DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-06979
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: Wife, Personal Representative

December 10, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guidelines C, Foreign Preference, and Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C and B. 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 in writing on May 17, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 18, 2010. DOHA issued a Notice of Hearing on October 25, 2010. I convened the hearing

as scheduled on November 10, 2010. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. The Government requested administrative notice be taken of certain facts relating to Israel as contained in Hearing Exhibit (HE) I. I took administrative notice of the documents. Applicant and one witness testified. Applicant offered Exhibits (AE) A through G, which were admitted without objections. DOHA received the hearing transcript (Tr.) on November 19, 2010.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1c, 2.a, 2.b, 2.c, 2.d, 2.e, and 2.h. He denied portions of the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 64 years old. He was born in Poland and is the only child of parents who survived the holocaust and immigrated to Israel in 1960, when he was a boy. At some point he became an Israeli citizen. He was conscripted to serve in the Israeli military from 1967 to 1970. He was subject to recall for a period of time, but does not have any further military obligation and is unaware of any future obligation. He immigrated to the United States in 1970 and attended school. He earned a bachelor's degree and a master's degree. He married a United States citizen in 1973 and has three children. His eldest daughter and son were born in the United States. His younger daughter was born in Israel.[1]

After graduating from college, Applicant worked for a U.S. company in the United States from 1975 through 1977. His mother died in 1977 and his father needed his support and help. In 1980, Applicant was able to have his company transfer him and his family to Israel. He purchased a house in 1980 in Israel. His father cosigned on the mortgage. He and his family lived there until 1985, when he and his family moved back to the United States. He continued to work for the same company. He registered his younger daughter, who was born while he lived in Israel, with the United States Embassy. She is a dual citizen of Israel and the United States. While living in Israel, Applicant's wife became a dual citizen of Israel and the United States. During his time in Israel, Applicant was able to help his father and assist him in transitioning to a retirement facility.[2]

Applicant's two oldest children are Israeli citizens because they were born to Israeli parents. They both finished school while living in Israel, so they were required to serve in the Israeli military. Both his daughter and son completed their Israeli military obligation. Both of them are dual citizens of Israel and the United States.[3]

[1] Tr. 40, 45-49, 62-65, 72-76, 82, 118-119, 128.

[2] Tr. 45, 49-52, 75-80, 84-86, 101-103.

[3] Tr. 90-93.

Applicant's eldest daughter has lived in Israel since 2001. She married an Israeli citizen. They have two children. They own their own internet business. Applicant's son-in-law completed his mandatory military service. Applicant is unaware if he has any future military obligations. His daughter no longer has any obligations because she is married. Both of Applicant's grandchildren are dual citizens of Israel and the United States. They have never lived in the United States. In 2009, Applicant's younger daughter moved to Israel. She is not required to serve in the Israeli military because she is past the age requirement. She is employed by an art gallery.[4]

Applicant became a naturalized United States citizen in 1989. He obtained a United States passport the same year. In 1992, he renewed his Israeli passport when it expired.[5]

From 1997 to 2009, Applicant made approximately 12 trips to Israel. When he entered and exited Israel he did so with his Israeli passport. When he took trips to other foreign countries he used his United States passport.[6]

In 1988, Applicant's father passed away. His father had many financial issues that were unresolved. Applicant attempted to sell the house, but was unsuccessful, so he leased it. In 1992, due to the enormity of the financial issues Applicant had to deal with, he and his family moved back to Israel and lived in the house until 1997. Later his oldest daughter lived in the house while she attended school. Applicant stated that due to the many financial issues that were unresolved regarding his father's estate it was too difficult to handle them while living in the United States, so they moved back to Israel. The house was eventually sold in 2001. He stated that he maintained a home in the United States during this time and has always maintained the United States as his permanent residence.[7]

From 1992 to 1997, Applicant worked for an Israeli company in Israel. He did not know if the company had contracts with the Israeli government. Upon moving back to the United States in 1997, Applicant started his own company that provided services to U.S. and Israeli companies based in the United States, until 2002. He provided his services to multiple companies and made business trips to Israel. While in Israel he would visit his daughter.[8]

[4] Tr. 45-46, 82, 123-126.

[5] Tr. 66-68, 103-106.

[6] Tr.68-71.

[7] Tr. 42-44, 80-82, 88-89.

[8] Tr. 40-41, 98-101, 106.

From 2002 to approximately June 2009, Applicant initiated contact with U.S. and foreign businesses. He was attempting to market his expertise and did this as a way of networking.[9]

Applicant does not own any property in Israel. He estimated his house in the United States is worth approximately $500,000, and his other assets are about $150,000.[10]

Applicant no longer has an Israeli passport. He destroyed it in the presence of his facilities security officer on September 29, 2009. He is willing to renounce his Israeli citizenship. If he attempts to go to Israel without an Israeli passport, he will be fined and required to acquire one. He does not intend to return to Israel. His daughter and grandchildren visit him in the United States once or twice a year. Applicant has no other close relatives living in Israel.[11]

Applicant voted in a local election in 1994. Only those holding property could vote in the local election. He voted because he was living there at the time. He did not vote in a national election.[12]

Applicant's son testified on his behalf. He described his father as a loyal American who loves his country. His father is thankful and grateful to the United States and is cognizant of the persecution of people around the world. He is thankful that this does not happen in the United States. He considers his father a good citizen who respects the law and his neighbors. He has never spoken badly about the United States and he has never violated its laws. He is a good law abiding loyal American.[13]

Applicant stated he has very strong ties to the United States. He went to school in the U.S., married in the U.S., and his assets are located here. He considers himself a loyal and devoted American with deep beliefs in the liberties afforded to its citizens. He is a student of American history and has collected many artifacts of Americana. He considers himself to be a patriotic American who flies his flag proudly. He is willing to renounce his Israeli citizenship, but has not contacted the consulate to take any affirmative steps.

Applicant provided documents about his credit history and his contributions to his company. He provided copies of documents showing his community involvement and

[9] Tr. 110-115.

[10] Tr. 119-120.

[11] Tr. 64-65, 120-123.

[12] Tr. 39-40, 94.

[13] Tr. 138-144.

contributions to charities. He provided copies of photos showing his interest in American history and artifacts. I have considered all of the documents provided by Applicant.[14]

Israel[15]

Israel is a parliamentary democracy whose prime minister heads the government and exercise 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.

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 Report to Congress of Foreign Economic Collection and Industrial Espionage for 2000 and 2005, lists Israel as one of the active collectors of proprietary 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 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 list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

[14] Tr. 49-60; AE A, B, C, D, E, F.

[15] HE I.

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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 C, Foreign Preference

AG ¶ 9 expresses 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; (2) military service or a willingness to bear arms for a foreign country; (3 accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; . . . (5) using foreign citizenship to protect financial or business interests in another country; . . . (7) voting in a foreign election; and
>
> (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was a dual citizen of Israel and the U.S. After becoming a citizen of the United States in 1989, he renewed his Israeli passport in 2004 and used it to travel to Israel in 2004, 2008, and 2009. After becoming a United States citizen, Applicant voted in a local Israeli election, resided in Israel, and worked for an Israeli company from 1992 to 1996. From 1997 to 2002, he provided services to U.S. companies and Israeli companies based in the United States. From 2002 to 2009, Applicant marketed his services to these companies. At one time, Applicant owned property with his father who lived in Israel. He served in the Israeli military before becoming a United States citizen. His children attended school in Israel when they lived there. I find the above disqualifying conditions apply.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship;
>
> (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in the foreign election was encouraged by the United States Government.

Applicant's exercised dual citizenship after he became a U.S. citizen and used his Israeli passport to enter and exit Israel. He exercised the rights, privileges, and obligations of an Israeli citizen while living there and after he became a U.S. citizen. There is no evidence he was encouraged by the United States Government to vote in an Israeli election. The mitigating conditions under AG ¶¶ 11(a), 11(c) and 11(f) do not apply. Applicant destroyed his Israeli passport in September 2009, and is willing to renounce is Israeli citizenship. He does not intend to travel to Israel again. I find mitigating condition AG ¶ 11(b) and 11(e) apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

> 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 conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

> (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;
>
> (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;
>
> (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

> (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's two daughters and two granddaughters reside in Israel and are dual citizens of the United States and Israel. His wife and son are dual citizens of the United States and Israel and reside in the United States with him. Applicant, along with his eldest daughter, son, and son-in-law completed their mandatory military service. Applicant has no other military obligations. His daughter has no further obligation because she is married. His son has no further obligation because he lives in the United States. He is unsure if his son-in-law has further obligations. Applicant worked for an Israeli company from 1992 to 1997. They did not have any Israeli Government contracts. In 1997, after moving back to the United States, Applicant started his own company and provided services to both U.S. companies and Israeli companies based in the U.S. until 2002. From 2002 to 2009, he provided consulting services to U.S. companies and Israeli companies based in the United States. He provided his services to multiple companies and made business trips to Israel. He no longer has any contact with the companies. He no longer owns any property in Israel. He continues to maintain contact with his family in Israel.

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, even 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.

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 to his family could create a potential conflict of interest. I find AG ¶¶ 7(a), 7(b), and 7(d) applies. I find AG ¶ 7(e) does not apply because Applicant no longer has any financial or property interests in Israel.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following are potentially applicable:

> (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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. It is very unlikely that he will be forced to choose between loyalty to the United States and his relationship with his family living in Israel or those who are dual citizens. 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 Appellant, in an attempt to gather valuable or classified information from the United States. It is also improbable that they would do the same against a dual citizen living in Israel.

Applicant's immediate family all are dual citizens of the United States and Israel. He has frequent contact and a strong family bond with his wife, children, son-in-law, and granddaughters. He has destroyed his Israeli passport and is willing to renounce his dual citizenship with Israel to show his undivided loyalty to the United States. He does not intend to travel to Israel again. There is no evidence that Applicant's family members living in Israel or the United States have been political activists or that they have high profile jobs with the Israeli Government. There is no evidence that Appellant's family members currently engage in activities which would bring attention to them. There is no evidence that terrorists or other anti-U.S. elements are aware that Applicant has family living in Israel. There is a very low possibility that Applicant's family, who are dual citizens, would be targets for coercion or exploitation. It is undeniable that Applicant has had a long emotional, religious, and cultural commitment to Israel. He exercised dual citizenship with Israel, returning to live there and care for his father. I considered all of his testimony and evidence. I considered his demeanor and candor and his fierce loyalty to the United States. Based on his deep connections to the United States, which are stronger than his connections to Israel, he has persuaded me that his loyalty to the United States is steadfast and he will resolve any conflict of interest in

favor of the United States. I find AG ¶¶ 8(a) and 8(b) applies. I find AG ¶ 8(c) does not apply because Applicant's contact and communication with his family is more than casual and infrequent.

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 have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant spent many years of his life in Israel. His parents immigrated to Israel and he became an Israeli citizen. He came to the United States and married and started a new life. Due to family commitments he returned to Israel. It is clear that he has strong religious, cultural, and emotional ties to Israel. Most of the members of his family are dual citizens of the United States and Israel. However, Applicant's evidence and testimony shows strong nationalist pride of his country of choice, the United States. He made a strong symbolic statement affirming his loyalty to the United States, when he destroyed his Israeli passport and stated his willingness to renounce his Israeli citizenship. Although Applicant has family members living in Israel and others who are dual citizens, due to the nature of the relationship between the United States and Israel, it is unlikely Applicant or his family members would be placed in a position to have to choose between their family and the interests of the United States. I am convinced that in the unlikely event there was a conflict of interest Applicant would resolve the conflict in favor of the United States. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guidelines for Foreign Preference and Foreign Influence.

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.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.h:	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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello
Administrative Judge