



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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) ISCR Case No. 10-05491
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Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

December 21, 2011

Decision

LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for National Security Position on dated February 22, 2008. (Government Exhibit 1.) On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and E 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 for SORs issued after September 1, 2006.

The Applicant responded to the SOR on May 4, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 3, 2011, and a notice of hearing was issued that same day, scheduling the hearing for November 23, 2011. The hearing date was amended on November 22, 2011, and rescheduled to November 29, 2011. At the hearing the

Government presented five exhibits, referred to as Government Exhibits 1 through 5. The Applicant presented no exhibits. He testified on his own behalf. The record remained open until close of business on December 9, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eleven Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits 1 through 11, which were admitted without objections. The official transcript (Tr.) was received on December 12, 2011. 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 submitted a request that I take administrative notice of certain facts concerning the current political conditions in Israel. Applicant made no objection. (Tr. pp. 33-34.) The request 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 Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

The Applicant is 44 years of age, divorced and has one son. He has a Ph.D. in Electrical Engineering. He employed as a Principal Systems Engineer. 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 a preference for a foreign country over the United States that could result in the compromise of classified information.

The Applicant admitted the allegations set forth under this guideline. (See Applicant's Answer to SOR.) The Applicant was born and raised in Moscow, Russia (formerly the Soviet Union) to a Russian Jewish family. He attended elementary, middle school and high school in Russia. He also obtained degrees equivalent to a Bachelor's and Master's degree in Russia. He was exempt from serving in the military in the Soviet Union due to his continuing studies. The Applicant's uncle was first to immigrate to the United States. In 1990, the Applicant's mother and brother followed, and later that year the Applicant immigrated to the United States. Within two weeks of coming here, he applied for political asylum and was granted job authorization pending the adjudication of his case. Nothing came of it and in 1998, he applied for permanent residence status and received his card that same year. In June 2006, he became a naturalized United States citizen.

He started at the bottom, in a meager job, delivering lunches and cleaning refrigerators during the day, and attended college at night. By 1993 he had obtained his Master's degree and by 1999 he had earned a Ph.D. He began working for his current employer in March 2007. He recently purchased a house and has bank accounts and a retirement account in the United States.

The Applicant has never held a security clearance. During his security clearance background investigation, he was interviewed and provided an affidavit. In the affidavit signed by him on August 4, 2009, he stated as follows:

My primary allegiance lies with the United States but I cannot ignore the fact that the country of Israel needs help. I feel it is important to help Israel due to my Jewish faith and heritage . . . If a conflict arose between Israel and the United States, and the two countries were no longer allies, then this would pose a struggle within me. I would feel conflicted and torn by my allegiance to the United States and my desire to help Israel. If this situation were ever to rise, I think the right thing for me to do would be to ignore the conflict in Israel and continue working at Raytheon, but I do not know if I could do this. I have warm feelings for Israel and it would be difficult for me to ignore Israel and continue working at Raytheon if they were being attacked by the United States. (Government Exhibit 3.)

The Applicant explained that he has very strong emotional attachments toward the country and people of Israel. They are immigrants like the Applicant and they share the fact that they have been mistreated by others. He would be torn if the United States and Israel were ever to go to war. He believes that if that situation were to ever occur he should step out of that situation. (Tr. pp. 57-60 and Government Exhibit 3, p.10.) The Applicant also explained that since his uncle was already in the United States, his family immigrated here. But the fact is that many people in his situation living in Russia decided to immigrate to Israel. (Tr. pp. 54-55.)

The Applicant has traveled to Israel on four separate occasions since immigrating to the United States. In January 2009, while traveling in Israel, he volunteered with an organization called, "Volunteers for Israel". He indicated that he volunteered to help this organization on two occasions that took about 3 ½ days each time. He explained that his volunteer work included assembling care packages containing food, blankets, and clothing for citizens of Israel. He also painted a home that was occupied by citizens of Israel. He has donated money to charitable organizations that benefit Israel. This organization provides support and works with the Israeli Defense Forces. (Government Exhibit 5.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of his personal background during the employment process.

The Applicant admits allegations 2(b), 2(c), and 2(d), and denies allegation 2(a), set forth under this guideline. He admits that he made the statements, but that there was not intent to be deceptive at the time the statement was made. As part of his security clearance background investigation, the Applicant was interviewed by a DoD investigator on July 27, 2009. The Applicant stated that during his trip to Israel in January 2009, he engaged in only tourist activities and visited a friend. The Government contends that he failed to disclose his volunteer work with Volunteers for Israel, an organization that works in support of the Israeli Military because he feared that his involvement might raise concerns about his allegiance. The Government also contends that only after being confronted with information from a prior interview did he disclose his involvement with Volunteers for Israel. The Applicant denied these allegations and credibly testified that he did disclose this organization to the investigator during his first interview, but the matter was taken out of context and misinterpreted. (Government Exhibit 3.)

In an affidavit signed by the Applicant dated August 4, 2009, he stated that to the best of his knowledge, "Volunteers for Israel" has no affiliation with the Israeli Government. (Government Exhibit 3.) The Government contends that the Applicant knew that this organization works in support of the Israeli Defense Forces and that he intentionally concealed this information.

During an interview with a DoD investigator on February 4, 22009, the Applicant stated that to his knowledge, "Volunteers for Israel" has no affiliation with the Israeli Government. (Government Exhibit 3.) The Government contends that the Applicant knew that this organization works in support of the Israeli Defense Forces and that he intentionally concealed this information.

In an affidavit signed by the Applicant dated August 4, 2009, he stated that he first learned of "Volunteers for Israel" during a casual conversation with a tourist while he was already traveling in Israel in January 2009. (Government Exhibit 2.) He testified at the hearing that he heard of the organization somewhere on the internet, and thought it might be a good thing to do somehow to help the Israeli people. He also remembers having a conversation with one of the tourists at his hotel in Israel while he was there. (Tr. p. 65.) The Government contends that the Applicant learned of this organization from a friend in the United States prior to traveling to Israel in January 2009.

It is unclear from the record whether the Applicant volunteered with this organization simply for humanitarian purposes, to help the people of Israel and their country in general, or whether he in fact knew at the time he volunteered that he was volunteering to support the Israeli military. Regardless, under the circumstances, and with nothing more, I cannot find that he intentionally or deliberately provided false information to the Government in response to questions regarding this organization.

The Applicant testified credibly at the hearing and did not appear deceptive on any issues of concern. Accordingly, I find for the Applicant under this guideline.

A letter of recommendation from the Applicant's supervisor indicates that the Applicant is an experienced, qualified, responsible engineer capable of resolving technical issues and problems. He brings new ideas and has received commendations for his work. (Applicant's Post-Hearing Exhibit 1.)

A letter from the Applicant's nephew, who served in the United States Marine Corps until he was honorably discharged as a corporal in 2009, indicates that his uncle is an honorable person who shares his same commitment to the country and its values. (Applicant's Post-Hearing Exhibit 2.)

The Applicant has received a number of awards, certificates of achievement and commendations and patents for his work product. (Applicant's Post-Hearing Exhibits 3, 4, 5, 6, 7, 8, 9, 10 and 11.)

I have taken official notice of the following facts concerning the country of Israel. Israel is a parliamentary democracy whose prime minister is head the government and exercises executive power. The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. However, there are differences on some issues. The United States is concerned, *inter alia*, with Israeli military sales, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. The United States and Israel have regularly discussed Israel's sale of sensitive security equipment and technology to various countries, especially China. Israel reportedly is China's second major arms supplier, after Russia. The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as an active collector of proprietary information. The 2005 Report to Congress from the National Counterintelligence Executive, released in 2006, states that the major collectors have been repeatedly identified as targeting multiple U.S. Government organizations since at least 1997. And, over the last several years this threat has not abated as economic espionage cases went up. Furthermore, Israeli military officers have been implicated in this type of technology collection in the United States. The Pollard case in 1985, and other subsequent cases involving the illegal export or attempted illegal export of U.S. restricted dual use technology to Israel, continues to be a threat to the national security.

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.

Conditions that could raise a security concern:

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

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

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16. (a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16. (b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

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) and Guideline E (Personal Conduct) 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 that 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 and has made false statements 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.

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.

The evidence shows that the Applicant has strong foreign ties to the country of Israel and its people. His statements and actions show his attachment to Israel, that he relates closely with Israel, and that he has warm feelings for the Israeli people. Posed with a hypothetical, he is unable to unequivocally state that he could bear arms for the United States against Israel if it were necessary. In that situation, he would be torn between the two. Other indications of his strong preference for Israel are apparent by his efforts to volunteer to help the country as well as his financial donations. He has volunteered in Israel to support their military and has supported charitable organizations that assist their people and their country. Given these facts, there is cause for concern in this case.

Under Foreign Preference, Disqualifying Conditions 10(c) *performing or attempting to perform duties, or otherwise acting, so as to serve the interest of a foreign person, group, organization, or government in conflict with the national security interest,* and 10.(d) *any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship;*

renunciation of United States citizenship applies. None of the mitigating conditions are applicable. Therefore, there is an indication of foreign preference that exists that could create the potential for conduct resulting in the compromise of classified information. Thus, I find that the Applicant is vulnerable to foreign preference. Accordingly, I find against the Applicant under Guideline C (Foreign Preference).

Under Personal Conduct, none of the disqualifying conditions apply since it cannot be determined with any real certainty whether the Applicant was simply naive and did not know the true extent of his involvement with "Volunteers for Israel", or whether he in fact knew and simply concealed the information from the Government. The Applicant testified credibly at the hearing that he did not know that the organization was associated with the Israeli government or the military, and I will give him the benefit of the doubt. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

Furthermore, there is insufficient evidence in support of mitigation under the whole person analysis. I have 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 conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack a candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

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 failed to meet 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.: Against the Applicant
Subpara. 1.b.: Against 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

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