



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



In the matter of:)
)
-----) ISCR Case No. 09-07911
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

January 11, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in the United States and immigrated to Israel when she was six years old. Applicant returned to the United States in 1987 when she was 23 years old; however, she obtained an Israeli passport and has used it several times to visit Israel. She continues to retain an Israeli passport even though she knows it raises security concerns. Foreign influence concerns are mitigated; however, foreign preference concerns are not fully mitigated at this time. Access to classified information is denied.

Statement of the Case

On August 29, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 13, 2010, Applicant responded to the SOR. (HE 3) On August 23, 2010, Department Counsel was prepared to proceed. On August 25, 2010, the case was assigned to me. On November 30, 2010, DOHA issued a hearing notice setting the hearing for December 13, 2010. (HE 1) The hearing was held on December 13, 2010, as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 17), and Applicant offered two exhibits. (Tr. 18-19; AE A-B) There were no objections, and I admitted GE 1-3 and AE A-B. (Tr. 17, 19) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On December 28, 2010, I received the hearing transcript.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Israel. (Tr. 17-18; Administrative Notice Request, July 28, 2010) Department Counsel provided supporting documents to show verification, detail and context for these facts in the Administrative Notice request. *Id.* Applicant did not object to me taking administrative notice of all of the facts in all of the documents. (Tr. 18) See the Israel section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Israel.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted the facts alleged in the SOR's subparagraphs; however, she denied that she has a preference for Israel over the United States. (HE 3) Her

¹The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or her Office of Personnel Management (OPM) personal subject interview (PSI) on September 17, 2009. (GE 2)

admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 45-year-old university professor. (Tr. 6, 27) She occasionally consults on Department of Defense projects. (Tr. 25-27) She was born in the United States, and she moved to Israel when she was six years old. (Tr. 16, 24) She graduated from high school in Israel in 1982. (Tr. 6, 21) Her compulsory military service in the Israeli Army was from 1982 to 1984. (Tr. 21) She was promoted to the rank of second lieutenant. (Tr. 22) Her military specialty in the Israeli Army was in personnel. (Tr. 22) She voted in one Israeli election in the early 1980s. (Tr. 23) She received her bachelor's degree in Israel in 1987. (Tr. 6, 21)

Applicant returned to the United States in 1987 when she was 23 years old. (Tr. 16, 27) She voted in numerous U.S. elections. (Tr. 23) She was awarded her master's degree in 1991, and her PhD in 1993 in the United States. (Tr. 6, 27) She settled in the United States because of the job opportunities and her preference for life in the United States. (Tr. 28-29)

Applicant's spouse was born in Israel and is a naturalized U.S. citizen. (Tr. 29) She met her future husband in 1982, when they were both serving in the Israeli Army. (Tr. 29) They married in Israel in 1985. (Tr. 29-30) Her husband is a photographer. (Tr. 30) Their two children are ages 12 and 18. (Tr. 33) Both of their children were born in the United States, and both live in the United States with Applicant. (Tr. 30, 34) Both of their children are dual United States and Israeli citizens, and their children have been to Israel. (Tr. 30) They speak Hebrew and English at home, and they attend Hebrew school after regular school. (Tr. 56)

Applicant's parents are not U.S. citizens. (Tr. 44) Both of her parents are retired and live in Israel. (SOR ¶ 2.a; Tr. 43-45; HE 3) Her father is retired from his employment with the Israeli Government, and he receives a pension. (SOR ¶ 2.b; Tr. 45-46; HE 3) Her mother also receives a pension from the Israeli Government. (Tr. 44) Applicant communicates with them on average once every two weeks. (Tr. 54) Her parents visit Applicant in the United States about every eighteen months or so. (Tr. 54) She is close to her parents. (Tr. 55)

Applicant's mother-in-law, two sisters-in-law, and two half brothers are citizens and residents of Israel. (SOR ¶¶ 2.c and 2.d; Tr. 47-50; HE 3) Her mother-in-law is retired, and she may receive a pension, similar to social security, from the Israeli Government. (Tr. 46-47) Her sister-in-law, her sister-in-law's husband, and a half brother, are not Israeli Government employees. (Tr. 47-52) She or her husband frequently communicates with one of her two sisters-in-law. (Tr. 49-51)

Applicant and her spouse own a house in the United States, and they do not own any property in Israel. (Tr. 32, 35) They have about \$110,000 in equity in their U.S. residence. (Tr. 33) They have about \$120,000 in U.S. investments and accounts. (Tr. 34) Applicant is a member of multiple U.S. professional associations. (Tr. 37-38) She has never served in the U.S. military. (Tr. 40)

Applicant and her husband may inherit some apartments or some interest or share in apartments in Israel when their parents pass away. (Tr. 35) Applicant's sister and her sister's husband live in the United States. (Tr. 36)

Applicant visited Israel in 2002, 2003, 2005, 2006, and 2009. (SOR ¶ 2.e; HE 3) Applicant, her husband, and their children try to travel to Israel every two years. (Tr. 31) Their children have been allowed to visit Israel without Israeli passports; however, Israeli authorities have chastised Applicant and her husband for using United States instead of Israeli passports for their children. (Tr. 31) Applicant, her husband, and their children most recently visited Israel in 2009. (Tr. 31, 37)

There is no derogatory information concerning Applicant's police or financial records. She has never been fired from a job. There is no evidence showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Applicant's Possession and Use of an Israeli Passport

Applicant has Israeli citizenship because both her parents are Israeli citizens. (Tr. 16) Applicant has a U.S. passport, which she uses for all foreign travel, except when she goes to Israel. (Tr. 16) By Israeli law, Applicant and her husband are required to have an Israeli passport to enter Israel. (Tr. 32) Applicant renewed her Israeli passport in 2006. (SOR ¶ 1.a(2); Tr. 41; GE 2; HE 3) Her Israeli passport will expire in October 2011. (Tr. 42) She uses her Israeli passport to enter and exit Israel. (SOR ¶ 1.a(3); Tr. 43; HE 3)

Applicant does not intend to relinquish her Israeli passport. (SOR ¶ 1.a(1); Tr. 42; HE 3) At some point in the future, if she needs a security clearance, and it is necessary to turn in her Israeli passport obtain a clearance, she "will consider that very seriously." (Tr. 42) She would also seriously consider renunciation of her Israeli citizenship if necessary for a specific contract (Tr. 65) Applicant understood that she will not be allowed to re-apply for a clearance until one year elapses after the date of this decision, and provided a contractor sponsors her for a security clearance. (Tr. 43-43)

Applicant emphasized she has a close relationship with her family living in Israel; however, she does not have a close relationship with the Israeli Government. (Tr. 70-71) She follows U.S. law when she is in the United States, and she follows Israeli law when living in or visiting Israel. (Tr. 71)

Character Evidence

A colleague, who has worked with Applicant on several projects over the last thirty months, and who is a PhD-level psychologist, described Applicant as highly trustworthy and reliable. (AE A) He lauded her professionalism, dependability, expertise, and excellent reputation in the scientific and academic communities. (AE A)

An Associate Professor, who has worked closely with Applicant for the past four years, describes her as having the highest standards of integrity and discretion. She is

completely loyal to the United States and committed to the security of the United States. She provides unique value to the United States' national security. (AE B)

Israel

Israel is a parliamentary democracy of about 7.2 million people. Israel generally respects the human rights of its citizens, although there have been some allegations of mistreatment of Palestinian detainees and discrimination against Israel's Arab citizens. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. In 1948, the United States was the first country to officially recognize Israel. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest trading partner. As of 2006, 38.4% of Israel's exports went to the United States while 12.4% of its imports came from the United States. In 2007, Israel imported goods valued at \$7.8 billion from the United States and exported \$18.9 billion in goods to the United States.

Israel is a prominent recipient of U.S. aid. Since 1949, the United States has provided over \$30 billion in economic assistance to Israel. Between 1976 and 2003, Israel was the largest recipient of U.S. foreign aid. In April 1988, the United States and Israel established a Joint Economic Development Group to develop the Israeli economy by exchanging views on Israel economic policy planning, stabilization efforts, and structural reform. The United States has also provided Israel with \$9 billion in loan guarantees since 2003, which enable Israel to borrow money from commercial lenders at a lower rate.

Although the United States has often publicly committed to Israel's security and well-being, Israel and the United States do not have a mutual defense agreement. In 1989, Israel was one of the first countries designated a Major Non-NATO ally. As such, Israel receives preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. Israel and the United States are partners in the "Star Wars" missile defense project, and have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the United States have established joint groups to further military cooperation. The two countries participate in joint military exercises and collaborate on military research and weapons development. The United States has pledged to ensure that Israel maintains a "qualitative military edge" over its neighbors, and has been a major source of Israeli military funding. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israeli is permitted to use part of its foreign military assistance grant for procurement spending from Israeli defense companies.

Israeli and U.S. military and diplomatic goals are not always consistent. Although Israeli arms agreements with the United States limit the use of U.S. military equipment to defensive purposes, the United States has rebuked Israel for possible improper use of U.S.-supplied military equipment. The United States is concerned about Israeli settlements, Israel's military sales to China, Israel's inadequate protection of U.S. intellectual property, and espionage-related cases implicating Israeli officials and security clearance holders. In 2000, Israel was listed as one of the nations aggressively targeting U.S. economic intelligence. There are several cases of U.S. citizens convicted for selling, or attempting to sell, classified documents to Israeli Embassy officials, and Israeli nationals indicted for espionage. There have also been investigations of the illegal export, or attempted illegal export, of United States' restricted, dual-use technology to Israel. In the Director of National Intelligence's 2008 Annual Threat Assessment, Israel is not identified in any way as representing a threat to or having interests inimical to the United States.

Improper release of sensitive and proprietary information potentially threatens U.S. national security in both military and economic terms. Industrial espionage is intelligence-gathering conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining commercial secrets. Industrial espionage may target commercial secrets of a civilian nature, or commercial secrets that have military applications, resulting in disclosure of sensitive technology that can be used to harm the United States and its allies.

Terrorist attacks are a continuing threat to Israel, and American interests in Israel. Terrorists in Israel, the West Bank and Gaza have injured or killed U.S. tourists, students, residents, and mission personnel. Due to the volatile security environment in Gaza and the West Bank, the United States continues to warn against any travel to those areas. In June 2007, Hamas, a State Department-designated foreign terrorist organization, assumed control over Gaza and in 2008, conflict between Hamas and Israel resulted in the loss of hundreds of lives.

In 1996, Israel and the United States signed a Counterterrorism Cooperation Accord, which established a joint counterterrorism group aimed at enhancing the countries' capabilities to deter and investigate international terrorist attacks or threats of international terrorist acts against Israel and the United States. The United States is the principal international proponent of the Arab-Israeli peace process, and has been actively involved in negotiating an end to the Israeli-Palestinian conflict. With the European Union, the United Nations, and Russia, the Bush Administration has been active in attempting to negotiate agreements between Israel and the Palestinian authority. The Obama administration has promised to continue to work for peace in the Middle East.

"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. For example, an American citizen child of an Israeli parent will be considered an Israeli citizen by Israeli immigration officials, even if the child was born

outside Israel, and Israeli law will apply to the child's travel to, and departure from, Israel. U.S. citizens who are also citizens of Israel must enter and depart Israel using their current Israeli passport."²

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

² U.S. Department of State, *Country Specific Information: Israel, the West Bank, and Gaza*, April 8, 2010, Enclosure II to Administrative Notice, at 2.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines C (foreign preference) and B (foreign influence) with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, “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 in Applicant’s case:

(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;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election;

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

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant was born in the United States, left the United States and moved to Israel when she was six years old, and returned to the United States from Israel when she was 23 years old. Applicant has Israeli citizenship because both her parents are Israeli citizens. She visited her family in Israel in 2002, 2003, 2005, 2006, and 2009. By Israeli law, Applicant is required to have an Israeli passport to enter Israel. She renewed her Israeli passport in 2006. Her Israeli passport will expire in October 2011. She uses her Israeli passport to enter and exit Israel. She does not intend to relinquish her Israeli passport at this time. Based on her continued possession and use of an Israeli passport, AG ¶ 10(a)(1) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

(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;

(d) use of a foreign passport is approved by the cognizant security authority;

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

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

Applicant does not intend to relinquish her Israeli passport. If she needs a security clearance in the future, she will seriously consider relinquishing her Israeli passport. She will also seriously consider renunciation of her Israeli citizenship. She has a close relationship with her family living in Israel; however, she does not have a close relationship to the Israeli Government. She follows U.S. law when she is in the United States, and she follows Israeli law when visiting Israel. None of the mitigating conditions fully apply, and foreign preference concerns are not mitigated.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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.

AG ¶¶ 7(a), 7(b), and 7(d) are raised by Applicant’s and her spouse’s relationships with their family members who are living in Israel. Applicant and her spouse are dual United States-Israeli citizens. Her parents, mother-in-law, sister, and several other family members are living in Israel and are citizens of Israel. She shares living quarters with her spouse.

Applicant's communications with her parents and her sister are frequent. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not fully rebutted this presumption. Applicant and her spouse's relationships with family living in Israel are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents of Israel create a concern about Applicant's "obligation to protect sensitive information or technology" and her desire to help her family living in Israel.

The mere possession of close family ties with a family member living in Israel is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. 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 foreign government; or the foreign country is known to conduct intelligence collection operations against the United States. The relationship of Israel with the United States places a much lesser burden of persuasion on Applicant to demonstrate that her relationships with her family members living in Israel do not pose a security risk. Even with this minimal risk, Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist her family living in Israel, or to assist her spouse, who has close family members living in Israel.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from Israel seek or have sought classified or economic information from or through Applicant, her spouse, or her family living in Israel, it is not possible to rule out such a possibility in the future. Applicant's communications with her family living in Israel are frequent, and she stated she is close to her family in Israel. Applicant's concern for the welfare of her family living in Israel is a positive character trait that increases her trustworthiness; however, it also

increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a), 8(c), and 8(f) have limited applicability. Applicant traveled to Israel to visit her family in Israel in 2002, 2003, 2005, 2006, and 2009. Applicant and her husband have frequent contacts with their family members living in Israel. The number of contacts between an Applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives. Because of her connections to her husband, and their connections to their family members living in Israel, Applicant is not able to fully meet her burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of Israel] could create a risk for foreign influence or exploitation." She admitted that she feels close to her family living in Israel.

AG ¶ 8(b) fully applies. Applicant has “deep and longstanding relationships and loyalties in the U.S.” She has strong family connections to the United States. Her spouse, children, and several other relatives are U.S. citizens and live in the United States. Applicant owns a house in the United States and has substantial investments in the United States. She received her master’s and PhD degrees in the United States. Her employment is in the United States. She is a professor in a U.S. university.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family members who live in Israel. There is no evidence that terrorists, criminals, the Israeli Government, or those conducting espionage have approached or threatened Applicant, her husband, or their family members living in Israel to coerce or influence Applicant for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ relationship with Israel, and especially Israel’s history of espionage. Israel’s history of espionage makes it more likely that Israel would attempt to obtain information from Applicant through her family living in Israel, if Israel determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with her family living in Israel. Applicant is not required to report her contacts with her family living in Israel.

AG ¶ 8(f) has no applicability. Applicant has substantial property interests in the United States, which include her employment in the United States, and the value of her home and investments in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case. Applicant does not own any property or have any investments in Israel or elsewhere outside the United States.

In sum, the primary foreign influence security concern is Applicant and her husband’s close relationship with their family members living in Israel, who are readily available for coercion or attempts to influence. The Israeli Government’s history of espionage against the United States further increases the risk of attempts to influence them. Although there are a number of espionage cases involving Israel, none involve use of relatives living in Israel to pressure security clearance holders to compromise national security. More importantly, all foreign influence security concerns are mitigated because of Applicant’s “deep and longstanding relationships and loyalties in the U.S.” which are discussed in more detail in the Whole-Person Concept, *infra*.

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 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.

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 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 this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Two colleagues, who have known Applicant for several years, lauded her reliability, trustworthiness, and professionalism. Applicant lived in the United States for the first six years of her life, and then from age 23 to 45. She earned her master's and PhD degrees in the United States. Her children and her husband are U.S. citizens. She owns a home in the United States, and her employment is in the United States. She has substantial investments in the United States. She has a U.S. passport.

There is no derogatory information concerning Applicant's police, financial or employment records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. She is a law-abiding U.S. citizen who expresses a preference for the United States interests over the interests of the Israeli Government. She considers the United States to be her home. Applicant's demeanor, sincerity, and honesty at her hearing are important factors militating towards approval of her access to classified information.

A Guideline B decision concerning Israel must take into consideration the geopolitical situation in Israel, as well as the dangers existing in Israel.³ The danger of coercion from the Israeli Government is minimal. Israel and the United States have very close relationships militarily, diplomatically, and through trade. Israel has a history of espionage targeting U.S. military and industrial secrets; however, there is no evidence that those U.S. citizens who provided classified information to Israel were coerced by Israel into betraying the United States, or that their relatives living in Israel were used by Israeli intelligence officials to obtain classified information from security-clearance holders.

³ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

The circumstances tending to support denial of Applicant's clearance under Guideline C are more significant than the factors weighing towards approval of her clearance at this time. Applicant continues to hold an Israeli passport, and she intends to use it in the future to enter and exit Israel.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign influence concerns; however, she has not fully mitigated the foreign preference security concerns resulting from her continuing retention of an Israeli passport, and her plans to use it to visit family members living in Israel.

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:	AGAINST APPLICANT
Subparagraph 1.a(1) to (3):	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a to 2.e:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge