



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 09-02319
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: Alan K. Hahn, Esquire

April 21, 2010

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigation Processing (e-QIP), on October 17, 2008 (Government Exhibit 1). On August 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on September 9, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 30, 2009. I received the case assignment on November 3, 2009. DOHA issued a notice of hearing on November 6, 2009, and I convened the hearing as

scheduled on December 4, 2009. The Government offered Government Exhibits 1 through 4, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through C, which were also admitted without objection. DOHA received the transcript of the hearing, and the record closed, on December 11, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the State of Israel. (Transcript at 9-11, 17-18, 23-25.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 53, has a domestic partner, and has two post-graduate degrees. She is employed by a defense contractor as a senior executive, and seeks a security clearance in connection with her employment in the defense industry. Applicant admitted the allegations in the SOR. Those admissions are hereby deemed findings of fact. She also provided additional information to support her request for eligibility for a security clearance.

Guideline C - Foreign Preference

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in a way that shows a preference for another country ahead of the United States.

Applicant was born in Israel and went to undergraduate school there. In 1977 she moved to the United States to continue her education here, and because her then-husband was an American citizen. She received advanced degrees from two American universities, the last in 1988. Applicant became an American citizen in 1981. (Transcript at 29.)

For most of her life, the Applicant had and used an Israeli passport to travel to and from Israel. She continued to do this after becoming an American citizen, not out of preference, but because the Israeli government required people like her to do that. For travel to all other countries, the Applicant uses her American passport. Applicant has three American-born children. In her testimony, she discussed the problems her family

has faced attempting to travel to Israel on American passports. (Government Exhibit 3; Transcript at 31-33, 45-46.)

Applicant submitted a "Declaration of Waiver of Israeli Citizenship" to the Israeli government on October 20, 2009. Applicant was told that it may take six to twelve months for the waiver to take effect. She had no emotional qualms about filing the waiver, stating, "I am an American citizen. I would like to serve the Joint Forces. . . . I don't feel that I have loyalty now to Israel after being here 32 years." (Applicant Exhibit A; Transcript at 34-35, 59-62, 65-66.)

As part of the process to waive her Israeli citizenship, Applicant also had her Israeli passport cancelled. She submitted a copy of the passport showing that it had been cancelled by Israeli authorities. (Applicant Exhibit B; Transcript at 61.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

Applicant has three close relatives who live in Israel, her mother and two sisters. None of the Applicant's relatives in Israel have any connection with the Israeli government or Israeli defense industry. She contacts them on a fairly regular basis. (Transcript at 41-43, 51-52.)

Applicant travels to Israel about every year to visit her family. When there, she occasionally stays in a condominium bought by for Applicant by her mother. The value of this condominium is approximately \$260,000. (Transcript at 35-36, 46-47.)

Applicant has worked for two other defense contractors before becoming a senior executive at her current employer. She worked in the defense industry from 1983 to 1994. (Government Exhibit 1 at Section 26; Transcript at 43-44.) During the period from 1994 through 1998, the Applicant occasionally worked as an outside consultant to an Israeli company. The company was unrelated to the Israeli defense industry. She was paid the normal consultancy rate by the Israeli company, \$70 an hour. (Transcript at 44, 53-58, 63.)

Applicant has contacts with Israel. Accordingly, it is appropriate to discuss the situation in Israel at this time.¹ Israel is a parliamentary democracy. Israel's prime minister leads the executive branch of the government. The United States is Israel's leading trading partner. Israel respects the rights of its citizens; however, there are some concerns about Israel's detention and interrogation of alleged terrorists, and discrimination against Arabs. Terrorism is a continuing threat to Israel and American

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

interests in Israel. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Occasionally, Israeli and American interests have diverged. Several U.S. government employees have been prosecuted for disclosure of classified information to persons connected to the Israeli government. Israel has an active program to gather proprietary information from U.S. companies.

Mitigation

Applicant has substantial personal and financial interests in the United States. Her domestic partner is a native-born American citizen. Her three children are all native-born Americans and currently live in the United States. She owns substantial stock in the company for which she is a senior executive. Not counting her share in the company, the Applicant's net worth is between three to four million dollars. This includes four properties she owns in the United States. Two of the properties have a market value of over two million dollars each. (Applicant Exhibit C; Transcript at 36-39, 48-51.)

Policies

Security clearance decisions are not made in a vacuum. 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 used as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Guideline C - Foreign Preference

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Israel and the United States, and that she had a valid Israeli passport.

Applicant has mitigated the Government's concerns about her dual citizenship with Israel, and her possession of an Israeli passport after becoming an American citizen. The concern is stated thus under this Guideline, *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 interests of the United States.*

Applicant continued to hold and use a valid Israeli passport after becoming an American citizen, and used it to travel to Israel. Accordingly, Disqualifying Condition 10 applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.*

The Applicant has submitted documentation showing that she is in the midst of renouncing her Israeli citizenship. Mitigating Condition 11(b) applies to this case: *the individual has expressed a willingness to renounce dual citizenship.* In addition, Mitigating Condition 11(a) also applies as her *dual citizenship is based solely on parents' citizenship or birth in a foreign country.*

The Applicant's Israeli passport has *been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* as required by Mitigating Condition 11(e). Guideline C is found for the Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled 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.

The Applicant has family connections to Israel. She also owns a condominium in Israel, bought for the Applicant by her mother. Finally, over ten years ago, the Applicant did consulting work for an Israeli company.

The following Disqualifying Conditions apply to this case based solely on the facts:

7.(a) contact with a foreign family member . . . 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 . . . 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 . . . by providing that information.

In addition, the ownership of property in Israel brings up Disqualifying Condition 7.(e) *a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.*

Applicant has proved that she is a conscientious and patriotic citizen, and member of the defense industry. She has substantial family and financial ties in the United States that far outweigh her relationship to Israel. While she still has family in Israel, the Applicant has shown that her loyalties are to the United States. Her consultancy work for an Israeli firm over ten years ago has no current security significance.

Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given her particular background:

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.; (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; 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.

Based on my analysis of the available information, the Applicant has overcome the adverse inference of her family members presence in Israel, as well as her ownership of real property there. Guideline B is found for the Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. The evidence shows that the Applicant is a patriotic American citizen. Though she was born in Israel, she has lived more than half her life in the United States. Her children were all born here, her domestic partner is a native-born American citizen, and she has substantial financial and business interests here. The Applicant eloquently testified about the importance of her family in the United States, and her pride in being an American citizen and a member of the defense industry. She is knowledgeable about security and understands her responsibility. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, the Applicant has mitigated the security significance of her alleged foreign preference and foreign connections and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

Formal Findings

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

Paragraph 1, Guideline C:	FOR THE APPLICANT
Subparagraphs 1.a through 1.c.:	For the Applicant
Paragraph 2, Guideline B:	FOR THE APPLICANT
Subparagraphs 2.a through 2.d.:	For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge