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

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| In the matter of: | ) | |
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| | ) | ISCR Case No. 10-06971 |
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| Applicant for Security Clearance | ) | |

## Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: John N. Griffith, Esquire

December 12, 2011

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## Decision

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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 30, 2010. On December 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for the 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), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on December 16, 2010. He answered the SOR in writing on December 29, 2010, and requested a hearing before an Administrative Judge. DOHA received the request on January 3, 2011, and I received the case assignment on June 3, 2011. DOHA issued a notice of hearing on June 6, 2011, and I convened the hearing as scheduled on June 28, 2011. The Government offered Exhibits (GXs) 1 through 3, which were received without objection.

The Applicant testified on his own behalf, as did four witnesses, and submitted Exhibits (AppXs) A through II, which were received without objection. DOHA received the transcript of the hearing (TR) on July 7, 2011. I granted the Applicant's request to keep the record open until July 28, 2011, to submit additional matters. On July 12, 2011, he submitted AppXs JJ and KK, which were received without objection. As the undersigned was on leave on July 28, 2011, the record closed on August 2, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## Procedural and Evidentiary Rulings

### Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Israel. The request was granted. 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

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.a, 1.b., 1.d., 1.e. and 2.b. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.c. and 2.a. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant moved to the U.S. in 1994, and started working for his current employer in 2004. (TR at page 97 line 14 to page 99 line 17.) He became a U.S. citizen in January of 2006. (GX 1 at pages 7~10.) His net worth in the U.S., excluding the proceeds from the recent sale of a house in Israel, is about $1,560,000. (TR at page 127 line 3 to page 129 line 18, and AppX FF.)

### Guideline B - Foreign Influence

1.a. The Applicant's parents and brother are citizens and residents of Israel. (GX 1 at pages 25~28.) His 90 year old father is a retired musician, and his 80 year old mother is a retired librarian. (TR at page 82 lines 13~24, at page 83 line 9 to page 87 line 18, and at page 105 line 23 to page 107 line 17.) The Applicant's brother is a freelance translator. (*Id*.) Neither his parents nor his sibling have any connection with the Israeli government. (TR at page 82 lines 13~24, at page 83 line 9 to page 87 line 18, and at page 105 line 23 to page 107 line 17.)

1.b. The Applicant's in-laws are citizens and residents of Israel. (GX 1 at pages 28~29.) His 89 year old father-in-law is retired from the private sector and suffers from Alzheimer's disease, and his 70 year old mother-in-law is also retired from the private sector where she was a nurse. (TR at page 73 line 14 to page 74 line 16, and at page

88 line 4 to page 89 line 8.) Neither in-law has any connection with the Israeli government. (*Id*.)

1.c. The Applicant owns no property in Israel, as his house there was sold in December of 2010, as evidenced by the documents of sale. (TR at page 76 line 19 to page 77 line 10, at page 118 line 16 to page 121 line 16, and AppXs GG, II and KK.)

1.d. The Applicant has a retirement fund in Israel, which he paid into. The fund is not affiliated with the Israeli government, and it is valued at about $135,000. (TR at page 78 line 18 to page 79 line 12, at page 122 line 13 to page 126 line 11, and AppX JJ.)

1.e. The Applicant visited Israel in 2003, 2004, 2006, 2007, 2008, 2009, 2010, and 2011. (TR at page 94 line 6 to page 95 line 6, and at page 110 line 17 to page 113 line 18.) Each visit lasted between "two and three weeks," and he visited his parents and his in-laws. (*Id*.)

**Guideline C - Foreign Preference**

2.a. and 2.b. The Applicant applied for and was issued an Israeli passport in December of 2007, after becoming a naturalized U.S. citizen in January of 2006. (GX 1 at page 33.) He used this passport to travel to Israel in 2008, 2009, and 2010. He was under a misapprehension that as a dual national with Israel, he was required to enter and exit Israel using an Israeli passport. (TR at page 93 line 8 to page 94 line 5.) After his 2010 trip, he discovered that this perception was wrong; i.e., that he, in fact, could use his U.S. passport to enter and exit Israel. (TR at page 114 to page 116 line 17.) Since this discovery, his Israeli passport has been invalidated by the Israeli consulate, and he used his U.S. passport to enter and exit Israel on his 2011 trip. (TR at page 137 line 14 to page 139 line 20, and AppX C.) Furthermore, he is willing to renounce his Israeli citizenship. (TR at page 116 line 18 to page 118 line 15.)

I also take administrative notice of the following facts. Israel is one of the most active collectors of proprietary information. Furthermore, Israeli military officers have been implicated in this type of technology collection in the U.S. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Israel. The U.S. Department of Commerce has penalized various U.S. companies for technological transfers directly to Israel. Finally, Israel has become a major global leader in arms exports and, over the last two decades, the U.S. and Israel have periodically disagreed over Israel sales of sensitive U.S. and Israeli technologies to third party countries, most notably China.

## 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, which are useful 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 over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 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

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is applicable: "*contacts with a foreign family member . . . 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*." The Applicant's parents, brother, and in-laws are citizens of and reside in Israel. This is countered, however, by the first mitigating condition, as "*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*" The Applicant's Israeli relatives have no connection with the Israeli government. His parents and in-laws were employed in the private sector, and are now retired. His brother also works in the private sector. Furthermore, the disqualifying condition found in Paragraph 7(e) is not applicable. The Applicant has no "*substantial . . . financial, or property interest"* in Israel. He has sold his house in Israel, and with its proceeds, his net worth in the U.S. is nearly $3,000,000. His $135,000 retirement fund in Israel pales in comparison to his net worth.

### Guideline C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

> 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.

Subparagraph 10(a)(1) is applicable: "*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*." Here, the Applicant, a naturalized citizen, used an Israeli passport to enter that country in 2008, 2009 and 2010. This is clearly countered, however, by the mitigating conditions found under Subparagraphs 11(b) and 11(e). Subparagraph 11(b) notes that where "*the individual has expressed a willingness to renounce dual*

*citizenship*," this is mitigating. I find that Applicant's renunciation intention to be genuine. Furthermore, under Subparagraph 11(e), the Applicant's "*passport has been . . . invalidated*," by the Israeli consulate.

**Whole-Person Concept**

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. 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.

The Administrative Judge should also 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."

The Applicant understands his responsibility to the U.S. while holding a security clearance; and as such, meets the eligibility criterion. Furthermore, he has the unqualified support of those who know and have worked with the Applicant (TR at page 30 line 16 to page 53 line 25, and AppXs S~BB). Also, his Program Manager, and the his Director of Engineering Development, testified and both spoke most highly of the Applicant (TR at page 30 line 16 to page 53 line 25). They all feel he is trustworthy; and as such, should be granted a security clearance.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence and Foreign Preference.

## 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:

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| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |

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| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Paragraph 2, Guideline C: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | For Applicant |

## Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola
Administrative Judge