



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



In the matter of: )  
)  
) ISCR Case No. 10-04641  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

06/27/2013

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign preference security concerns, but failed to mitigate the foreign influence security concerns generated by his relationship to his family members who live in Israel. Clearance is denied.

**Statement of the Case**

On September 26, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence, and C, foreign preference. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD for SORs issued as of September 1, 2006.

Applicant answered the SOR on October 30, 2012, admitting all of the allegations, except subparagraphs 1.d and 2.a., and requesting a decision on the record. On March 7, 2013, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 18, 2013, and he did not file a response. On May 24, 2013, the case was assigned to me.

### **Evidentiary Ruling**

Department Counsel requested that I take administrative notice of the facts contained in 11 documents submitted as Item 7, Exhibits I through IX. According to the Appeal Board, “ a current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases.” (ISCR Case No. 07-05686 at 4, footnote 3 (App. Bd. November 12, 2008)) Exhibit II, the National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, was published 13 years ago, in 2000. Because this is not recent, I decline to take administrative notice of the facts contained within this document.

Exhibits VI through XI are press releases published by the U.S. Department of Commerce Bureau of Industry and Security setting forth episodes of illegal or unlicensed exports of various technologies to Israel. All of these documents, except Exhibit VIII, concern U.S. companies violating the law. None of them involve Israeli foreign nationals or U.S. citizens with relatives in Israel. Consequently, I take administrative notice of the facts set forth in Exhibit VIII, involving an Israeli, but I will not take notice of Exhibits VI, VII, and IX through XI.

### **Findings of Fact**

Applicant is a 42-year-old married man with three children ages 14 and 9.<sup>1</sup> He has an undergraduate and master’s degree in engineering, and has worked for a defense contractor as an electrical engineer since 2009. (Item 5 at 16)

Applicant’s mother is a U.S. citizen who moved to Israel in the early 1970s, shortly after marrying his father, a citizen of the United Kingdom. Applicant was born in Israel. Because his mother retained her U.S. citizenship when moving to Israel, Applicant was a U.S. citizen at birth. He was raised in Israel as a dual citizen and moved to the United States in 2007.

While living in Israel, Applicant completed his mandatory military service, participating in an academic reserve program, a ten-year program that allows Israeli high school graduates to postpone military service until they earn their undergraduate degrees. (Item 6 at 18) Under this program, Applicant attended basic training and officer training school during the summers while in school. After graduating in 1993, Applicant was assigned to an arms company owned by the Israeli government, where he worked

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<sup>1</sup>The 14-year-old children are twins.

as an electrical engineer for three years. (Item 6 at 18) He then became a full-time employee of the arms company in 1996 under an Israeli directive "which allowed academic reserve participants to convert their three years of additional service to full time employment." After graduating from the academic reserve program in 1999, Applicant continued to work for the arms company through 2000, when he left and joined a privately-owned company in Israel.

Applicant held a top secret security clearance during his stint at the Israeli government-owned arms company. (Item 5 at 67) He held a top secret clearance while working for a classified project with his private employer in 2002. (Item 5 at 67)

While living in Israel, Applicant voted in several Israeli elections. Also, he possessed an Israeli passport which he continued to use to travel to Israel after moving to the United States in 2007. He used his U.S. passport to travel everywhere other than Israel. (Item 6 at 26). The Israeli passport expired in January 2012.

Applicant's wife and children are dual U.S./Israeli citizens. They moved with him to the United States in 2007. Applicant's parents continue to reside in Israel. His mother is a teacher and his father is a businessman. (Item 6 at 52) Although the extent of Applicant's contact with them is unknown from the record, he maintains an Israeli driver's license to facilitate travel within Israel when he is visiting his parents and other relatives. (Item 6 at 50)

Applicant's parents live in the home where Applicant lived before moving to the United States. (Item 6 at 49) He continues to own the home and it is worth approximately \$170,000. (Item 4 at 1) As of the date of Applicant's Answer, he was attempting to sell the home.

Applicant's brother is a dual U.S./Israeli citizen. He lives in Israel and is an engineer. Applicant has two half-sisters who are Israeli citizens and residents. One of them is a student working on her master's degree and the other one is a secretary for a data storage company. (Item 6 at 49)

Applicant's father-in-law is deceased. (Item 6 at 34) His mother-in-law is a citizen and resident of Israel. She is a retired doctor. Applicant's wife's stepfather is a citizen and resident of Israel. He is retired. Applicant is in touch with him approximately 15 times per year, either through e-mail or telephone. (Item 6 at 45) Applicant's brother-in-law is a student working on a graduate degree in international business. (Item 6 at 34) He is an Israeli citizen who lives in Taiwan with his family. There is no record evidence of how often Applicant is in contact with any of his relatives other than his wife's stepfather.

Applicant has approximately five close former neighbors and colleagues who are citizens and residents of Israel. He stays in touch with them, primarily through e-mail, approximately ten to fifteen times per year. (Item 6 at 45)

Applicant's net worth is approximately \$1.5 million. Approximately \$1.2 million of Applicant's assets are in the United States. The remainder of his net worth, including the home where his parents live, a pension fund, and a savings account, constitute assets located in Israel. (Item 4 at 1; Item 6 at 30) Applicant is in the process of liquidating his Israeli pension fund and savings account. Recently, he sold approximately \$20,000 of these assets and transferred the proceeds to the United States. (Item 4 at 1)

### **Administrative Notice**

Israel is a parliamentary democracy with a modern economy. U.S.-Israel defense, diplomatic, and economic cooperation has been close for decades. (HE XV at 5) Several groups operating in Israel, the West Bank, and Gaza have been designated by the U.S. State Department as foreign terrorist organizations. (HE XI at 6) There is an ongoing threat throughout Israel of terrorist attacks, kidnappings, and rocket attacks. (HE XII)

Foreign countries, including Israel, aggressively target and acquire sensitive and protected U.S. technologies. (Item 7 HE III at 2; HE IV) Over the years, Israeli intelligence officers have been implicated in intelligence collection against the United States. (Item 7, Ex. V at 35) In 1986, Jonathan Pollard, a civilian U.S. Naval intelligence employee and his wife pleaded guilty to selling classified documents to Israel. Four Israeli officials were indicted in connection with the case. (Item 7, Ex. V at 2, 35)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

## Analysis

### Guideline C, Foreign Preference

Under this guideline, a security concern is generated “when an individual acts in such a way as to indicate a preference for a foreign country over the United States.” (AG ¶ 9) Before moving to the United States, Applicant lived in Israel. He served in the military and possessed a top secret security clearance. He possessed a passport issued by Israel which he used for travel to and from Israel both while living in Israel and after he moved to the United States. The following disqualifying condition under AG ¶ 10(a) applies:

(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 [including] but not limited to . . . military service or a willingness to bear arms for a foreign country.

Applicant’s dual citizenship is based solely on his mother’s decision to relocate from the United States, where she was a citizen, to Israel to start her family. AG ¶ 11(a), “dual citizenship is based solely on parent’s citizenship or birth in a foreign country,” applies. Applicant was a minor when he attended secondary school in Israel. His subsequent pursuit of higher education in Israel and his decision to stay in Israel after college to settle down and raise a family did not represent exercises of preference for Israel over the United States. Rather, these actions were reflective of a young man who had spent his entire life in his home country. In sum, Applicant technically was a dual U.S. citizen, but Israel was his home. Consequently, although Applicant’s dual U.S. citizenship at birth renders AG ¶ 10(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,” inapplicable, I nevertheless conclude that Applicant has mitigated the foreign preference security concern.

### Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

Over the years, several people have been involved with espionage against the United States on Israel’s behalf. Applicant’s relatives who are citizens and residents of Israel and his property interests in Israel trigger the application of 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,” and AG ¶ 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.”

Applicant’s brother-in-law is now living in Taiwan. Although friendly countries can conduct espionage against the United States as readily as hostile ones, it is unlikely that a country as close to the United States as Israel, with a shared cultural history and a similar respect for individual liberties, would attempt to utilize its security apparatus to coerce an Israeli citizen who is not located in Israel. I conclude Applicant’s brother-in-law living in Taiwan does not generate a heightened risk, and I resolve subparagraph 2.h in Applicant’s favor. Also, for the same reasons, I conclude that AG ¶ 7(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,” does not apply to Applicant’s relationship with his immediate family.

Regardless of how Israel has received classified or sensitive information over the years, Applicant’s close family ties with relatives living in Israel, extensive financial investments, and past possession of a top secret Israeli security clearance render all of the mitigating conditions inapplicable. Applicant has not mitigated the foreign influence security concerns.

### **Whole-Person Concept**

Under the whole-person concept, 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.

Applicant did not submit much evidence outside of his contacts and financial interests in Israel for me to consider in my whole-person analysis. Judging by his level of education, and his accrual of more than one million dollars of net worth by age 42, I can extrapolate that he must be highly talented, motivated, and successful. These factors, however, do not mitigate the vulnerability to coercion generated by his family, friends, and financial interests 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraphs 2.e-2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraphs 2.i-2.j:	Against Applicant

## Conclusion

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

MARC E. CURRY  
Administrative Judge