United States and Israel who resides in Israel (SOR 2.a), and that Applicant travels to Israel about once every three years (SOR 2.b). Under Guideline E, personal conduct, Applicant was alleged to have

deliberately falsified his February 2008 e-QIP by denying that he held an active foreign passport in the last 7 years (SOR 3.a).[1]

Applicant responded, "I admit" to each allegation in the SOR. However, concerning the alleged falsification of his e-QIP, he explained that he was ill and in a rush to finish the e-QIP. Consequently, he "put in an 'x' in the wrong box," and failed to detect the error. He added that he immediately presented his foreign passport during his subject interview with a government investigator. After considering the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 68-year-old endowed professor in engineering at a U.S. public university, and he has held this position since September 1976. Excepting a two-year period in the 1980s when his clearance was administratively withdrawn because he had no need for access to classified information, Applicant has held a security clearance since October 1976 (Ex. 1, Tr. 33). His clearance is required for defense-related research and for his participation on expert panels for the U.S. government (Exs. A, B, C, D, Tr. 33-34, 38), and is being sponsored by an academic research institute (Tr. 35).

Applicant was born in Romania in 1941 to a Czech mother and Hungarian father. He was raised in Romania with his sister, who was born in 1945 (Ex. 1). In 1960, the family immigrated to Israel (Exs. 1, 3, Tr. 36, 42). Both Applicant and his sister acquired Israeli citizenship. At the time, they renounced their Romanian citizenship as required by Israeli law (Ex. 3). There is no indication that their parents became Israeli citizens.

Applicant studied electrical engineering in Israel, and he served as a noncommissioned officer in the Israeli Army from November 1963 to May 1966 (Ex. 1, Tr. 36). In October 1966, he married his first wife, who had emigrated from Romania to Israel. In 1967, they came to the United States for Applicant to pursue his graduate studies, and he earned his doctorate degree in February 1970 (Ex. 1, Tr. 36-37). Their two children, who are now in their thirties, were born in the United States (Ex. 1). He and his first wife divorced in 1983, and in May 1984, Applicant married a native of Russia who had been a naturalized U.S. citizen for almost ten years (Ex. 1). Applicant has a son, who was born in Romania in 1990, but is a U.S. citizen (Ex. 1).

In April 1970, Applicant began employment as a senior engineer for a defense contractor in the United States (Ex. 1). In August 1976, Applicant left the job for an academic position at the university where he is now a distinguished professor in the electrical and computer engineering department (Ex. 1, Answer). In October 1976, Applicant was granted a secret-level security clearance. Since the summer of 1977, he has received a series of research grants and contracts from the U.S. military (Tr. 38).

In January 1978, Applicant became a naturalized U.S. citizen (Ex. 1). A dual citizen of Israel and the United States since January 1978 (Ex. 1), Applicant held U.S.

[1]DOHA alleged that Applicant falsified an e-QIP dated February 12, 2008. While the form bears a certification date of February 12, 2008, Applicant did not sign the form until February 15, 2008.

and Israeli passports (Tr. 39). He used his Israeli passport on trips to Israel (Tr. 39). Both passports were stolen while he was in France in 1985. He renewed only his U.S. passport (Tr. 31, 39). Applicant subsequently traveled to Israel five or six times solely on his U.S. passport without incident until mid-September 2006. On that trip, which was to lecture at two Israeli universities (Tr. 54), Israeli border officials checked computer records, which revealed that Applicant had been issued an Israeli passport in the early 1980s. Applicant was allowed to enter Israel on his U.S. passport, which had been renewed in July 2005 for another ten years (Exs. 1, 2, Tr. 40), but he was told that he would need an Israeli passport to exit the country (Tr. 31-32). Three days later, Applicant was issued an Israeli passport valid for ten years. He presented the Israeli passport on his exit from Israel later that same day (Ex. 2, Tr. 50). Applicant did not use his Israeli passport on foreign travel outside of trips to Israel, including to Europe in the summer of 2008 (Ex. 2, Tr. 32).

To update his security clearance, Applicant completed an e-QIP on February 15, 2008. He disclosed his dual citizenship with Israel and the United States, but he checked off "No" to question 17.d concerning whether he had an active passport issued by a foreign government in the last 7 years (Ex. 1). In the process of filing out the form on the computer, Applicant inadvertently marked the wrong box. He did not realize his error at the time (Tr. 30-31). Applicant indicated on the e-QIP that his spouse was a dual citizen of Russia and the United States, but that his children were all U.S. citizens. Applicant also disclosed his sister's Israeli residency and citizenship. He listed no pleasure travel in the past seven years, but reported business trips to several countries, including Israel, between July 2000 and July 2007 (Ex. 1).

On May 5, 2008, Applicant was interviewed about his dual citizenship by an authorized investigator for the Office of Personnel Management. The interview was conducted in Applicant's office at the university (Ex. 3, Tr. 31). Applicant indicated that he acquired Israeli citizenship when he emigrated from Romania to Israel with his family on an unrecalled date (Ex. 3). Applicant responded affirmatively when asked whether he possessed a foreign passport, and he handed his Israeli passport to the investigator for perusal (Tr. 30).[2] Applicant explained that when he traveled to Israel in September 2006, the Israeli government required him to obtain an Israeli passport to leave the country. He denied any subsequent use of the foreign passport, but admitted that the passport had not been invalidated. Applicant denied any allegiance to Israel and expressed his willingness to renounce his Israeli citizenship and relinquish his Israeli passport if necessary for his clearance. He explained that he had not wanted to go through the lengthy and complicated process required to renounce his Israeli citizenship (Ex. 3, Tr. 32). He asserted that he would not have acquired an Israeli passport if he had not been forced to do so by the Israeli government. Concerning foreign contacts, Applicant revealed that he had ongoing contact with his sister and her husband once to twice yearly in-person when they visit him in the United States or when he travels to Israel, and monthly by telephone or email. His sister was employed as a neuro-

[2]Applicant testified that he just happened to have both his U.S. and Israeli passports in a drawer in his office (Tr. 31).

psychologist in Israel. Applicant's brother-in-law worked for a U.S. company and he traveled on business monthly to the United States (Ex. 3). The interviewer declined to make any recommendation to Applicant concerning the surrender of his foreign passport, and Applicant took no action following the interview to renounce his foreign citizenship or relinquish his foreign passport (Tr. 32). Because he had an Israeli passport when he was initially granted his security clearance in 1976, he assumed there was no problem with retaining a foreign passport and he was not expressly told otherwise (Tr. 58).

In response to DOHA interrogatories, Applicant provided a copy of his current U.S. and Israeli passports on October 27, 2008. His Israeli passport bore only one border control stamp, which showed his departure from Israel on September 18, 2006 (Ex. 2). In December 2008, Applicant went to Israel for his niece's wedding. At the invitation of faculty, he again lectured at the same two Israeli universities as he had in 2006, although this time to different departments (Tr. 55). Applicant entered Israel through passport control for Israeli citizens, but he presented both his U.S. and Israeli passports (Tr. 40, 51). Israeli officials were interested only in his Israeli passport (Tr. 51). When he departed Israel, Applicant presented just his Israeli passport (Tr. 40, 52).

On receipt of the SOR on March 24, 2009, Applicant was on notice that his exercise of dual citizenship and his possession of a valid Israeli passport were of concern to the Department of Defense. As of his hearing on August 18, 2009, Applicant was a dual citizen of Israel and the United States and possessed valid passports from both countries (Tr. 32), although he reiterated his willingness to relinquish his Israeli passport and citizenship if required by the U.S. government to retain his security clearance (Tr. 40).

Applicant understands that on revocation of his Israeli citizenship, he would be issued documents by the Israeli government that would permit him to enter and exit Israel on his U.S. passport (Tr. 41). Based on his experience in September 2006, Applicant believes that he could surrender his Israeli passport without relinquishing his Israeli citizenship, but he would not be allowed to leave Israel as an Israeli citizen on his U.S. passport (Tr. 52-53). Applicant made no effort to confirm the accuracy of this belief (Tr. 53). Applicant wants to be able to travel to Israel for family events in the future, such as the wedding of his other niece (Tr. 41). He has not tried to obtain official approval from the U.S. government for his retention of his Israeli passport (Tr. 57) because he was unaware that he should or could obtain such approval (Tr. 57-58).

Applicant's sister works as a neuro-psychologist treating brain-damaged patients at a hospital in Israel. She studied for her master's degree in the United States from 1977 or 1978 to about 1983, when she returned to Israel to care for Applicant's and her mother. Following their mother's death in 1990, Applicant's sister returned to the United States with her spouse for his job with a U.S. company. Around 1995, his sister and her immediate family moved back to Israel. As of August 2009, Applicant's brother-in-law, who is a computer scientist, was working in Israel for the same U.S. employer (Tr. 43-44). Applicant's sister and brother-in-law have two daughters. The older daughter, who

was married in December 2008, is a software engineer currently working in Europe. The younger daughter is a post-doctorate fellow in biochemistry at a university in Israel (Tr. 45). Applicant has a 95-year-old aunt who is a resident citizen of Israel (Tr. 46). Applicant visited with his sister and his aunt on his trips to Israel (Ex. 3). As of August 2009, Applicant had telephone contact with his sister every few months (Tr. 49). Twice yearly at most, Applicant also has contact with Israeli academics at various international conferences and through several professional societies in his field of expertise (Tr. 59). Applicant's lectures in Israel involved open source published material. Applicant is required to clear any publications and planned lectures with the U.S. government if the material is defense-related and not completely open source (Tr. 55). No evidence was presented to show that he had failed to comply in any aspects with that requirement.

Renewal of Applicant's security clearance is strongly endorsed by an academic colleague at the university (Ex. A), and by a principal research engineer affiliated with the research institute that is sponsoring Applicant's clearance (Ex. B). Both colleagues are familiar with Applicant's personal character and technical expertise from more than 20 years of respective relations. As one of the top, if not the top, researchers in the world in a field that is vital to U.S. defense interests, Applicant brings considerable knowledge and talent to maintaining and strengthening the national defense. These professional colleagues attest to Applicant possessing "a strong brand of patriotism" (Ex. A) and "unwavering allegiance to the United States" (Ex. B).

After reviewing the U.S. government publications concerning Israel and its foreign relations, including with the United States, I take administrative notice of the following facts:

Israel is a parliamentary democracy of about 7.1 million people. Israel generally respects the human rights of its citizens, although there have been some issues respecting treatment of Palestinian detainees and discrimination against Arab citizens. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. The United States was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence in 1948. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest trading partner. As of 2007, 35% of Israel's exports went to the United States, while 13.9% of its imports came from the United States. Israel is a prominent recipient of U.S. aid. Since 1949, the United States has provided more than $30 billion in economic assistance to Israel. Between 1976 and 2003, Israel was the largest recipient of U.S. foreign aid. The United States has also provided Israel with $9 billion in loan guarantees since 2003, which enable Israel to borrow money from commercial lenders at a lower rate. The United States and Israel established in April

1988 a Joint Economic Development Group to develop the Israeli economy by exchanging views of Israel economic policy planning, stabilization efforts, and structural reform.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being. The United States is the principal international proponent of the Arab-Israeli peace process, and has been actively involved in negotiating an end to the Israeli-Palestinian conflict. In 1989, Israel was one of the first countries designated a Major Non-NATO ally. As such, Israel receives preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. Israel and the United States are partners in the "Star Wars" missile defense project, and have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the United States have established joint groups to further military cooperation. The two countries participate in joint military exercises and collaborate on military research and weapons development. The United States has pledged to ensure that Israel maintains a "qualitative military edge" over its neighbors, and has been a major source of Israeli military funding. The Omnibus Appropriations Act of March 11, 2009, provided $2.38 billion in foreign military financing for Israel. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use one-quarter of its foreign military assistance grant for procurement spending from Israeli defense companies.

Arms agreements between Israel and the United States limit the use of U.S. military equipment to defensive purposes. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The United States is concerned about Israeli settlements; Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. U.S. government employees and U.S. government contractors have been implicated in providing classified and sensitive information to Israel. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 to

be considered 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 overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in 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 that 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

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 United States. AG ¶ 9. Applicant immigrated to Israel with his family in 1960, and he became an Israeli citizen. As required by Israeli law, he fulfilled his military duty by serving as a noncommissioned officer in the Israeli Army from November 1963 to May 1966. His military service for Israel does not implicate AG ¶ 10(a)(2), "military service or willingness to bear arms for a foreign

country," because he was not yet a U.S. citizen.[3] Possible concerns of foreign preference raised by his past foreign military service are mitigated under 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." Similarly, Applicant accepted educational benefits from Israel in his youth. *See* AG ¶ 10(a)(3) (stating, "accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country"). AG ¶ 10(a)(3) again does not apply in the absence of any evidence that he has accepted any social benefits or entitlements from Israel after his U.S. naturalization in January 1978.

However, Applicant exercised a privilege of his foreign citizenship after becoming a U.S. citizen when he obtained an Israeli passport while in Israel in September 2006, and then used that foreign passport later that day to exit Israel, and to enter and exit Israel on a subsequent trip in December 2008. Applicant acquired the foreign passport only after he had been told that he would not be allowed to exit Israel without one, but the possession and/or use of a current foreign passport raises security concerns of foreign preference, irrespective of whether it is necessitated by foreign law or discretionary. AG ¶ 10(a)(1), "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," clearly applies.

Concerning the potentially mitigating conditions, AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country," does not squarely apply. He immigrated to Israel with his parents and sister when he was 18 or 19, and he and his sister became Israeli citizens. Available information does not show that his mother, who was a Czech citizen, or his father, who was a Hungarian citizen, acquired Israeli citizenship.

AG ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," must be considered because Applicant told a government investigator in May 2008, and reiterated at his hearing in August 2009, that he was willing to renounce his Israeli citizenship and relinquish his foreign passport if necessary for his clearance. A willingness to renounce foreign citizenship is entitled to less weight if it is in any way conditional or unaccompanied by steps taken to achieve that end. Applicant explained in May 2008 that he had not yet renounced his Israeli citizenship because he did not want to go through the long and complicated process required. The investigator declined to advise Applicant about what he should do. Since Applicant had been granted access to classified information before his U.S. naturalization, and he retained his access for 31 of the last 33 years, he could reasonably assume that his Israeli citizenship was not an issue. Likewise, Applicant had held an Israeli passport until about 1985, and no one informed him that there was a problem with his possession of a foreign passport.

[3] AG ¶ 10(a) applies when the exercise of any right, privilege, or obligation of foreign citizenship occurs after one becomes a U.S. citizen or through the foreign citizenship of a family member.

But on receipt of the SOR in March 2009, Applicant was on notice that his active exercise of dual citizenship by obtaining and using an Israeli passport in September 2006 raised concerns of foreign preference. As of August 2009, Applicant had not surrendered or otherwise invalidated his Israeli passport. Nor had he started the process of citizenship renunciation, despite learning that he would be permitted to travel to Israel on his U.S. passport if he renounced his Israeli citizenship. While Applicant is not required to renounce his Israeli citizenship for access, the U.S. government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the foreign country. During his trip to Israel in December 2008, Applicant entered the country in the line reserved for citizens of Israel. Clearly, he could have entered through passport control for foreign visitors, although he presented both his U.S. and Israeli passports. Since the Israeli officials wanted only his Israeli passport, Applicant did not bother to present both passports when he exited the country. His use of the foreign passport was not intended as an act of preference for Israel, but rather to comply with Israeli legal requirements over which he had no control.

Nonetheless, Applicant has not fully mitigated the foreign preference concerns raised by his acquisition and use of the foreign passport. Applicant made no effort to seek approval for his use of the foreign passport before he traveled to Israel in December 2008, apparently because he did not realize that he could do so. Although his acquisition and use of the foreign passport was motivated by necessity, absent prior approval by the cognizant security authority, AG ¶ 11(d), "use of a foreign passport is approved by the cognizant security authority," does not apply. AG ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," also does not apply in mitigation, since Applicant possesses an Israeli passport that is not scheduled to expire until 2016. Applicant is likely to travel to Israel in the future, for family events, or to lecture at Israeli universities, or both. As long as he possesses a valid Israeli passport, future use of that passport cannot be ruled out, given his demonstrated compliance with Israeli requirements as recently as December 2008.

Guideline B—Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6, as follows:

> 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.

Applicant's sister is a dual citizen of Israel and the United States who resides in Israel. Applicant visits her when he is in Israel about once every three years, most recently in September 2006, and again in December 2008 for her daughter's wedding. He also has telephone contact with her every few months. These close family ties are understandable, but at the same time, they raise a heightened risk of undue foreign influence. 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," applies.

Moreover, AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country," is implicated. Applicant may have had no choice but to obtain an Israeli passport if he wanted to exit Israel in September 2006. However, by accepting invitations to lecture at Israeli universities during his trips ("I also gave lectures in 2008. Whenever I go someplace, usually they invite me to give some lectures." Tr. 54), Applicant heightens his visibility within academia and increases the risk of undue foreign influence through these professional contacts.

Applicant's closest relations (spouse and children) enjoy the protections of U.S. citizenship and residency. Yet, it is difficult to fully satisfy mitigating condition 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." Israel and the United States have a close friendship. The United States is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in the region. Israel receives preferential treatment in bidding for U.S. defense contracts and substantial economic aid from the United States. Yet the interests of even the closest of allies are not always completely aligned.

The United States is concerned about Israeli settlements, Israel's military sales to China, Israel's inadequate protection of U.S. intellectual property, and espionage-related cases implicating Israeli officials and U.S. government employees or U.S. government contractors. Israeli military officials have been implicated in economic espionage activity in the United States. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000. Nothing about Applicant's sister's work as a neuro-psychologist at a hospital or her spouse's work as a software engineer for a U.S. company in Israel heightens the risk of undue foreign influence, but I cannot apply either AG ¶ 8(a) or AG ¶ 8(c), "contact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," to this family relationship. Furthermore, Applicant has not indicated that he intends to decline any future invitations to lecture in Israel. While there is no evidence that he has failed to clear publications or lecture material with appropriate U.S. authorities when necessary, ongoing contacts with Israeli academics is likely.

As for the potential applicability 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," Applicant's loyalty or obligation to his sister and her family in Israel cannot be reasonably characterized as minimal. Applicant testified that he would not surrender his foreign passport if it meant he would not be allowed to go to Israel for family events ("I have another niece who might get married. There will be a wedding. I don't think it would be appropriate for me to say–No, I cannot come." Tr. 41). On the other hand, Applicant has deep and longstanding relationships in the United States, most notably his immediate family members, his academic position and professional standing in his chosen field of expertise, his U.S. citizenship since 1978, and his continuous residency in the United States for more than 40 years. Other than the acquisition and use of his Israeli passport, Applicant has not actively exercised his Israeli citizenship. Considering the many years over which he has held a security clearance without adverse incident, Applicant can be expected to fulfill his security obligations to the United States in the event of any undue foreign pressure or influence.

Guideline E—Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is the failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

On his February 2008 e-QIP, Applicant disclosed his dual citizenship with Israel and the United States. Yet, he checked off "No" to question 17.d concerning whether he had an active foreign passport issued in the last seven years. Applicant submits that he inadvertently erred, and did not realize his mistake until it was brought to his attention. Certainly, given Applicant's academic stature and previous experience with a clearance, he can reasonably be expected to understand the importance of accuracy and full disclosure, and he failed to exercise due care in filling out the form. But mistakes can also be overlooked, especially when the document is prepared electronically. Applicant disclosed his Israeli citizenship, his travel to Israel for business, and his past military service in the Israeli Army. The evidence falls short of proving that he deliberately concealed his possession of a valid Israeli passport. AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," does not apply when omissions are inadvertent.

Furthermore, before he realized his error, Applicant presented his Israeli passport to the investigator in May 2008 in response to whether he had a foreign passport. Any personal conduct concerns raised by this inaccuracy on his e-QIP would be mitigated under AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of the applicant's conduct and all the circumstances in light of 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.

Applicant maintains that his sole allegiance is to the United States, where he has chosen to make his home and career for the past 40 years. The salient issue in the security clearance determination is not in terms of loyalty or allegiance, but rather what is clearly consistent with the national interest. *See* Executive Order 10865, Section 7. For the reasons addressed above, Applicant has mitigated the foreign influence concerns, and his carelessness in completing the e-QIP does not raise sufficient personal conduct concerns to justify denying him continued access to classified information. Concerning his acts of foreign preference, Applicant's failure to comply with AG ¶ 11(d) concerning the surrender or invalidation of his foreign passport does not bar him from a security clearance, but there must be compelling reasons to deviate from the policy guidance. Applicant's expertise in a field vital to the nation's defense is undisputed. On the other hand, it is troubling that he has taken no affirmative acts to address the concerns surrounding his Israeli passport. Applicant could have gone a long way toward demonstrating his willingness to relinquish his foreign passport and renounce his foreign citizenship by starting the process, or short of that, by promising that he would not travel to Israel until after his Israeli citizenship had been revoked. He has not provided evidence that he sought any guidance or assistance from security officials about the passport issue. In light of the unmitigated foreign preference concerns, I am unable to conclude that it is clearly consistent with the national interest to renew his security clearance at this time.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of the record in this case, it is not clearly consistent with the national interest to renew Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge