DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-11561
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro Se*

January 29, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of the U.S. and Israel. He maintains significant ties to Russia, where his older son is a resident citizen, and to Israel, where he lived from 1979 to 1988. Applicant served in the Israeli military and worked at an Israeli nuclear research institute in the 1980s. After Applicant immigrated to the U.S. in about 1989, Israeli officials or agents contacted him several times about his former work with the Israeli research institute. Applicant's mother-in-law, who lives with him and his spouse in the U.S., has financial assets in Israel (pension and apartment ownership) that are being handled by Applicant's spouse. Foreign influence concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 11, 2006. On July 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the

security concerns under Guideline B, foreign influence, that provided the basis for its preliminary decision to deny him a security clearance and 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 July 14, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 11, 2009, I scheduled a hearing for September 2, 2009.

At the hearing, four government exhibits (Ex. 1-4) and two Applicant exhibits (Ex. A-B) were admitted in evidence without any objections. Applicant testified, as reflected in a transcript (Tr.) received on September 10, 2009. I also agreed to take administrative notice of certain facts pertinent to Israel and to Russia and their respective foreign relations, including with the U.S., *infra*.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On July 23, 2009, in two separate motions, Department Counsel requested administrative notice be taken of certain facts relating to Israel and to the Russian Federation, and their respective foreign relations, including with the U.S. The government's requests were 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 requests 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

DOHA alleged under Guideline B, foreign influence, that Applicant's son is a resident citizen of Russia (SOR 1.a); that Applicant's mother-in-law is a dual citizen of the U.S. and Israel who resides in the U.S. but receives a survivor's military pension from the Israeli government (SOR 1.b); that Applicant served in the Israeli military from about June 1980 until about July 1988 (SOR 1.c); that during August 1984 to August 1988, he worked as a research scientist at a nuclear institute affiliated with an Israeli government organization and he held an Israeli security clearance (SOR 1.d); and that

from 1996 until at least 2005, while living and working in the U.S., Applicant was regularly contacted by Israeli government officials or agents concerning his past work for the Israeli nuclear research institute (SOR 1.e). Applicant admitted that his son is a Russian resident citizen, and that his mother-in-law receives an Israeli pension from her deceased spouse's former, nonmilitary employment with the Israeli government. Applicant acknowledged his past employment with the Israeli nuclear research institute, although he denied that he had held an Israeli security clearance for that position. He admitted that he had been contacted by Israeli officials in the U.S. about his previous work with the Israeli nuclear research institute and whether anyone had tried to extract secret information from him. He added that on learning from the U.S. Federal Bureau of Investigation (FBI) that these foreign contacts were "out of line," he cooperated with the FBI, and alerted the FBI of a subsequent final contact from an Israeli official.

After considering the pleadings, transcript, and documentary exhibits, I make the following findings of fact.

Applicant was born in Russia (then the Soviet Union) in 1950. He married his first wife in Russia in June 1974, and they had a son in August 1975. Three years later, Applicant and his first wife divorced (Ex. 1).

In 1979, Applicant immigrated to Israel and became an Israeli citizen. Applicant was allowed to leave Russia despite a major invention and publication that made his name known there and in the U.S. scientific community (Tr. 83). His Soviet citizenship was revoked (Ex. 2). In July 1981, he and his current spouse were married in Israel. A Russian émigré, she had acquired her Israeli citizenship in 1978. While living in Israel, Applicant and his spouse had two daughters, who were born in 1982 and 1984 (Ex. 1).

Applicant served in the Israeli military as a machine gunner (Tr. 36) from about July 1980 to July 1988, at least some of that time on active reserve duty (Exs. 1, 2, 3). From August 1984 to August 1988, he was employed as a scientist at an applied nuclear research and development institute affiliated with an Israeli governmental organization (Ex. 4). During his final year at the Israeli research institute, he pursued his doctorate degree at an Israeli university. He was awarded his doctorate degree in June 1988 (Ex. 1).

Applicant first came to the U.S. from Israel in 1988 when he was on sabbatical. He decided to remain in the U.S. because of better opportunities for his children and the safer environment, and he obtained a work visa (Tr. 84). He was eventually granted U.S. permanent residency. His immediate family (spouse and daughters) immigrated to the U.S. from Israel, and his mother and brother from Russia. In February 1992, a son was born to Applicant and his spouse in the U.S. (Ex. 1). Applicant and his spouse became dual citizens of the U.S. and Israel when they acquired naturalized U.S.

citizenship in October 1998.[1] Their two daughters became dual citizens of Israel and the U.S. in July 1999. Applicant's mother became a U.S. naturalized citizen in January 1996, and his brother in April 2000 (Ex. 1).[2]

Applicant had his own company in the U.S. from December 1995 to May 1997. Thereafter, he worked for a succession of employers located in various regions of the U.S., including for a defense contractor from April 2002 to October 2003 (Ex. 1). Starting in about 1996, Applicant was contacted by Israeli officials or agents in the U.S., about once a year on average, by telephone or at times in person. Applicant was asked whether he had ever been approached for sensitive ("secret") information concerning his work at the nuclear research institute in Israel (Exs. 1, 3, Tr. 37, 48, 67).[3] The Israelis did not share with him how they knew where and when to reach him. Applicant was required to notify the Israeli embassy of his whereabouts when he came to the U.S., but he did not register subsequent changes of address in the U.S. with the Israeli embassy or consulate (Tr. 74-75). Applicant testified that when he relocated to a distant locale for employment in about 1997, he "might have told" the Israeli officials or agents who contacted him of his intended destination. When Applicant moved across the country for a new job in 2001, he "might have told them ahead of time" that he was leaving "because they asked [him] a question about what his plans were. . . ." (Tr. 74). In about 2004, the FBI approached Applicant about his contacts with these Israeli officials or agents. He provided details of the previous contacts, and when the Israeli officials or agents subsequently contacted him in about June 2005, he notified the FBI of the contact (Ex. 3, Tr. 38).[4] Applicant never informed any of his U.S. employers of these foreign contacts (Tr. 47). According to Applicant, he did not consider the actions of the Israeli officials or agents to be significant (Tr. 48, 80).

In November 2006, Applicant began working as a precision sensor electronics senior engineer for his present employer, a laboratory engaged in U.S. defense work (Exs. 1, A). On December 11, 2006, Applicant's expired Israeli passport, which was valid from October 1996 to October 2001, was shredded in his employer's security office to facilitate him obtaining a DoD security clearance (Ex. 2). On his e-QIP completed on December 11, 2006, Applicant indicated that he, his spouse, and their two daughters held dual citizenship with Israel and the U..S., although his younger son held

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[1]At his hearing, Applicant denied he was still a dual citizen of Israel and the U.S., but he admitted that the Israeli government still considers him a citizen because he had not applied to renounce his Israeli citizenship (Tr. 70-71).

[2]As of November 2006, Applicant's father had died. Applicant indicated on his e-QIP that his father had held Russian citizenship (Ex. 1), and that his mother was a citizen of the U.S. only. She apparently remained behind in Russia with her other son after Applicant immigrated to Israel (Tr. 36).

[3]Applicant testified it was "like if somebody was trying to bribe [him]" (Tr. 70).

[4]Applicant was apparently told by Israeli officials that he was being contacted because he had been employed in a defense-related field in Israel, and Israel wanted to ensure that he had not been approached by any foreign agents for information. He denied any further contact of this nature after the FBI "apparently made Israel close the program" (Tr. 79).

only U.S. citizenship. Applicant also indicated that his mother and brother were naturalized U.S. resident citizens. Applicant disclosed that his oldest son, a Russian citizen, was living with him in the U.S. His father-in-law, an Israeli citizen, and his mother-in-law, a dual citizen of Israel and the U.S. since her U.S. naturalization in April 2005, were living with him and his spouse in the U.S. as well. Applicant responded "No" to question 17.b on the e-QIP concerning whether he had ever been employed by a foreign government, firm, or agency. Yet, in response to question 17.c concerning any contacts with a foreign government, its establishments, or representatives, Applicant disclosed that he had been contacted by the Israeli government from about March 1989 to June 2005 "once in [a] great while in connection with [his] security clearance back in Israel, asking routine questions as to whether any secret information [he] could have known while in Israel could have been compromised, or whether anybody tried to approach [him] regarding that information." Applicant indicated that he had not been exposed to any secret information so the process was "pure formality." (Ex. 1) Applicant now denies that he had held a security clearance during his employment with the Israeli nuclear research institute because he had not been told that he held one, he had not accessed classified information, and it would have been difficult to obtain a clearance given that his mother and brother lived in Russia at the time (Tr. 36).

On March 5, 2008, Applicant was interviewed by an authorized investigator for the Department of Defense concerning his allegiance, which he asserted was solely to the U.S., and his foreign contacts. Applicant denied any contact from anyone representing a foreign intelligence or security service. Yet, he acknowledged that after he had immigrated to the U.S., Israeli government officials contacted him by phone or in person until 2005 to verify that no one had requested information about his position as a scientist in Israel, but that the FBI found out and he was told to have no contact with these foreign nationals in the future. Applicant volunteered that his father-in-law had died, and that his mother-in-law was receiving a widow's pension that was being deposited into an account in Israel, which had a balance of about $10,000 to $20,000. Applicant denied that he or his family owned any property in a foreign country. Concerning his son from his first marriage, Applicant indicated that his son had returned to his native Russia two years ago. Applicant indicated that his son ran a publishing company in Russia and was a local television personality (Ex. 3).

On February 19, 2009, Applicant responded to foreign influence interrogatories from DOHA which included the query, "Since you became a naturalized U.S. citizen in October 1999, have you ever been contacted by a foreign government, foreign business, foreign organization, foreign group, or foreign person, who asked you for information or help in any matter?" Applicant responded, "No." (Ex. 2). Concerning ongoing contacts with foreign citizens, Applicant admitted occasional email contacts with his son in Russia to as recently as February 8, 2009. He indicated he was also in contact with three former classmates with Russian or Israeli citizenship, but he claimed to not know their occupations (Ex. 2).

On March 10, 2009, Applicant was forwarded subsequent interrogatories by DOHA in which he was asked specifically about his contacts with Israeli government

officials. Applicant indicated that his first contact was in about 1996. He was called at home two or three times, and then met by an Israeli in person. Subsequent contacts were on the order of about once a year, not always with the same person. He admitted he had not reported the contacts until after the FBI inquiry because the contacts "seemed totally innocent to [him]." Applicant averred that the FBI was completely satisfied with his voluntary cooperation (Ex. 3).

Applicant's parents-in-law immigrated to the U.S. from Israel in about September 1999. Applicant's mother-in-law (and Applicant's father-in-law before his death) lived with Applicant and his spouse since coming to the U.S. (Tr. 52). On the death of her spouse, Applicant's mother-in-law received a pension from her husband's former employment with a nonmilitary department in the Israeli government (Answer, Ex. 3, Tr. 34-35). Applicant's mother-in-law maintains a bank account in Israel into which the pension funds are deposited and then transferred to the U.S. (Tr. 50-51). She also owns an apartment in Israel (Tr. 51).

After almost 20 years of no contact, Applicant contacted his first wife in Russia three or four times in the late 1990s concerning paperwork to obtain U.S. permanent residency for their son (Ex. 3), which was later granted in about December 2004 (Ex. 1). Applicant's son came to the U.S. twice, and stayed with Applicant for a couple of months each time (Tr. 53). Applicant's son returned to Russia permanently in late 2006 or early 2007. He runs a television advertising company (Ex. 3, Tr. 33, 55). Applicant does not believe that his son is politically active, although his son has done advertising work for local political campaigns in Russia (Tr. 81). Applicant exchanges electronic mail messages with his son "every once in awhile" (Tr. 56), about two or three times a year (Ex. 3), including on Applicant's birthday in February 2009 (Tr. 56). Applicant last contacted his son in July or August 2009 about the expiration of his son's U.S. permanent residency status. As of September 2009, Applicant's son planned to attend the wedding of one of his half-sisters in the U.S. (Tr. 57).

Applicant has not traveled to either Israel or Russia since he immigrated to the U.S. (Tr. 57-58). His spouse has been to Israel at least twice in the past two years, including in about February 2009, to care for her mother's apartment and look for renters. Applicant's spouse stayed with friends while she was in Israel (Tr. 58-59). Applicant claims to be unable to recall the names of his spouse's friends in Israel other than the first name of one woman, who is a music teacher as is his spouse (Tr. 60). Applicant is friendly and has occasional (less than once yearly) contact with some Russian émigrés in Israel and with some former "army buddies" from his military service in Israel (Tr. 61). Applicant also has contact by email or Skype with former classmates. In May or June 2009, a former classmate about to lose his job with a large nonprofit organization in Israel asked Applicant to intercede on his behalf with his supervisor, who is a friend of Applicant's since his days in the Israeli military (Tr. 63). To Applicant's knowledge, none of his friends in Israel works directly for the Israeli government (Tr. 63-64), although his friend from the military is responsible for the irrigation needs of an entire district in Israel.

Applicant owns his home in the U.S. where he has resided with his immediate family, including his mother-in-law, since December 2003 (Ex. 1, Tr. 64). Applicant has no financial assets in Israel. His spouse opened a bank account in her name during her last trip to Israel to facilitate the transfer of funds concerning her mother's assets in Israel (Tr. 66). Applicant indicated his spouse's account could have a balance of about $10,000, although he did not know for certain (Tr. 67). His spouse has power of attorney over her mother's property in Israel (Tr. 67). Applicant went to the Israeli consulate to obtain this power of attorney for his spouse (Tr. 77).

Applicant has consistently received excellent performance reviews, especially in the area of technical competency, since he started working for his present employer. He demonstrated a high level of intelligence and innovation, a broad experience base, and willingness to work any problem presented to him (Ex. A). Applicant's supervisor (group leader) for the first 18 months or so of Applicant's employment at the laboratory observed nothing that would lead him to question Applicant's loyalty to the U.S. or ability to safeguard sensitive information (Ex. B).

After reviewing the U.S. government publications concerning Israel and the Russian Federation, and their respective foreign relations, I take administrative notice of the following facts:

Israel

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 U.S. and Israel have a close friendship based on common democratic values, religious affinities, and security interests. The U.S. was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence in 1948. In 1985, Israel and the U.S. concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. Israel is a prominent recipient of U.S. aid. Since 1949, the U.S. 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 U.S. 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. In April 1988, the U.S. and Israel established 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 U.S. do not have a mutual defense agreement, although the U.S. remains committed to Israel's security and well-being. The U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S. limit the use of U.S. military equipment to defensive purposes. The U.S. has acted to restrict aid and has rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The U.S. 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 U.S. 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.

Russian Federation

Russia is a vast and diverse federation consisting of 84 administrative units. Power is concentrated in the executive branch, primarily in the president who appoints the prime minister with parliament's approval. Russia's bicameral legislature consists of a compliant state Duma (lower house), dominated by a progovernment party, and a weaker Federation Counsel (upper house). Despite a general tendency to increase judicial independence, the judiciary often operates to protect state interests. Russia has an uneven human rights record. There is political pressure on the judiciary, restrictions on the mass media, intolerance of ethnic minorities, corruption and selective enforcement of the law, and erosion of accountability of government leaders to the population. Security forces have been involved in politically motivated abductions, disappearances, and unlawful killings, torture, arbitrary arrest and detention, violence or other harsh treatment, especially within the North Caucasus region in 2008. Elections to the Duma in December 2007 and to the Russian presidency in March 2008 were criticized by U.S. and European Union observers as unfairly controlled by governing authorities. Political elites have taken the helm of many of Russia's leading economic

enterprises as assets considered strategic by the Russian government have been re-nationalized.

Following the dissolution of the Soviet Union in December 1991, Russia has increased its international profile, taking active steps to become a full partner in the world's principal political organizations, such as the United Nations. The U.S. and Russia share common interest on a broad range of issues, including countering terrorism, reducing their strategic arsenals, and stemming the proliferation of weapons of mass destruction. Billions of dollars have also been allocated to aid Russian democratization and market reform. On the other hand, Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus with increasing sophistication on collecting sensitive and protected U.S. technologies through its intelligence services. Beyond collection activities and espionage directed at the U.S., Russia provides, in exchange for money or diplomatic influence or both, technologies that can be used in the construction of weapons of mass destruction to other countries, including China, Venezuela, Syria, and Iran. Because of the deterioration of its conventional military forces, Russia is increasingly relying on nuclear forces to maintain its status as a major power. Russia remains the most capable cyber-threat to the U.S. It is developing systems and technologies capable of interfering with or disabling vital U.S. space-based navigation, communication and intelligence collection capabilities.

The relationship between the U.S. and Russia remains complicated. After the terrorist attacks of September 2001, the NATO-Russia Council was established, giving Russia a voice in NATO discussions. Concerns over domestic developments in Russia, and foreign policy differences, including U.S. plans to deploy a ground-based missile system in Europe with interceptors in Poland and a radar installation in the Czech Republic, led to a strain in U.S.-Russia relations since 2003. Russia's military invasion into Georgia in August 2008, and its decision to recognize the territories of South Ossetia and Abkhazia, led to a significant decrease in contacts between the U.S. and Russia, and to temporary suspension of the NATO-Russia Council. In September 2008, the U.S. State Department reported that an "enemy image" of the U.S. had been created in the state-controlled Russian media. Relations between the U.S. and Russia have improved since the Obama Administration as both countries seek to change the tone of the relationship and cooperate in areas of mutual interest.

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 required 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 B—Foreign Influence

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

> 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.

Despite his dual citizenship status, Applicant maintains that his sole allegiance lies with the U.S., where he has lived since about 1988. The concern in this case is not with Applicant's allegiance or loyalty, but rather whether there is an unacceptable risk of undue foreign influence because of his connections to Israel or Russia or both. Applicant's present ties to his native Russia are limited but significant. Applicant's son from his first marriage is a resident citizen of Russia (SOR 1.a), where he is, or was as recently as of March 2008, a television personality, and where he runs an advertising business. He was of preschool age when Applicant immigrated to Israel, and there is no evidence that Applicant maintained ongoing close relations with his son over the years. However, Applicant acquired U.S. permanent residency for his son. Between about December 2004 and 2007, Applicant's son came to the U.S. twice and stayed with Applicant for a couple of months each time. Applicant has maintained contact, albeit on an infrequent basis (three or four times yearly) but as recently as August 2009, with his son after his son returned to Russia permanently. 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.

Applicant's military service for Israel (SOR 1.c), and his employment with the nuclear research institute in Israel (SOR 1.d), also raise foreign influence concerns, notwithstanding the passage of 20 years since these affiliations. Concerning his past military service, Applicant is friendly with an "army buddy" who oversees an entire district's water irrigation needs in Israel. As recently as May or June 2009, Applicant was asked to contact this friend and advocate for the continued employment of a former classmate. His ongoing contacts with friends from the military and school implicate AG ¶ 7(a).

Other than denying that he accessed classified information or held a security clearance, Applicant has provided little detail about his work in optics for the Israeli nuclear research institute. However, it is reasonable to infer that his work was sensitive if not classified, given that Israeli agents or officials contacted him annually to ascertain whether he had been asked to divulge "secret" information about the institute or his past duties. AG ¶ 7(a), ¶ 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," and AG ¶ 7(h), "indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion," are implicated because of these contacts with Israeli officials from at least 1996 until June 2005.

AG ¶ 7(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," applies because of his mother-in-law's financial interests in Israel that are being managed by his spouse. Applicant's mother-in-law, who lives with him and his spouse, receives a widow's pension from the Israeli government, and she owns an apartment in Israel. Either unwilling or incapable of managing these interests herself, Applicant's mother-in-law gave Applicant's spouse a power of attorney to deal with these assets. Applicant's spouse opened an account in Israel to facilitate the transfer of funds, and she traveled to Israel, including in February 2009, to look for renters for her mother's apartment. During that visit, she stayed with friends whose names Applicant claims he cannot now recall.

Applicant's closest relatives 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." His oldest son apparently intends to continue to pursue his career in Russia. Relations between the U.S. and Russia have improved since the dissolution of the Soviet Union. Some cooperation has been achieved in countering terrorism, reducing strategic arsenals, and stemming the proliferation of weapons of mass destruction. Billions of dollars have been allocated to aid Russian democratization and market reform. But domestic developments and human rights abuses in Russia, and foreign policy differences, have strained relations. Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus with increasing sophistication on collecting sensitive and protected U.S. technologies through its intelligence services. While there is nothing about his son's advertising activities that involves sensitive or classified information, Applicant's son has engaged in activities in Russia (as a television personality and through his work on political ads) that could raise his visibility with Russian officials, particularly given Russia's restrictions on the media.

The U.S.-Israeli relationship is contrasted by historically close ties. The U.S. 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 U.S. But this close friendship has not prohibited Israel from aggressively targeting U.S. economic intelligence and U.S. classified and sensitive information. Applicant was repeatedly contacted by Israeli officials or agents between 1996 and June 2005 concerning whether he had been improperly approached for sensitive information about his work in Israel. He was contacted before and after, if not also while, he worked for a U.S. defense contractor. There is no evidence that Applicant disclosed any U.S. sensitive or proprietary information, or that these foreign contacts continued after June 2005. But he did not report these foreign contacts until after he was confronted by the FBI. AG ¶ 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," cannot be relied on to mitigate the foreign influence concerns raised by his repeated contacts with Israeli agents or officials concerning his sensitive work in Israel.

Applicant's subsequent cooperation with the FBI is in his favor, but fewer than five years have passed since the Israelis last approached him about whether others were seeking information about sensitive matters related to his work for the Israeli nuclear institute. If Applicant is to be believed, he did not realize that the contacts by Israeli officials or agents were significant. He has not demonstrated that he would recognize, even now, an attempt to gain influence. Past history shows that when he was asked by Israeli officials or agents about his plans to relocate, he provided the information willingly. Despite his considerable ties to the U.S. developed since about 1989 (career, citizenship, home ownership), I am unable to apply AG ¶¶ 8(a) or 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."

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," is not pertinent. Applicant's contacts with his son in Russia are infrequent but not casual. As of August 2009, Applicant was in contact with his son concerning his son's loss of his "green card" because his son intends to attend his half-sister's wedding in the U.S. Furthermore, Applicant has close and continuing relations with his spouse and mother-in-law, who have Israeli citizenship and are concerned with financial assets in Israel.

Applicant described his mother-in-law's pension from Israel as "a very small pension, like several hundred dollars" (Tr. 34). He provided little information about her apartment in Israel. It is unclear whether his mother-in-law relies on these foreign sources to cover any living expenses in the U.S. since she resides with Applicant and his family. Foreign assets may be mitigated if they are routine or so minimal to be an unlikely source of pressure or influence. *See* AG 8(f) (stating, "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"). Applicant went to the Israeli consulate to obtain a power of attorney for his spouse so that she could handle her mother's financial interests in Israel. His spouse traveled to Israel more than once, including in February 2009, to handle matters involving the apartment. During this trip, she opened her own bank account in Israel to facilitate transfer of her mother's monetary assets there. The ongoing concern with the foreign assets makes it difficult to apply AG ¶ 8(f). None of the mitigating conditions apply to mitigate the very substantial foreign influence concerns in this case.

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.

As set forth under Guideline B, *supra*, Applicant has significant ties to Russia and to Israel that present a heightened risk of undue foreign influence. Countervailing strong personal ties to the U.S. are undisputed. He has chosen to make the U.S. his home for the past 20 years. He acquired U.S. citizenship in October 1998. He has not traveled to Israel or to Russia since he immigrated to the U.S. Despite his dual citizenship, he took no steps to renew his Israeli passport after 1996, and his expired foreign passport was shredded by his employer. His contributions to his employer also must be considered in the "whole-person" evaluation. A coworker has observed nothing that would lead him to question Applicant's allegiance to the U.S.

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. Applicant may have the best of intentions and yet be in an untenable position of potentially having to choose between the interests of a foreign country or foreign national and the interests of the U.S. Serious foreign influence concerns preclude me from concluding that it is clearly consistent with the national interest to grant him a 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge