



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



In the matter of:)
)
 -----) ISCR Case No. 09-06591
)
)
 Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Department Counsel
For Applicant: *Pro se*

February 7, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the foreign preference and foreign influence security concerns generated by his relationship with resident Israeli citizens and his use of an Israeli passport when traveling to Israel to visit them. Clearance is denied.

Statement of the Case

On April 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, Foreign Influence, and 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.

Applicant answered the SOR on May 24, 2010, admitting all the allegations except subparagraphs 2(a)(2) through 2(a)(4), and requesting a decision based on the written record in lieu of a hearing. On August 11, 2010, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it on August 27, 2010, and responded on October 5, 2010. I have reviewed the FORM and have concluded that eligibility for access to classified information is denied.

Evidentiary Ruling

At Department Counsel's request, I took administrative notice of the facts set forth in 11 documents included in the FORM. I shall reference these documents using Roman numerals.

Findings of Fact

Applicant is a 32-year-old married man with one child, an infant. Applicant earned a bachelor's degree in 2001 and a master's degree in 2007. He earned both degrees from universities in the United States. Although he did not list his major on the security clearance application, based on the jobs he has held over the past ten years, including "wafer fabrication engineer," "multi-disciplined engineer," and "integration and test engineer," his college degree was likely in an engineering - related field.¹ Since July 2008, Applicant has been working for a defense contractor as an operations program manager.

Applicant was born in Surinam in 1978. At that time, it was a Dutch colony. (Item 5 at 3) He was an Israeli citizen by virtue of his father, and also a citizen of Holland. (*Id.*) In 1987, when Applicant was nine years old, his family relocated to the Applicant (Item 5 at 8) Currently, all of Applicant's immediate family members live in the United States (Item 5 at 10)

When Applicant was a child, his parents obtained an Israeli passport for him. (Item 5 at 4) During his childhood, he visited Israel using the Israeli passport three times --- twice in the early 1990s with his family, and once in 1995 as part of a high school exchange program. (*Id.*) Since graduating from high school, Applicant has travelled to Israel approximately every other year. He has not visited Israel since 2008.

Applicant became a naturalized U.S. citizen in January 2004. (Item 4 at 4) Applicant's most recent two visits to Israel occurred after he became a U.S. citizen. Although he had a U.S. passport, he used his Israeli passport on both occasions. (Item 3 at 3) According to Applicant, during both trips to Israel after becoming a U.S. citizen, Israeli transportation security officials would not let him enter the country with his U.S. passport and told him that, as a person who possesses Israeli citizenship, he needed to use his Israeli passport. (Item 2 at 3)

¹See Item 3 at 16-20.

Applicant renewed his Israeli passport after it expired in 2003. It expired again in July 2008. In December 2008, the Government propounded interrogatories to Applicant. In response to Interrogatory Number 7, asking whether Applicant planned to renew his Israeli passport, he responded as follows:

I currently have no intention to renew my Israeli passport. However, my familial responsibilities may require me to travel to Israel to attend to legal matters. If Israeli law requires my passport to be renewed in order to do so, then I will renew my passport. I would report the passport renewal to my Security Officer. (Item 5 at 20)

In Applicant's answer to the SOR, he stated the following:

I hereby clarify that I do not intend to renew my Israeli passport. Furthermore, I have voluntarily surrendered my Israeli and Dutch² passport to the Facility Security Officer . . . (Item 2 at 3)

Also, he stated that any scenarios outlined in his answer to Interrogatory Number 7 were merely speculative. Applicant provided an affidavit, dated May 24, 2010, from his company's facility clearance officer (FSO) certifying that he surrendered the Israeli passport. (Item 2 at 5) The record contains no evidence of whether Applicant is willing to renounce his dual citizenship.

Applicant has not voted in any Israeli elections, nor has he served in the Israeli military. (Item 5 at 4) Applicant is now too old to be subject to Israeli law governing mandatory military service. (*Id.*)

Applicant and his wife married in 2004. She is an Israeli citizen with permanent U.S. resident status. (Items 4 at 28; 5 at 9) She is self-employed as an event photographer. (Item 5 at 9)

Applicant's parents-in-law are Israeli citizen residents. His father-in-law owns a carpentry business and his mother-in-law is a homemaker. (*Id.*) Applicant talks with his mother-in-law approximately twice per year, and his father-in-law approximately once per year. He has not visited them since his last trip to Israel in 2008.

Applicant has four siblings-in-law who live in Israel. His sister-in-law is an engineering student and her spouse is a software engineer. (Item 5 at 10) Applicant talks to his sister-in-law and spouse approximately once per year and visits them approximately once every other year when he travels to Israel.

Applicant's brother-in-law living in Israel is a lawyer. (*Id.* at 11) Applicant does not talk to him by phone, and does not always see him when he visits Israel.

²Applicant's Dutch citizenship and his previous possession of a Dutch passport were not alleged in the SOR.

Applicant's other sister-in-law living in Israel is a lawyer. (*Id.*) He does not keep in touch with her by phone and does not always see her when he visits Israel. (*Id.*)

Israel is a parliamentary democracy with strong historic and cultural ties with the United States (Exhibit I at 6). Commitment to Israel's security has been a cornerstone of U.S. Middle East policy since Israel's inception. (*Id.* at 10) The United States is strongly committed to Israel's viability as a Jewish state. (*Id.*) Both countries have a mutual interest in a peaceful, secure Middle East. The threat of terrorist attacks in Israel is ongoing, and is particularly acute in regions controlled by Hamas. (Exhibit II at 4-6) The U.S. Government warns that American interests could be the focus of such attacks. (Exhibit IV) There have been some cases Israeli and U.S. citizens prosecuted and convicted of spying against the United States for Israel. (Exhibit III at 39)

Since 1989, Israel has experienced a rapid influx of highly skilled immigrants, predominantly from the former Soviet Union. This influx has spurred a correspondingly rapid growth in Israel's high tech sector. (Item I at 8) Israel has as many companies listed on the NASDAQ market as Canada, Japan, and Ireland combined. Several leading U.S. high tech firms have offices in Israel. (*Id.*)

The United States is Israel's largest trading partner. (*Id.* at 9) The most lucrative areas for U.S. exporters are defense-related products, as well as energy and security. (*Id.*) In late 2005, a major U.S. chipmaker announced plans to spend \$3.5 billion to build a new chip-making plant in Israel. (Item 5 at 18) As foreign access to sensitive U.S. technologies has expanded, rapid advances in information technology such as cell phones with digital photographic capability and compact electronic storage devices has vastly simplified the illegal retrieval, storage, and transfer of massive amounts of information. (*Id.*)

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 or other legal purposes. (Exhibit II at 3) Dual citizens must enter and depart Israel using their current Israeli passport. (*Id.*)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline C, 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 ¶ 9)

Applicant possessed a valid Israel passport and used it to travel to Israel multiple times between 1995 and 2008. His most recent uses of the Israeli passport occurred after he became a naturalized U.S. citizen. AG ¶ 10(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 . . .” applies.

Applicant’s Israeli passport expired in 2008. He surrendered it to his company’s FSO in May 2010. AG ¶ 11(e), “the passport has been destroyed, surrendered to a cognizant security authority, or otherwise invalidated,” applies.

Despite being aware of Israel’s requirement for Israeli citizens to enter the country using an Israeli passport, Applicant maintains his Israeli citizenship and has vacillated throughout the investigative process regarding the issue of whether he will renew the passport to travel to Israel in the future. Applicant has not mitigated the foreign preference security concern.

Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” (AG ¶ 6) Moreover, “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.” (*Id.*) A “current and accurate assessment of the ‘geopolitical situation’ and the

security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases.” (ISCR Case No. 07-05686 at 4, footnote 3 (App. Bd. November 12, 2008))

Israel is a staunch U.S. ally with a shared commitment to the rule of law, strong cultural ties, and mutual commercial interests. However, even friendly countries can attempt to gain unauthorized access to classified information. (ISCR Case No. 98-502 (May 4, 1999) at p. 3) Israel has conducted espionage against the United States in the past and actively engages in corporate espionage against U.S. companies. A G ¶ 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.

Although Israel has conducted espionage against the United States, it is not a totalitarian regime with a history of attempting to intimidate its citizens worldwide to achieve its geopolitical objectives. Consequently, the risk of coercion that Applicant may experience through his spouse, a U.S. resident, is minimal. I resolve SOR subparagraph 1.a in Applicant’s favor.

Applicant does not always visit his brother-in-law and sister-in-law who are attorneys when he visits Israel, and he does not otherwise communicate with them between visits. 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,” applies to these relatives.

As recently as December 2008, Applicant noted that family obligations to his Israeli relatives could compel him to renew his Israeli passport and return to Israel. Given the presumption that relationships with in-laws are not casual,³ AG ¶ 8(c) does not apply to Applicant’s relationship with his other Israeli in-laws even though their contact is not significantly more frequent than his contact with his siblings-in-law who are attorneys.

Applicant’s allusion to family obligations that may compel him to renew his Israeli passport to travel to Israel demonstrates a depth of affection to his in-laws which generates a vulnerability to coercion. Applicant has lived in the United States for his entire adult life. His parents live in the United States and he was educated in the United States. These facts do not overcome the security concern generated by Applicant’s self-expressed familial obligation to his Israeli in-laws, and his equivocal response to the question of whether he would ever renew his Israeli passport. Neither 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 United States, nor AG ¶ 8(b), “there is no conflict of interest, either because the

³ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002) at 8)

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," apply. Applicant has not mitigated the foreign influence security concerns.

Whole-Person Concept

Under 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 have considered these whole-person factors in my analysis of the disqualifying and mitigating conditions, and they do not warrant a favorable conclusion. Applicant has failed to mitigate the security concerns.

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:	AGAINST APPLICANT
SOR subparagraph 1.a:	For Applicant
SOR subparagraphs 1.b-1.c:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
SOR subparagraph 2.a:	Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge