



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-02902
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Barry M. Sax, Attorney At Law

February 3, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire For Investigations Processing on June 16, 2009. (Government Exhibit 1). On August 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on August 18, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 18, 2010. A notice of hearing was issued on October 29, 2010, scheduling the hearing for December 8, 2010. The matter was rescheduled on November 1, 2010, for December 15, 2010. At the hearing the Government presented two exhibits, referred to Government Exhibits 1 and 2. The Applicant called two witnesses and presented ten exhibits, referred to as Applicant's Exhibits A through J. He also testified on his own behalf. The official transcript (Tr.) was received on

December 22, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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. 24). Applicant's Counsel requested that I take administrative notice of information concerning the Law of Return and DOHA Case No. 09-03220. (Tr. pp. 30-32). 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 25 years of age and has attended college in Israel. 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 was born in the United States in 1985, to parents of Jewish heritage. He grew up and was raised in the United States as a moderate orthodox Jew. He attended Jewish religious schools most of his life, from elementary through mid-high school. During high school he decided to go to Israel to attend a religious academic college that taught the immersion in Judaism and Hebrew. In 2003, the Applicant moved to Israel where he spent the next four years of his life, until 2007.

From August 2003 to January 2004, he attended a religious college in Israel. Not entirely content with the curriculum, he changed colleges and attended a technical religious college in Israel that also taught math and sciences. He attended this particular college of technology for a year and a half. While attending this technical college, he learned from fellow students of an opportunity for non-citizens to volunteer to serve in the Israeli Defense Force (IDF). He started the process to enlist the IDF in August 2005. After submitting the enlistment paperwork, in October 2005, he returned to the United States. In November 2005, he returned to Israel to start his army service and served on active duty from November 2005 through January 2007, fourteen and a half months. The Applicant served in the IDF along side Israeli citizens who were serving mandatory military service. His primary responsibility in the Israeli military was to protect the people of Israel, and sacrifice his life if it was required. He carried a weapon and was taught to kill if his post was attacked. Among his assignments was to protect and guard the West Bank. He also crossed over the border into Lebanon into a combat zone. (Tr. p. 123, and 130-131.)

Following his military service, the Applicant was given three options. He could return to the United States, stay in Israel, or apply for Israeli citizenship under the Law of Return, and stay in Israel. The Applicant returned to the United States. The Applicant stated that he was tired of Israel. He did not like the culture and he clashed with the mentality. (Tr. pp. 82-84.) Upon returning to the United States, he decided he wanted to study Engineering and so he enrolled in college.

The Applicant testified that he has never been a dual citizen of Israel and the United States. He is only a United States citizen. (Tr. p. 77.) He has never requested Israeli citizenship, had an Israeli passport, nor taken advantage of the Law of Return. (Tr. p. 78.)

The Applicant began working for his current employer on a full time basis in June 2011. Prior to that he was a summer intern for the company. Testimony from witnesses who know the Applicant both professionally and personally, including his technical lead, who was extremely impressed with his talents and hired him, and with whom he works, attests to his intelligence, excellent work product, trustworthiness, dedication, strong sense of integrity, good character, and specifically his ability to safeguard classified information. They highly recommend the Applicant for a position of trust. (Tr. pp. 32-66.)

Letters of recommendation from professional colleagues, former fellow students, the Applicant's father, a retired U.S. Army member, and other friends who know the Applicant well, stated that he is honest, reliable and a great asset, worthy of a security clearance. (Applicant's Exhibits A through I.)

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:

(2) military service or a willingness to bear arms for a foreign country.

Conditions that could mitigate security concerns:

None.

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;
- 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 participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior 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 Guideline C (Foreign Preference) 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 demonstrates a foreign preference may be prone to provide information or make decisions that are harmful to the interests of the United States. This raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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.

CONCLUSIONS

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: (2) military*

service or a willingness to bear arms for a foreign country applies. None of the mitigating conditions are applicable.

This is an unusual and very unique case. The evidence shows that the Applicant is a United States citizen who grew up and was raised in the United States. In 2003, as a teenager, he decided to move to Israel to study, and immerse himself in Judaism and his Jewish culture. In 2005, he voluntarily joined the Israeli Army where he served on active duty along side Israeli citizens to defend the country of Israel for fourteen and a half months. He returned to the United States in 2007, just four years ago. Although he states that he has no preference for Israel, and in fact states that he did not like it there, his conduct shows differently. His conduct demonstrates that he has deep and abiding ties to Israel. The Applicant did not volunteer to serve in the United States military, he volunteered to protect the people of Israel. His dedication and devotion to the country of Israel is evident by his commitment to the culture, its religion and its army.

Applicant has failed to establish application of any of the Mitigating Conditions. Based on his recent foreign military service and his relationship and depth of loyalty to Israel, he cannot be expected to resolve any conflict of interest in favor of the United States interest. Although he has lived in the United States most of his life, his connections and contacts with Israel are strong. His recent military service in Israel places the United States at a heightened risk of foreign exploitation, pressure or coercion that could create a potential conflict of interest between the Applicant's ability to protect sensitive information and technology and his desire to help Israel.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the facts set forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

It is noted that the current political situation in Israel elevates the cause for concern in this case. The evidence shows that the Applicant has a strong bond of affection with a foreign country, in a way 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 a 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 vulnerable to foreign preference. Accordingly, I find against the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline C.

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: Against the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: Against the Applicant
Subpara. 1.c.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge