



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02834

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

June 15, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire For Investigations Processing on November 9, 2009. (Government Exhibit 1.) On October 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense after September 1, 2006.

The Applicant responded to the SOR on October 27, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 5, 2011. A notice of hearing was issued on January 13, 2011, scheduling the hearing for February 15, 2011. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 through 4 that were admitted without objection. The Applicant called two witnesses, and presented one exhibit, referred to as Applicant's Exhibits A that was admitted without objection. He also testified on his own behalf. The record remained open to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eleven

Exhibits, referred to as Applicant's Post-Hearing Exhibits A through K. The official transcript (Tr.) was received on February 22, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Israel. The Applicant had no objection. (Tr. p. 18.) The requested administrative notice was taken. The requests and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 45 years of age and has a Bachelor's Degree in Computer Science. He is employed as an Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant admitted allegation 1(a), and denied allegation 1(b) set forth under this guideline. (See Applicant's Answer to SOR.) The Applicant was born in Israel in 1966. He grew up in Israel and at the age of 18, served in the mandatory Israeli Army for three years. He was then placed in the Israeli Army reserves. He immigrated to the United States at the age of 27 with the intent to study and then return to Israel. He graduated from college in the United States. He met his wife in Israel and was married in 1996. About ten years ago, he decided that he wanted to make the United States his permanent home. In 2007, he became a naturalized United States citizen. His wife is also a naturalized United States citizen. They have two children who were born in the United States.

The Applicant possessed a valid Israeli passport that was issued to him on October 25, 2002. After becoming a United States citizen in 2007, he used his Israeli passport to travel to Israel on numerous occasions. He traveled to Israel in April 2007, July 2007, March 2008, July 2009, and November 2009. His Israeli passport will not expire until October 24, 2012. With the understanding that his foreign passport could jeopardize his chance of obtaining a security clearance, on February 16, 2011, the Applicant surrendered his Israeli passport to his employer's security office. (Applicant's Post-Hearing Exhibit A.) He also applied to have his Israeli citizenship renounced. (Applicant's Post-Hearing Exhibit B.) If he travels to Israel at any time in the future, he will use his American passport. (Tr. p.64.)

The Applicant is no longer subject to being called upon to serve in the Israeli Army Reserve since he will no longer be a citizen of Israel.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admitted allegations 2(a), 2(b), 2(c), 2(d), 2(f), 2(g) and 2(h) of the SOR. He denied allegations 2(e), and 2(i). (See Applicant's Answer to SOR.) The Applicant's spouse and two children are dual citizens of Israel and the United States based only upon the children's birth right. The Applicant's elderly mother, sister and in-laws are citizens and residents of Israel. He traveled to Israel to visit his elderly mother in February 2005, April 2006, September 2006, April 2007, July 2007, March 2008, July 2009, and November 2009. None of his relatives work for or have been affiliated with the Israeli government in any way.

In August 2008, the Applicant traveled to Germany for one week to visit a friend who is an Israeli citizen. She is a long time family friend, an elderly woman, who is a Holocaust survivor. The Applicant maintains contact with her on holidays, which is possibly twice or three times a year. (Tr. p. 66.)

At one point, the Applicant had a bank account in Israel with a balance of approximately \$10,000. He and his mother jointly own a rental apartment in Israel worth approximately \$300,000. His portion of the rent from the apartment was placed in his Israeli bank account and wired periodically to his bank in the United States. The Applicant no longer has this account, as it has been closed. (Tr. pp. 62-63 and Applicant's Answer to SOR.)

The Applicant has significant assets in the United States. His home is worth approximately one million dollars. He currently has approximately \$350,000 in equity in his home. He has about \$245,000 in cash in stocks and bonds. He has about \$57,000 in his 401(k). (Applicant's Post-Hearing Exhibits F, G, H, I, J and K.) His combined total assets in the United States is roughly \$650,000, which is four times the estimated one half of \$300,000 that he has in Israel.

He testified that he would never do anything to jeopardize the national security of the United States. He also states that he would never do anything to advance Israel at the detriment of the United States. (Tr. p. 67).

Two close friends of the Applicant testified that he is extremely trustworthy, loyal, and responsible. They recommend him for a security clearance. (Tr. pp. 69-74.)

Numerous letters of recommendation from professional associates, coworkers, friends and neighbors of the Applicant attest to his intelligence, professionalism, high degree of integrity, trustworthiness, good judgment, reliability, excellent work ethic, strong moral compass, great depth of knowledge and sense of humor. He is recommended for a security clearance. (Applicant's Exhibit A.)

Letters from the Applicant's direct and indirect supervisors attest to his trustworthiness, intelligence and hardworking nature. He is said to have excellent technical and interpersonal skills that are respected and appreciated by his management. He is recommended for a security clearance. (Applicant's Post-Hearing Exhibits C, D and E.)

I have taken official notice of the following facts concerning the Israel. Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified technologically advanced economy that is growing at five percent annually. The United States is Israel's largest trading partner. The threat of terrorist attacks in Israel is an on-going concern. Terrorist organizations have launched rockets and mortars from the Gaza Strip. The U.S. government has previously issued warnings that American citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, the West Bank and Gaza. As a result, American citizens have been urged to exercise a high degree of caution when visiting places associated with U.S. interests and/or located near U.S. official buildings. The United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. There are some issues in U.S. - Israeli relations. The United States is concerned with Israeli military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases involving Israeli citizens.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *The Concern.* 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.

Condition that could raise a security concern:

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; This includes but is not limited to:

(1) possession of a current foreign passport.

Conditions that could mitigate security concerns:

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

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

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

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;

7.(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

7.(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.

Conditions that could mitigate security concerns:

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 U.S;

8.(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 in the U.S. interest;

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;

8.(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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct and surrounding circumstances;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which the participation was voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is

predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guidelines C (Foreign Preference) and B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 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. This includes but is not limited to: (1) possession of a current foreign passport applies. However, Mitigating Conditions 11(b) the individual has expressed a willingness to renounce dual citizenship, and 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated also applies.*

Under Foreign Influence, Disqualifying Condition 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; 7.(b) connections*

to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and 7.(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 apply. However, Mitigating Conditions 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 U.S.; 8.(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 in the U.S. interest; and 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; and 8.(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 also apply.

The evidence shows that the Applicant exercised dual citizenship after becoming a citizen of the United States by possessing an Israeli passport. Without hesitation, however, he surrendered his foreign passport and applied to renounce his Israeli citizenship when he learned that it could harm his eligibility for a security clearance. He credibly testified that he would never jeopardize the national security of the United States. He has demonstrated that there is no situation that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign preference. Accordingly, I find for the Applicant under Guideline C (Foreign Preference).

Furthermore, the Applicant has lived in the United States for almost half of his life. He and his wife became naturalized United States citizens, and now have two native born American children who plan to remain in the United States. The Applicant's house and other financial assets in the United States far exceed what he has in Israel. His foreign relatives in Israel that he visits on an annual basis, and who he is fairly close to, do not compare to his devotion, dedication and obligations to his immediate family in the United States. Furthermore, none of his relatives have worked for or have been affiliated with the Israeli government in any way.

It is noted that the current political situation in Israel elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with his foreign family members or to any foreign individual, or to Israel, in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. There is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of

classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a 45 year old Engineer who has lived the American Dream. He is an immigrant from another country who has made the United States his own. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has demonstrated that he is sufficiently trustworthy, and that he clearly meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guidelines C (Foreign Preference) and B (Foreign Influence).

On balance, it is concluded that the Applicant has overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant

Paragraph 2: For the Applicant.
Subpara. 2.a.: For the Applicant
Subpara. 2.b.: For the Applicant
Subpara. 2.c.: For the Applicant
Subpara. 2.d.: For the Applicant
Subpara. 2.e.: For the Applicant
Subpara. 2.f.: For the Applicant
Subpara. 2.g.: For the Applicant
Subpara. 2.h.: For the Applicant
Subpara. 2.i.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge