



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



In the matter of: )  
)  
) ISCR No. 09-05355  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

December 17, 2010

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is granted.

**History of Case**

On March 23, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On June 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing (AR) on June 16, 2010, and waived his right to a hearing. He subsequently reversed that decision and requested a hearing before an administrative judge. DOHA assigned the case to me on August 9, 2010, and issued a Notice of Hearing on September 9, 2010, scheduling the hearing for September 20, 2010. I convened the hearing as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified, called one witness, and offered Applicant Exhibits (AE) A through D into evidence without objection. The record remained open until October 5, 2010, to give Applicant an opportunity to submit his original documents, which he did. DOHA received the transcript of the hearing (Tr.) on September 23, 2010.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Israel. (Tr. 16-17.) The request and the attached documents are included in the record as Hearing Exhibits (HE) I. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer, Applicant admitted all of the factual allegations set forth in SOR ¶ 1, except those in ¶1.a (3) alleging that he used an Israeli passport to travel to Israel in July 2004 and December 2003.

Applicant is 44 years old. He was born in Israel. He graduated from high school in 1984 and then attended college for one year. In June 1990, he immigrated to the United States for a more fulfilling life and better employment opportunities. He obtained permanent resident status in April 1992 and became a U.S. citizen in April 1997. Applicant began working for his current employer in July 1997. He earned a bachelor's degree in computer science and mathematics in July 1998. He is a senior engineer with his company and has received awards over the past years. He has held a Secret security clearance since December 2000, and worked on contracts involving military projects. (Tr. 10; 33.)

In June 2000, a government investigator interviewed Applicant in response to answers on his first security clearance application, pertaining to his dual citizenship, foreign connections, and foreign travel. Applicant disclosed that in December 1994 and August 1995, he and his first wife traveled to Israel. He stated,

There are no limits or reservations regarding my loyalty to the U.S. and I would be willing to bear arms against any foreign enemy, to include Israel, on behalf of the U.S. Although I had an Israeli passport before I became a

U.S. citizen, it has subsequently expired and I have no intent of obtaining another one. In summary, my loyalty is exclusively to the U.S. (GE 4.)

Applicant used his U.S. passport to enter and exit Israel in December 2003 and July 2004. Prior to his visit in December 2003, he had not traveled to Israel for five or six years. (Tr. 58) He was warned by Israeli airport authorities in 2003 and 2004, that he and his children would be detained if they did not have an Israeli passport. In July 2007, Applicant applied for and was issued an Israeli passport with an expiration date of July 2017. He used it to enter and exit Israel in October 2008 and November 2009. He obtained the passport in 2007 in order to enter and exit Israel without being intimidated by Israeli airport authorities. (AR) Prior to renewing the Israeli passport, he told his facilities security officer about the situation, who did not raise any objections. (Tr. 62.) His security office held his Israeli passport when he was not traveling to Israel. (GE 5; Tr. 42.) On June 10, 2010, the security officer destroyed the passport per Applicant's request. (GE 6.) Applicant said that he has "no connection to Israel" and no longer wants the aggravation associated with the passport. (Tr. 43.) He renounced his Israeli citizenship during the hearing and has tried to do so with the Israeli authorities. (Tr. 43, 68.) He does not know if he will visit Israel again. (Tr. 45.)

Applicant married his first wife, a U.S. citizen, in June 1991 and they divorced in May 2002. (GE 1.) He has two children from that marriage, ages 17 and 12. Later in 2002, he married his current wife, a U.S. citizen. She retired from the Air Force as an E-7 after 25 years of service. She works for a government agency, performing a job that she did in the Air Force. They have a five-year-old son. His 17-year-old daughter wants to join the U.S. Army upon graduation from college.

Applicant visited Israel in 2003 at the request of his wife so they could visit his family. He had not visited Israel since 1995. His wife was with him when the Israeli authorities threatened to detain him and his children if he did not use an Israeli passport (and not a U.S. passport) to enter and exit the country on their visits. (Tr. 24-26.) In response to questions about her husband's loyalty to the United States, she said, "This guy, he loves this country . . . he gave me a new zeal and zest for being proud to wear my uniform." (Tr. 27.) She has no reservations about her husband's loyalty to the United States. He told her "when he dies, he wants to be buried here in America. He doesn't want any part of him or his children ever sent back to Israel." (Tr. 29.)

Applicant's parents were born in Israel, where they remain citizens and residents. They are both in their early 70's. His father is a retired policeman and his mother is a homemaker. He speaks to his parents once a week. (Tr. 56.)

Applicant has five brothers and three sisters, all born in Israel. They are citizens and residents of Israel. Two brothers are chefs and three are construction workers. His sisters are homemakers. (GE 4.) He speaks to some of them monthly and only if they are visiting his parents' house when he telephones. (Tr. 56.) His relationship with them is cordial, but one that he does not anticipate will continue upon his parents' death. (Tr. 47.) None of his family members have any affiliation with the Israeli government. (GE 2.)

Applicant does not own property nor have financial interests in Israel. (Tr. 54.) He and his wife have retirement and bank accounts in the United States. (Tr. 55.) He owned a house with his first wife, but she was awarded it in their divorce. (*Id.*)

Applicant credibly and sincerely asserted his pride of U.S. citizenship. He stated during the hearing that his wife and children are his family, as is this country. (Tr. 48.) On describing his loyalty to the United States, he testified that “I choose to be an American.” (Tr. 35.) “I love this country. I’m willing to give my heart and my soul for this country. . . this country gave me everything I have now.” (Tr. 36.) There is no derogatory information in the record concerning his police or financial records. He has never been fired from a job, arrested, used illegal drugs, or been involved in an alcohol-related incident. (GE 1.)

Applicant submitted three letters of recommendation. A project manager who has known and worked with Applicant on projects since 2004, wrote that he routinely observed Applicant handle classified information. Applicant “takes safeguarding of sensitive information very seriously; he has excellent classified material handling practices, and is a mentor to junior engineers.” (AE A.) He believes Applicant “can be trusted to safeguard sensitive information.” (*Id.*) A retired Naval Officer, who has worked with Applicant for nine years, stated that “My experience with [Applicant] is that he meets all the criteria for maintaining his security clearance and I trust him explicitly to perform the work, both classified and unclassified, that is necessary to meet his responsibilities.” (AE B.) A retired Navy Chief Warrant Officer, who is working on a project with Applicant, complimented Applicant on his contributions in the success of a mission that supports their military customers. He has no reservations about Applicant handling classified information. (AE C.)

## Israel<sup>1</sup>

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. It has a diversified, technologically advanced economy with a strong high technology sector. The major industrial sectors include high-technology electronic and biomedical equipment, metal products, chemicals, and transportation equipment. The United States is Israel’s largest single trading partner.

The Government of Israel considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. Children of American citizens who have an Israeli parent are considered Israeli citizens by the Israeli Government, even if the children were born outside of Israel. Israeli law applies to these children when they travel to and from Israel. U.S. citizens who are also citizens of Israel must enter and depart Israel using their current Israeli passport.

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<sup>1</sup> HE I.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. However, they have different policies on other important issues. The United States is concerned with Israeli military sales, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. They have regularly discussed Israel's sale of sensitive security equipment and technology to various countries, including China. Israel reportedly is China's second major arms supplier, after Russia.

The National Counterintelligence Center's Reports to Congress of Foreign Economic Collection and Industrial Espionage for 2000 and 2005, lists Israel as one of the active collectors of propriety information. The major collectors have been repeatedly identified as targeting multiple U.S. Government organizations since at least 1997. Israeli military officers have been implicated in this type of technology collection in the United States. There have also been cases involving illegal export, or attempted illegal export of U.S. restricted and dual use technology to Israel.

### **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 (AG) 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(a), 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse to an applicant 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

AG ¶ 9 set out the security concern involving foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in Israel. He became a U.S. citizen in 1997. In July 2007, after he was a U.S. citizen, he applied for and was issued an Israeli passport, in order to enter and exit Israel more easily to see his family. He used the passport in 2008 and 2009 to enter Israel. The passport does not expire until 2017. Applicant obtained and used an Israeli passport after he became a U.S. citizen to gain entry and exit Israel. Based on the evidence, the Government produced substantial evidence of a disqualifying condition under AG ¶ 10(a)(1) and (b), and the burden shifts to Applicant to rebut, explain, extenuate or mitigate these facts and the resulting security concerns.

The guideline includes two conditions in AG ¶ 11 that could mitigate security concerns arising from Applicant's foreign passport:

(b) the individual has expressed a willingness to renounce dual citizenship; and

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

Applicant expressed his willingness to renounce his Israeli citizenship before the hearing. He contacted the appropriate authorities and attempted to follow the proper protocol to formally renounce it. He again expressed his willingness to renounce his citizenship during this hearing in September 2010. Those actions are sufficient to conclude that AG ¶ 11(b) applies. In June 2010, at the request of Applicant, his security officer destroyed his Israeli passport and triggered the application of AG ¶ 11(e).

### **Guideline B, Foreign Influence**

The security concerns relating to the guideline for foreign influence are 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.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying:

(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;<sup>2</sup> and,

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<sup>2</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.

Most nations with substantial military establishments seek classified and sensitive information from the United States because it has the largest military industrial complex and most advanced military establishment in the world. Israeli military officials could potentially seek or accept classified information from U.S. citizens with access to this material. Applicant's access to classified information and his connection and contacts with his family residing in Israel could create a potential conflict of interest if they were taken hostage or otherwise threatened if he did not cooperate and disclose protected information. Both disqualifying conditions are applicable.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case are:

(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

(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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Israel's close, friendly relationship to the United States, its adherences to human rights standards and rule of law, its leading role in the suppression of terrorists, and the lack of evidence that Israel uses coercive tactics in its espionage targeting of the United States, all tend to negate a concern that Appellant's relationship with his family pose a security risk.



Based on those facts, it is unlikely that Applicant will be forced to choose between loyalty to the United States and his relationship with his family living in Israel. With the peaceful, long-standing alliance between Israel and the United States, it is improbable that Israeli intelligence officials would use coercion or pressure against a U.S. citizen living in the United States, such as Applicant, in an attempt to gather valuable or classified information from the United States. In addition, none of Applicant's family members in Israel are involved in the government or military. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would be confronted with a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application.

Applicant produced significant evidence establishing AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the United States. He has lived in the United States since 1990 and has returned to Israel a few times. His wife and children are U.S. citizens, residing in the United States. He holds bank accounts in the United States. Since 1997, he has successfully worked for a federal contractor that performs work for the federal government. He does not own property in Israel. There is no evidence that he has connections or contact with any people in Israel other than his immediate family members. He refers to himself as an "American."

Applicant maintains ongoing communication with his parents and sporadic communications with his siblings in Israel. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent and not casual.

### **Whole-Person Concept**

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

According to 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 Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his [or

her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Three circumstances weigh against Applicant in the whole-person analysis. First, there is some risk that intelligence agencies in Israel could actively seek classified information and attempt to use Applicant’s family members to obtain such information. Second, he had numerous connections to Israel before he immigrated to the United States in 1990. Following his birth, he spent his formative years, including his attendance at high school, there. Third, he maintains communication with his parents and eight siblings, who are residents and citizens of Israel.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 20 years and has been a naturalized citizen for 13 years. He graduated from a U.S. university. His spouse and children are U.S. citizens. He has worked for his employer since 1997 on projects of military importance. His colleagues assess him as loyal, trustworthy, and responsible, praising his competency and track record of properly handling classified information. He is a good family member and U.S. citizen. He destroyed his Israeli passport and has no plans to return in the future. His ties to the United States, which he refers to as “his country,” are much stronger than his ties to his parents and eight siblings living in Israel. There is no evidence he has ever taken any action that could cause potential harm to the United States. There is no derogatory information about him in the record. He credibly asserted his steadfast allegiance to the United States and willingly renounced his citizenship to Israel.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant fully mitigated the security concerns pertaining to foreign preference and foreign influence. Overall, the record evidence leaves no doubt as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline C and Guideline B.

### **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 APPLICANT

Subparagraphs 1.a (1) through 1.a (3): For Applicant

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraphs 2.a through 2.f:

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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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SHARI DAM  
Administrative Judge