DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-04350
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: William David Byassee, Esquire
M. Robin Repass, Esquire

July 27, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a computer science expert who works as a principal scientist for a defense contractor. He has significant family and academic ties to Israel which heighten his foreign influence. Despite his strong ties to the United States, the security concerns are not fully mitigated. Clearance denied.

Statement of the Case

On October 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, which provided the basis for its preliminary decision to deny him a security clearance. DOHA took the action 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 on September 1, 2006.

Applicant responded to the SOR on December 2, 2010, and he requested a hearing. On January 13, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 14, 2011, I scheduled a hearing for February 15, 2011.

I convened the hearing as scheduled. Before the introduction of any evidence, I agreed to take administrative notice of pertinent facts related to Israel, as requested by the Government and without objection from Applicant.[1] Three Government exhibits (GE 1-3) and four Applicant exhibits (AE A-D) were admitted without objection. Applicant, his spouse, and two of his coworkers testified on his behalf, as reflected in a transcript (Tr.) received on February 25, 2011.

At Applicant's request, I held the record open until March 1, 2011, for him to document his efforts to renounce his foreign citizenship with the United Kingdom (UK). On February 16, 2011, Applicant submitted a declaration to renounce British Citizenship, which was entered into evidence without objection as Applicant exhibit E.

Findings of Fact

The SOR alleges under Guideline B, Foreign Influence, that Applicant's mother and four of his siblings are resident citizens of Israel (SOR 1.a); that Applicant is associated with an academic, who is a resident citizen of Israel (SOR 1.b); and that Applicant traveled to Israel in at least 2002, 2004, 2007, and 2010 (SOR 1.c). Applicant admitted the allegations with explanation. Applicant's admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 43-year-old computer science expert. (GE 1; AE A, B, D.) While employed as an associate professor at a private university in the United States, he began consulting for a defense contractor in his area of expertise in June 2004. After he was denied tenure by the university, he began working for the company as a full-time senior scientist in May 2009. (GE 1; Tr. 43, 54-55.) He is now a principal scientist there. (Tr. 82) Applicant seeks a Top Secret security clearance for his work on a military project. (Tr. 47.) He has never held a U.S. security clearance. (GE 1; Tr. 74.)

Applicant was born in the UK in April 1968. He is youngest of six children born to immigrants to the UK. Applicant's father died when he was only four years old. As his siblings matured, they left the household, some for Israel. When Applicant was 14, he and his mother moved to Israel because she wanted to be closer to his siblings. She became a permanent resident but did not obtain Israeli citizenship for some time. She did not apply for Israeli citizenship for Applicant, and he remained solely a UK citizen. (GE 1; Tr. 75-77.)

Applicant attended high school and then music school in Israel. (GE 2; Tr. 76-77, 98-99.) In late 1990, Applicant married his first wife. She was a U.S. citizen, who was not accepted by his family. So Applicant and his spouse moved to the United States almost immediately after their marriage. Their union lasted less than four years. (GE 1; Tr. 76-78,

[1] The Government's request for administrative notice, dated January 3, 2011, and source documents were not submitted to me before the hearing.

89-90.) The marriage and his decision to pursue a non-religious lifestyle caused a rift in his relationship with his family for several years where Applicant had rare contact with his family members in Israel. (Tr. 90.)

Applicant chose to remain in the United States after his divorce. In May 1995, he was awarded his bachelor's degree in computer science. A talented researcher, Applicant began collaborating with other academics in his field as an undergraduate. He pursued graduate studies in computer science at very competitive institution nearby, and in 1996, he was awarded a graduate research fellowship. (AE A.)

In September 1998, Applicant, then a U.S. permanent resident (Tr. 28), married his current spouse in the United States. (GE 1; Tr. 25.) His spouse was born in the United States to a military family. (Tr. 26) They have three daughters under age ten who are native U.S. citizens. (Tr. 26.) Applicant and his spouse bought their home around November 2001. (GE 1.)

Around August 1999, Applicant began teaching a college class in his area of expertise. (AE A; Tr. 30.) After Applicant was awarded his doctorate degree in January 2000, he was appointed to the position of assistant professor at the university. (GE 1.) In 2002, Applicant was awarded a prestigious two-year research fellowship reserved for tenure-track academics in the early stage of their careers with strong records of accomplishment in independent research. (AE A, C; Tr. 85.)

In June 2003, Applicant was promoted to an associate professor position at the U.S. university. He continued to pursue research in his area of expertise. (AE A, D; Tr. 45.) Applicant also advised doctoral candidates, including some foreign graduate students who were involved in his research/study group. (Tr. 100-01.) Applicant was particularly interested in an Israeli student's research, and he and the Israeli citizen began a professional collaboration that has continued even after the Israeli returned to Israel and became a university professor (akin to an assistant professor in the United States). (AE A; Tr. 101-02, 137.)

In June 2004, Applicant became a naturalized U.S. citizen. (GE 1.) Applicant's spouse, his eldest daughter, and his mother-in-law, attended the swearing-in ceremony. En route home from the ceremony, Applicant stopped at city hall to register to vote in the United States. (GE 2; Tr. 28.) Since then, he has voted in most, if not every, election in which he has been eligible to vote in the United States. (Tr. 28.) Applicant's U.S. passport was issued to him on June 10, 2004. When Applicant's UK passport expired in July 2005, he chose not to renew it. (GE 1; Tr. 87-88.)

Also in June 2004, Applicant began consulting for his current employer on projects needing his particular expertise. (GE 1; AE A; Tr. 54-55, 80.) In 2009, Applicant was denied tenure at the university. By then, Applicant was consulting more closely with a principal scientist at work. (Tr. 41.) Applicant asked this senior employee whether he would consider hiring him, and the scientist was "absolutely happy" to convert Applicant's status to a full-time senior scientist. (Tr. 55.)

At the request of this principal scientist, who also serves as a division vice president (Tr. 41), Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application on December 22, 2009. He disclosed his dual citizenship with the United States and the UK; his mother's dual citizenship with Israel and the UK and her residency in Israel; and the Israeli residency and citizenship of his two sisters and two of his three brothers. His other brother was still a resident citizen of the UK. Applicant responded "Yes" to whether he had ever had any foreign financial businesses, foreign bank accounts, or other foreign financial interests under his direct control or ownership, and listed an investment account of $200,000 held between 1990 and 1994. (GE 1.) The account was created for him by his family and he had the funds transferred to the United States. (GE 2.) Concerning any foreign business, professional activities, or foreign contacts in the last seven years, Applicant indicated on the e-QIP that he had attended academic conferences in Mexico and Europe. He responded "Yes" to whether, in the last seven years, he had sponsored any foreign citizen to come to the United States as a student, for work, or for permanent residence. Applicant disclosed that he had sponsored three foreign nationals, including an Israeli from September 2000 to September 2009, to "pursue graduate studies in [his] research group." Among the foreign travel listed on Applicant's e-QIP were trips to Israel in January 2003, June 2004, and June 2007, to visit family. (GE 1.) Applicant's spouse accompanied him on those trips, as she did on an earlier trip taken in 2002. (GE 3; Tr. 105.) She has no family in Israel. (Tr. 32.)

Applicant traveled to Israel with his spouse and children to see his family in February 2010. (GE 3; Tr. 31.) During their two-week stay, they resided in an apartment that his mother had rented for them. (Tr. 31.) Applicant also visited the Israeli professor, whom he had mentored in the United States. Applicant discussed research with him, and he gave a presentation to the Israeli professor's students concerning work that had already been published in academic literature. Applicant's lecture was advertised beforehand on the campus, but he was not compensated for his appearance. (Tr. 122-23, 129.) Applicant again met with the Israeli professor in the summer of 2010, this time in the United States, to discuss their collaborative academic research. Applicant considers his relationship with this Israeli academic to be purely professional. (Tr. 102, 119-20.)

On February 23, 2010, Applicant was interviewed by an authorized investigator for the Government about his foreign ties. He indicated that he did not use his UK passport as a U.S. citizen and did not intend to renew it. Applicant expressed a willingness to renounce his UK citizenship as a condition of access. He denied ever serving in a foreign military or voting in a foreign election. Applicant explained that none of his family members living in Israel were employed by the Israeli government. He had telephone contact with his elderly mother once a week on average, but only a few times a year with his siblings. Applicant admitted traveling to Israel with his spouse to see his family members since 2002, including in February 2010, when he and his spouse took their daughters. He denied he had any contact with anyone from his foreign travel besides his family. (GE 3.)

Applicant was re-interviewed by the investigator on March 24, 2010, in part about the three foreign nationals listed on his e-QIP as persons he had sponsored for graduate research in the United States. Applicant explained that he had been their academic advisor, and that he misunderstood the question on the e-QIP. Applicant reportedly disclosed to the investigator that between September 2000 and 2009, he was in contact

with the Israeli national three times a month. He denied any contact with him since then. He also claimed to know nothing about the Israeli's present employment other than that he was a professor. Concerning the other foreign nationals, Applicant indicated that he had ongoing contact with the student who was still pursuing graduate work in the United States. His association with the other international student terminated in 2006. (GE 3; Tr. 103-04.)

In September 2010, Applicant was given an opportunity by DOHA to review the summaries of his February and March 2010 interviews with the Government investigator. Applicant corrected the record to indicate that between 2000 and mid-2009, he had weekly in-person contact with the Israeli professor while the latter was in graduate school in the United States. Applicant provided the name of the Israeli university at which his former student was now a professor. Applicant volunteered that he had in-person contact with this Israeli academic several times during the summer of 2010 in the United States. As of September 2010, Applicant and the Israeli citizen conversed by telephone about twice a month. (GE 3.)

Sometime in 2010, Applicant received $50,000 from a trust fund established by his father in the UK in 1969. (Tr. 99.) In 2011, he received another $50,000 from his mother, who had an investment that matured. (Tr. 100, 124.) The funds were transferred to Applicant's account in the United States. (Tr. 138.)

On February 16, 2011, Applicant completed his application to renounce his British citizenship. On February 23, 2011, he mailed the application and his expired UK passport to the British embassy. As of the close of the record, the UK embassy had received his application to renounce. (AE E.) Applicant has never acquired Israeli citizenship or an Israeli passport. (GE 2.) His loyalty is solely to America, where he has made his home. (Tr. 115.) He has attended a couple of meetings of a U.S. lobbying group advocating for a peaceful solution to the Israeli-Palestinian situation. (Tr. 130-31.)

With the emigration from the UK to Israel of his last brother in late 2010 or early 2011, all of Applicant's five siblings now reside in Israel. None of his five siblings have any present direct connection to the Israeli government to his knowledge, although some served their mandatory military service for Israel in the past. (Tr. 32.) Applicant's three brothers are employed respectively as a lawyer in the real estate industry, as a computer entrepreneur in educational software for children, and as a physician. His elder sister works as a librarian, while the other runs a charitable organization. (Tr. 93-97, 118-19.) Applicant has a "cordial" relationship with his siblings, and he visits them when he is in Israel. (Tr. 105, 107, 124.) Applicant has email contact with his siblings, primarily through his spouse, once a month or less, about his mother's health. (Tr. 35.)

Applicant's mother is 86 and in declining health. He has brief telephone conversations with her every week or two. (Tr. 124.) Although he considers their relationship to be "pretty good," he would not say that they are close. (Tr. 124.) Yet he believes it is important to visit her more frequently than once every two or three years, given her ill health. As of February 2011, Applicant and his spouse plan to go to Israel in June 2011 to see his mother. (Tr. 35-36, 105-06.) They intend to stay in an apartment owned by his sister. (Tr. 131-32.) On his mother's death, Applicant anticipates that he will

travel to Israel "not more than once every number of years, not often at all." (Tr. 106.) Applicant still feels a connection to Israel, but it is not his home. (Tr. 107.)

Applicant had telephone contact with the Israeli academic about their research as recently as January 2011. They submitted their collaborative research for publication to an academic conference. (Tr. 133-34.) Applicant estimates that he has spent around 20 or 30 hours on the particular issue with this Israeli professor, and he anticipates that their discussions in this area will continue. (Tr. 121-22.) Applicant expects that he will seek out the Israeli professor on future trips to Israel if they are still collaborating on their research. (Tr. 125.) The Israeli professor knows the identity of Applicant's employer and that it does some work for the DoD, although not about the specific projects worked on by Applicant. (Tr. 132-33.) Applicant may get together with his Israeli colleague during his trip to Israel in June 2011, but he has no current plans. (Tr. 135.)

Applicant understands that he has expert knowledge that could aid Israel if he was to use his unique skill set for Israel. He does not believe that his specific work for the defense contractor would be particularly useful for Israel. (Tr. 136.) He denies, and no evidence was presented to the contrary, that he has ever been approached by the Israeli government, its military, or its intelligence services. (Tr. 127.) His academic collaboration with the Israeli professor is in the public domain, so he does not see this ongoing professional relationship as posing a conflict with his security responsibilities, if he is granted a security clearance. (Tr. 135-36.) Applicant cannot imagine that Israel would pressure his family or associate in Israel to gain influence over him. He denies he would betray the U.S. in the event of any such threat. (Tr. 137.)

Two coworkers with Top Secret security clearances testified on Applicant's behalf. The principal scientist/division vice president, who hired Applicant and asked him to apply for the Top Secret clearance, acknowledged that Applicant's expertise would be attractive to other countries. (Tr. 52-53.) But their company does not conduct business with foreign entities by choice because so much of its work is for the U.S. military. (Tr. 49-50.) He has "absolutely no qualms at all about [Applicant] having a security clearance." Applicant has demonstrated the highest quality work and professionalism. (Tr. 47-48.) A principal software engineer, who has collaborated with Applicant on several projects (Tr. 57-61), found Applicant to be "extremely reliable" in handling the company's proprietary intellectual property and "very responsible" in not inquiring about classified information. He opined that technology Applicant co-developed has "great potential" to benefit the U.S. government. (Tr. 66-67.)

Administrative Notice

After reviewing the U.S. government publications concerning Israel and its foreign relations, including with the United States, I take administrative notice of the following facts:

Israel is a parliamentary democracy of about 7.59 million people, 32.9% of whom were born outside Israel. Israel generally respects the human rights of its citizens, although there have been some issues respecting treatment of Palestinian detainees and discrimination against 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. The United States was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence in 1948. 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 single trading partner. In 2009, bilateral trade totaled $22.3 billion, a decline of about 20% over 2009, due largely to the slowdown in global trade. The U.S. trade deficit with Israel was $11.1 billion. Israel remains a prominent recipient of U.S. aid. Since 1949, the United States has provided more than $30 billion in economic assistance to Israel. Between 1976 and 2003, Israel was the largest recipient of U.S. foreign aid.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being. 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. 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. The Omnibus Appropriations Act of March 11, 2009, provided $2.38 billion in foreign military financing for Israel. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use one-quarter of its foreign military assistance grant for procurement spending from Israeli defense companies. Israel is convinced that Iran is trying to obtain a nuclear weapon and urges the United States and Europe to set aside differences with China and Russia over human rights and missile defense to work together to stop Iran from developing nuclear weapons.

Arms agreements between Israel and the United States limit the use of U.S. military equipment to defensive purposes. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The United States is concerned about Israeli settlements; Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. U.S. government employees and U.S. government contractors have been implicated in providing classified and sensitive information to Israel. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence as recently as 2000. Israel was not named specifically in the National Counterintelligence Executive's

Annual Report to Congress on Foreign Economic Collection and Industrial Espionage—2005, although it was noted that, as in years past, entities from a small number of countries accounted for the foreign targeting of U.S. technologies in fiscal year 2005. In March 2005, a U.S. company pleaded guilty to exporting digital oscilloscopes to Israel without a license. The items were reportedly capable of being utilized in the development of weapons of mass destruction and in missile delivery fields. Israeli firms were also implicated in cyber-espionage against international competitors involving spy software obtained from a British programmer.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered in evaluating an applicant's eligibility for access to classified information. 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. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion when seeking 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 that 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. 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 B—Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6, as follows:

> 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.

Applicant's mother is apparently a dual citizen of the UK and Israel, who has resided in Israel since about 1982. Four of his five siblings (two of his three brothers and his two sisters) are longtime resident citizens of Israel. His other brother immigrated to Israel from the UK in late 2010 or early 2011, although it is unclear whether he has acquired Israeli citizenship. Concerned about his mother's health, Applicant has ongoing telephone contact, albeit brief in duration, with her on a regular basis. Old rifts have mended sufficiently for Applicant to share cordial relations with his siblings, even if most of his contact with them is by electronic mail through his spouse. He visits his siblings when he is in Israel and plans to stay in an apartment owned by his sister during a trip in June 2011. Applicant also has a collaborative relationship with a former graduate student he mentored, who is now an assistant professor in Israel. Applicant has visited this Israeli academic when in Israel, including in February 2010, when he gave a presentation to university students at the Israeli's invitation. In January 2011, Applicant and his Israeli colleague jointly submitted a research paper to a conference. AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," applies because of his ties of obligation, if not also some affection, to his family in Israel and because of his close professional association with the Israeli assistant professor, whom Applicant has known since around 2000.

Moreover, AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country," is implicated. By accepting an invitation to lecture at the Israeli university, Applicant heightens his visibility within Israeli academia and increases the risk of undue foreign influence.

Applicant's closest relations (spouse and children) enjoy the protections of U.S. citizenship and residency. Yet it is difficult to fully satisfy mitigating condition AG ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." Israel and the United States have a close friendship. The United States is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in the region. Israel receives preferential treatment in bidding for U.S. defense contracts and substantial economic aid from the United States. However, the interests of even the closest of allies are not always completely aligned. The Appeal Board has recognized that not all countries that seek protected information do so in order to harm the United States. *See* ISCR Case No. 02-26976 at 5 (App. Bd. Oct. 22, 2004). A country may seek to gain access to U.S. classified or protected information not to harm the United States, but to better its own position.

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 U.S. government employees or U.S. government contractors. Israeli military officials have been implicated in economic espionage activity in the United States. Israel was listed in the past as one of the nations that aggressively target U.S. economic intelligence. Nothing about Applicant's siblings' occupational endeavors in Israel heightens the risk of undue foreign influence, but I cannot apply either AG ¶ 8(a) or AG ¶ 8(c), "contact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," to these family relationships. Furthermore, Applicant intends to continue his professional collaboration with his former student, who is aware of Applicant's employer and its work on behalf of the DoD. While their joint research is intended for the public domain, and there is no evidence that the foreign national is acting other than out of shared academic interest, Applicant acknowledged that the Israeli government could benefit from his unique skill set.

As for the potential applicability of AG ¶ 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 of the U.S. interest," Applicant's loyalty or obligation to his mother in particular cannot be reasonably characterized as minimal. Applicant understandably has increased the frequency of his trips to Israel as his mother's health has declined. He feels it is important to see her. Applicant also intends to continue his professional relationship with the Israeli professor, who consults him "every so often," albeit more frequently when it comes time to publish a paper. (Tr. 133.) The fact that their work is for the public domain and is unrelated to Applicant's work for the defense contractor lessens, but does not completely eliminate, the risk of foreign influence, especially considering Applicant's prominence in his field.

On the other hand, Applicant is professionally and personally rooted in the United States. He left Israel for the United States when he was about 23 years old. After his

divorce from his first wife, he chose to continue to pursue his studies in computer science in the United States. His considerable expertise was acquired through years of education and research in the United States, initially under the tutelage of his academic advisor at a U.S. university. He spent several years as an academic with teaching responsibilities at a private university in the United States. Since June 2004, he has contributed to the U.S. defense effort, for almost five years as a consultant before becoming a full-time employee of a company that is so involved on projects for the U.S. military that it accepts no business from other countries.

Applicant established strong personal ties to the United States, most notably his marriage to a native U.S. citizen, the births of his three daughters in the United States, and his voluntary acquisition of U.S. citizenship in June 2004. Applicant testified credibly that he loves his daughters; they "are everything to [him]." (Tr. 92.) Applicant's spouse confirmed that Applicant's U.S. citizenship was such a source of pride for him that he stopped off at city hall en route home from his naturalization ceremony to register to vote, and that he has voted "in every election" since then. (Tr. 28.) All of Applicant's financial assets, including his employment income and home ownership, are in the United States. In the last year or so, he transferred $100,000 from foreign sources (his father's trust in the UK and his share of his mother's gift of her investment funds) into his account in the United States. Applicant presented substantial evidence to establish AG ¶ 8(b), and I do not doubt that his allegiance is to the United States.

However, the DOHA Appeal Board has long held that the presence or absence of an Adjudicative Guidelines disqualifying or mitigating condition is not solely dispositive of a case. *See* ISCR Case No. 05-03846 (App. Bd. Nov. 14, 2006). Applicant clearly is very invested in his academic research, and he intends to continue his professional collaboration with the Israeli professor. Should Applicant be granted a security clearance, he would be required to comply with requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country. *See* AG ¶ 8(e) (stating, "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"). Applicant disclosed his contacts with three international graduate students, including the Israeli national, when he completed his e-QIP in December 2009. When he was interviewed in February 2010, Applicant indicated that he traveled to Israel with his family earlier that month. Yet he denied any ongoing contact with anyone besides his family from his foreign travel. Applicant did not disclose that he had met with the Israeli professor during that trip to Israel, or that he had given a lecture at an Israeli university.

Moreover, during his interview in March 2010, Applicant was asked specifically about his contacts with the Israeli professor. Applicant indicated at that time that he was unaware of the employment of the Israeli citizen other than that he was a professor, and he denied any contact with him from 2009 to present. When given an opportunity to correct any inaccuracies in the reports of his two interviews, Applicant indicated in September 2010 that he had in-person contact with the Israeli about weekly from 2000 to mid-2009. Applicant also provided the name of the Israeli university where his former student is now a professor. He further indicated that he had in-person contact with the Israeli professor in

the United States in the summer of 2010, and that they were in contact twice monthly as of September 2010. Applicant again was not fully forthcoming about their contacts in that he did not reveal that he had met with the Israeli professor in February 2010 in Israel or had lectured at the Israeli university.

Applicant is credited with disclosing on direct examination at his February 2011 hearing that he met with the Israeli professor the last time that he went to Israel, and that he gave a presentation to the Israeli professor's university students. In response to my inquiry, Applicant confirmed that his presentation was in February 2010 and it was advertised on campus ahead of time. Applicant was not asked why he failed to disclose during his February 2010 interview this lecture at the foreign university or his contacts with the Israeli professor, which occurred only weeks, if not days, before his interview. It is highly unlikely that Applicant would have forgotten about the lecture. Certainly during his March 2010 re-interview, Applicant should have realized that the Government was concerned about his foreign contacts of an academic nature. Even if his motives were benign, his lack of full candor about his relationship with the Israeli professor raises concerns about whether Applicant can be counted on to recognize and report any undue foreign influence, especially of a covert nature. The foreign influence concerns are not fully mitigated.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of 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.

Applicant has handled company sensitive information at work appropriately, and his colleagues, who hold Top Secret clearances themselves, endorse him for a security clearance. The value of Applicant's expertise to the U.S. defense effort cannot be underestimated. At the same time, Applicant's visibility is increased because of his unique skill set, which he admits would be attractive to foreign entities, including Israel. In light of his ties of obligation, if not affection, to his family members in Israel, his ongoing professional collaboration with the Israeli professor, and his plans to continue to travel to

Israel, an unacceptable risk of undue foreign influence persists. His failure to provide complete information about his relationship with an Israeli professor during his February and March 2010 interviews is a factor weighing against access to classified information in my whole-person analysis. After considering the facts and circumstances before me in light of the adjudicative guidelines, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant access to classified information at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge