



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02884
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Joseph Testan, Attorney At Law

October 29, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on October 30, 2008. (Government Exhibit 1.) On June 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 for SORs issued after September 1, 2006.

The Applicant responded to the SOR on July 17, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on August 9, 2010. The matter was transferred to the undersigned Administrative Judge on August 23, 2010. A notice of hearing was issued on August 27, 2010, scheduling the hearing for October 5, 2010. At the hearing the Government presented three exhibits, referred to Government Exhibits 1 through 3,

which were admitted without objection. The Applicant called four witnesses and presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. He also testified on his own behalf. Following the hearing, a request to reopen the record was made by the Applicant. Department Counsel failed to respond, and the record was reopened for the limited purpose of receiving an additional and relevant document, referred to as Applicant's Post-Hearing Exhibit A, a copy of the Applicant's mother's naturalization application approval Form-652 dated October 5, 2010, the same day of the hearing. The record was then closed. The official transcript (Tr.) was received on October 19, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Israel. (Tr. p. 15-19.) Applicant had no objection. (Tr. pp. 19-20.) 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**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 27 years of age and has Bachelor's Degrees in Electrical Engineering and in Computer Engineering. He is employed as a Systems Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Russia in 1983, to a Russian Jewish Family. His father hated Russia, as they were persecuted. In 1990, when the Applicant was seven years old, he and his parents escaped Russia and immigrated to Israel where they lived for eleven years. In August 2001, when the Applicant was seventeen years old, his family was given the opportunity to immigrate to the United States, and he and his parents moved here. Since then, he has made the United States his permanent home. He became a naturalized United States citizen as soon as he possibly could, in 2006. He attended college and obtained two Bachelor's Degrees. He is currently enrolled at a state University and is trying to finish his Master's Degree in Electrical Engineering. (Tr. p. 51). He has no desire to ever return to Israel, as he loves the United States. (Tr. p. 24.) He lives with his parents here, he owns a car, has a bank account, and a

retirement account that contains approximately \$13,000 in the United States. (Tr. pp. 69-70.) He has no assets of any kind in Israel.

The Applicant's father is a naturalized United States citizens. (Tr. p. 52.) The Applicant's mother, an Israeli citizen, was approved for her American citizenship on the day of the hearing. (Applicant's Exhibit E and Applicant's Post-Hearing Exhibit A.) The Applicant's father, a dental technician in Russia, and his mother, a software engineer in Russia, now do the same work in the United States. The Applicant's father recently began the application process to sponsor his parents to come to the United States. (Applicant's Exhibit B.) The Applicant's uncle, his mother's brother, is also a United States citizen. (Tr. p. 54.) The Applicant's maternal grandparents, originally from Russia, immigrated to the United States in 2001, and have resided here since then. The Applicant's girlfriend, originally from Russia, is a United States citizen. (Tr. p. 58.) The Applicant plans to marry in the future and build his family in the United States. (Tr. p. 70.)

The Applicant's paternal grandparents are citizens and residents of Israel. The Applicant communicates with his paternal grandparents in Israel about two to three times a year. None of the Applicant's extended family members are affiliated with the Israeli Government in any fashion. (Tr. p. 57.)

When the Applicant left Israel in 2001, he had already been summoned for his compulsory military service for the next year. He states that he has not been formally released from his obligation to satisfy this service. In December 2007, the Applicant applied to the Consulate of Israel to revoke his Israeli citizenship and was advised to first apply for his release from the Israeli military obligation. (Government Exhibit 1.) He tried to resolve the issue by requesting a release based upon his medical condition. (Tr. p. 78.) In December 2008, his request for release of military service was denied and his current status is a deserter of the Israel Defense Force. Israel did not accept his documentation as a valid reason for release of his military responsibilities. (Tr. p. 70.) In July 2010, the Applicant completed and submitted a Declaration to Waive his Israeli citizenship. (Applicant's Exhibit A.) In August 2010, he faxed a letter to the Consulate General of Israel requesting that they proceed with revoking his Israeli citizenship. (Applicant's Exhibit F.) Applicant testified that although he is considered a deserter by the country of Israel, he does not care, and for all practical purposes, unless he returns to Israel, which he has no intention of ever doing, there is nothing they can do to him. (Tr. p. 61.)

Witnesses for the Applicant that included a work associate, a college associate, and his girlfriend, testified to his reliability, trustworthiness and good judgment. (Tr. pp. 22-26, 37-41, and 42-46.)

Letters from the Applicant's supervisor, and co-workers who hold security clearances, indicate that the Applicant is detail oriented, a self-starter, has solid computer skills, works well with others, and is always up for a new challenge. He is described as honest, reliable, trustworthy and follows all rules set before him. He is

highly recommended for a position of trust. (Applicant's Exhibit D.) The Applicant has worked for his current employer since January 2008. His most recent performance appraisal for the year 2009 is favorable. (Applicant's Exhibit C.)

The Applicant has contacts with Israel. Accordingly, it is appropriate to discuss the situation in Israel at this time.<sup>1</sup> 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 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.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* 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

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<sup>1</sup>All 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.

States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

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.;

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 in the U.S. interest;

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct and surrounding circumstances;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which the participation was voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;

- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in 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.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Conditions 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.*, 8(b) *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.*; and 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* also apply.

The Applicant and his father are naturalized United States citizens. His mother has been approved for citizenship and is awaiting the swearing in ceremony. Since 2001, the Applicant has resided in the United States. He has become a naturalized citizen, and has made the United States his permanent home. He has obtained his higher education here, and although he currently resides with his parents, he plans to marry, and raise his own family in the United States. The Applicant's paternal grandparents are residents and citizens of Israel, however, the Applicant has only casual and limited contact with them.

It is noted that the current political situation in Israel elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with his foreign family members or to any foreign individual, or to Israel, in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. He has made that clear. In fact, he is considered to be a deserter of the country, by avoiding his compulsory military service, and he is not concerned about it. He has tried to renounce his Israeli citizenship as evidenced by his documentation. He has no intentions of ever returning to Israel again. There is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. He has demonstrated that he can be trusted with sensitive classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the Applicant  
Subpara. 1.b.: For the Applicant  
Subpara. 1.c.: For the Applicant  
Subpara. 1.d.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge