



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



In the matter of:)	
)	
)	ISCR Case No. 09-03220
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

May 27, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86), on December 5, 2008. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 17, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 10, 2010. The case was assigned to me on January 15, 2010. On March 1, 2010, a Notice of Hearing was issued scheduling the hearing for March 23, 2010. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 4, which were admitted without objection. The Government requested that administrative notice be taken of one document with 11 attachments. The document was marked as Hearing Exhibit I (Hearing Ex I) without objection. Applicant testified and

submitted three exhibits which were admitted as Applicant Exhibits (AE) A – C without objection. DOHA received the transcript of hearing on April 1, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified technologically advanced economy that is growing at five percent annually. The United States is Israel's largest trading partner.

The threat of terrorist attacks in Israel is an on-going concern. Terrorist organizations have launched rockets and mortars from the Gaza Strip. The U.S. government has previously issued warnings that American interests could be the focus of such terrorist attacks. U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, the West Bank and Gaza. As a result, American citizens have been urged to exercise a high degree of caution when visiting places associated with U.S. interests and/or located near U.S. official buildings.

The United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. There are some issues in U.S. – Israeli relations. The United States is concerned with Israeli military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases involving Israeli citizens.

(All sources for the above information are contained in Hearing Exhibit 1.)

Findings of Fact

In his Answer to the SOR, dated September 17, 2009, Applicant admits to all SOR allegations.

Applicant is a 46-year-old master supply technician employed with a Department of Defense contractor. He has worked for his current employer for four years. From February 13, 1986 to February 28, 2006, he served on active duty in the U.S. Army. He was in the logistics career field. He honorably retired at the rank of Staff Sergeant. He has a general equivalency degree (GED) and one year of college. He has held a SECRET clearance since 1989. He is married and has a 12-year-old son from a prior marriage. He has three stepsons ages 16, 14, and 12. (Tr. 5 -6, 21, 23-25, 48; Gov 1; AE A)

Applicant was born in the United States. His mother is a dual citizen of the United States and Israel. She was born in the United States. She met and married Applicant's father, an Israeli citizen, when he attended a U.S. university. (Applicant's father is a dual

citizen of the United States and Israel.) When Applicant was two, his family moved to Israel. His father was a professor. His area of expertise was mechanical engineering and thermal dynamics. They moved back to the United States every three or four years when his father was on sabbatical from his university. In the past, his father has worked for U.S. Department of Energy, General Electric, and the U.S. Post Naval Graduate School. His father is 80 years old and is a semi-retired professor residing in Haifa, Israel. His father completed his mandatory service in the Israeli Defense Force and served in the reserves until 1980. His mother, age 75, is retired. She was a student grant liaison at an Israeli university. She used to volunteer with the United Services Organization (U.S.O.) Neither of Applicant's parents held political office in Israel. Applicant telephones his parents every Saturday. (Tr. 26-31, 44, 51; Gov 4)

Applicant's younger brother and sister are citizens and residents of Israel. His brother, age 35, used to be a payment coordinator for several gyms. He is now a full-time student pursuing his physical education degree. He is single and has no children. Applicant speaks with his brother on the telephone every two months. His sister, age 40, is unemployed. She is single and has no children. Applicant speaks with her at most once or twice a year if she happens to be at her parents' house. (Tr. 33-34; Gov 4)

Applicant's parents visit him in the United States for two to three weeks every year. His brother visited him once in 2007. His sister has never visited him. (Tr. 28, 34)

Applicant has two childhood friends whom he occasionally keeps in contact with. One friend runs a media center in Israel. The other friend works for a U.S. company doing business in Israel which develops facial recognition software. His paternal uncle is a professor who is a citizen of and resides in Israel. Applicant has no contact with his uncle. (Tr. 42, 45-46; Gov 4)

Applicant has always considered himself an American. Ever since he was a child, he wanted to be a U.S. soldier. He could not leave Israel until he served his three years of mandatory service in the Israeli Defense Force. After he completed his service, he moved to the United States in 1985 and enlisted in the U.S. Army the next year. (Tr. 38-39; Gov 4)

After moving to the United States, Applicant traveled to Israel to visit his family when he was stationed in Germany in the 1990s. In April 2008, he took his wife to Israel before they were married. Applicant always traveled on a U.S. passport. In 2008, he entered Israel with his U.S. passport. He was told by Israeli officials that he needed to obtain an Israeli passport to exit Israel because he was an Israeli citizen. He obtained an Israeli passport in order to exit the country. The passport has an expiration date of April 12, 2018. Applicant was unaware that applying for an Israeli passport would raise a security concern. (Tr. 35-36; Gov 2; Gov 4)

On March 8, 2010, Applicant applied to renounce his Israeli citizenship. He anticipates the renunciation will be complete within six months to a year. On March 12,

2010, Applicant surrendered his Israeli passport to his facility security officer. (Tr. 21-22; AE B; AE C.)

Applicant's wife and three stepsons are U.S. citizens. His son was born and raised in the United States. He has never applied for Israeli citizenship for his son and does not intend to in the future. His son has never traveled to Israel. His son's mother (Applicant's ex-wife) is a U.S. citizen. His ex-wife and son live about 20 minutes away from him. (Tr. 25-26; 34-35)

Applicant has never voted in Israeli elections. He votes in U.S. elections. He does not own any property or assets in Israel. He has owned a home in the United States since 1987. It is valued at \$410,000. He has about \$120,000 in equity in the property. He also owns several rental homes in the area where he lives. The rental properties are valued at \$300,000. He receives \$2,200 each month from his U.S. Army retirement. He has approximately \$25,000 in a 401(k) account. (Tr. 40, 48-50)

During his active duty service, Applicant deployed to Somalia from December 1992 to February 1993. He deployed to Haiti from September 1994 to October 1994. He deployed to Egypt during the first Gulf War. He deployed to Italy during the second Gulf War. His military awards and decorations include the Meritorious Service Medal; Army Commendation Medal; Army Achievement Medal; Joint Meritorious Unit Award; Army Good Conduct Medal (3rd Award); National Defense Service Medal; Armed Forces Expeditionary Medal; Southwest Asia Service Medal with Bronze Service Star; Humanitarian Service Medal; Noncommissioned Officer Professional Development Ribbon; Army Service Ribbon; Overseas Service Ribbon; Multinational Force and Observers Medal; and Global War on Terrorism Service Medal. (Tr. 46-47; AE A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline 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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the foreign influence disqualifying conditions, the following apply to Applicant's case.

AG ¶ 7(c) (*contact with a 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 because Applicant's parents and siblings are citizens of and reside in Israel. The threat of terrorist attacks in Israel and several espionage-related cases involving Israeli citizens heightens the risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

AG ¶ 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*) applies for the same reason. Applicant's relationship with his family members in Israel creates a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help his family members residing in Israel.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. The following foreign influence mitigating conditions apply to Applicant's case.

AG ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. While Applicant has a close relationship with his relatives who reside in Israel, his closest relationships (wife, son, and stepsons) are all citizens and residents of the United States. Applicant was born in the United States. He moved back to the United States as soon as he was able to as a young adult. He has lived in the United States for over 25 years. He has always considered himself an American. He honorably served in the U.S. Army for 20 years. After his retirement, he worked for a defense contractor for four years. He has held a SECRET security clearance since 1989 with no security violations. He owns no property and has no investments in Israel. All of his assets are located in the United States.

While there is no question that Applicant has a sense of duty and obligation towards his family members in Israel, his deep and longstanding relationships, his professional ties, and his assets are located in the United States. Applicant submitted an application to renounce his Israeli citizenship in March 2010. Although a dual citizen, he never exercised his Israeli citizenship until he was required to obtain an Israeli passport in order to exit Israel. He has never applied for his son to become an Israeli citizen. His deep and longstanding relationships in the United States support the

premise that he can be expected to resolve any conflict of interest in favor of the United States.

For these reasons, I conclude Applicant mitigated the concerns raised under Foreign Influence.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

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.

The guideline notes several disqualifying conditions that could raise security concerns. AG ¶ 10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and AG ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant applied for an Israeli passport in April 2008. He had dual citizenship because he was born in the United States and his father was an Israeli citizen. The record evidence indicates Applicant was issued an Israeli passport on April 12, 2008. The passport expires on April 12, 2018. While on a trip to Israel in April 2008, Applicant traveled using his U.S. passport. Israeli border officials told him that he needed to apply for an Israeli passport in order to exit Israel because he was an Israeli citizen. He did as he was told. Regardless of the circumstances under which Applicant obtained his Israeli passport, applying for a foreign passport while a U.S. citizen is considered an exercise of foreign citizenship.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. The following foreign preference mitigating conditions apply:

AG ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*);

AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*); and

AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*).

Applicant was born in the United States. He is a dual citizen of Israel because his father was an Israeli citizen. On March 8, 2010, he initiated the proceedings to renounce

his Israeli citizenship. He surrendered his valid Israeli passport to his facility security officer pending the renunciation process. When the renunciation is complete, he will surrender the Israeli passport to the Israeli Consulate. Applicant was unaware of the security concerns that would be raised by applying for and receiving an Israeli passport. He only used the passport to exit Israel in April 2008 because he was required to by Israeli officials. This one-time use of an Israeli passport is the only evidence of Applicant exercising his Israeli citizenship over a period of 25 years. The foreign preference concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's ties to the United States as well his relationship with his parents, two siblings, and two friends who are citizens of and reside in Israel. I considered Applicant's 20 years of honorable service in the U.S. Army as well as his subsequent employment with a defense contractor. He has held a security clearance since 1989 without incident. He has lived in the United States for over 25 years. His assets are located in the United States. During his 20 years of active duty service with the U.S. Army, Applicant's parents and siblings resided in Israel. The only fact that is different is that Applicant was forced to apply for an Israeli passport during a trip to Israel in 2008 in order to be allowed to exit the country. He was not aware of the security issues this action would raise. Once he became aware of the issues, he took steps to renounce his Israeli citizenship and surrendered his Israeli passport to the facility security officer. While Applicant has a sense of duty and obligation towards his family members residing in Israel, his most significant contacts are in the United States. I find Applicant is likely to resolve any conflict of interest that may arise because his family members are citizens of and reside in Israel in favor of the United States. After evaluating all of the evidence in the context

of the whole person, I conclude Applicant mitigated the concerns under foreign influence and foreign preference.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge