DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: William O'Neil, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

August 16, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence, foreign preference, and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On May 13, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On November 5, 2010, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on November 15, 2010.[2] On January 21, 2011, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

[1] Government Exhibit 1 (SF 86), dated May 13, 2009.

[2] Government Exhibit 2 (Applicant's Answers to Interrogatories, dated November 15, 2010).

Clearance Review Program (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on February 4, 2011. In a sworn statement, dated February 9, 2011, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 12, 2011, and the case was assigned to me on April 18, 2011. A Notice of Hearing was issued on June 23, 2011, and I convened the hearing, as scheduled, on July 15, 2011.

During the hearing, three Government exhibits (GE 1-3) and eight documents marked as one Applicant exhibit (AE A) were admitted into evidence, without objection. Applicant and one other witness testified. The transcript of the hearing (Tr.) was received on July 26, 2011.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the State of Israel (Israel), appearing in 12 written submissions. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Israel in publications or press releases of the U.S. Department of State,[3] U.S. Department of Commerce,[4] the Congressional Research Service (CRS),[5] the Interagency Operations

[3] U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Israel*, dated December 10, 2010; U.S. Department of State, *Country Specific Information: Israel, the West Bank and Gaza*, dated November 30, 2010.

[4] U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *New Jersey Firm Fined $700,000 for Unlicensed Exports of Specialty Powders*, dated October 1, 2009; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *California Exporter Settles Criminal and Civil Charges for Illegal Exports of High Performance Oscilloscopes to Israel,* dated April 12, 2005; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Minnesota Company Settles Charges Relating to Illegal Exports*, dated December 15, 2003; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Israeli Man Settles Charges of Concealing Material Facts*, dated February 2, 2002; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Arizona Company Settles Charges of Illegal Exports of Lasers*, dated May 22, 2001.

[5] CRS, Library of Congress, *Israel: Background and Relations with the United States*, dated April 2, 2009.

Security Support Staff (IOSS),[6] and the Office of the National Counterintelligence Executive (ONCIX).[7]

The five press releases were presented apparently to substantiate that Israel actively pursues collection of U.S. economic and propriety information, and, therefore, Applicant's relationships with his various family members and extended family members in Israel raised suspicion about him. None of the cases cited involved Applicant personally or involved espionage through any familial relationship. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family or extended family, was ever involved in any aspect of the cited cases or ever targeted by any Israeli intelligence official.

With regard to the ONCIX reports, I note that the first one is 11 years old, and the cited facts are based, in part, upon a private survey of "nearly a dozen selected Fortune 500 companies." The report does not indicate how the companies were selected, what companies were selected, or how they decided upon their input to the survey. The survey results do not indicate whether the collection of economic information was accomplished through "open" methods, such as reading a newspaper, that raise no security issues under the relevant criteria, or more covert methods that might raise security concerns. Furthermore, as the selected companies are unidentified, it is impossible to assess possible bias or determine if there is an existing anti-Israel economic or political agenda. For these reasons, I conclude the factual matters asserted by Department Counsel, as demonstrated by the proffered report, should be given less weight than information from a more authoritative source. It appears that the collection method of information changed after that report, and the above concern does not pertain to the subsequent ONCIX reports.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,[8] as set forth below under the Israel subsection. However, while I do not reject the facts set forth in the various press releases, the inference that Applicant or his family, or his extended

[6] IOSS, *Intelligence Threat Handbook*, dated June 2004 (excerpts only).

[7] ONCIX, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2008, dated July 23, 2009; ONCIX, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2005, dated August 2006; ONCIX, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2000, undated.

[8] Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. *See, e.g. Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). Tr. at 15.

family participated in criminal activity was not argued during the hearing and is specifically rejected.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations (¶¶ 1.a. through 1.e., and 2.a. through 2.d.) of the SOR. Those admissions are incorporated as findings of fact. He denied the remaining allegation (¶ 3.a.).

Applicant is a 45-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been specified. Since he entered the professional work force in April 2004, Applicant has held a variety of positions with different employers. He was a network computer technician with one company from April 2004 until September 2005, and with a different company from September 2005 until April 2007. From April 2007 until March 2009, he was a network computer technician and a desktop support person. He has been employed in a similar position with his current employer, a government contractor, since March 2009.[9] In addition, Applicant owns a small part-time business that performs virus removal and personal computer repairs.[10]

Foreign Influence and Foreign Preference

Applicant was born in 1965 in Israel.[11] He initially came to the United States in 1983, accompanying his mother who had married a U.S. citizen.[12] He fell in love with the United States and did not want to return to Israel, but felt an obligation to do so to fulfill his three-year Israeli military service obligation.[13] He returned to Israel later that same year and, from 1983 until 1986, served with the Israeli Defense Force (IDF).[14] Upon completing his service, at the age of 21, Applicant returned to the United States to work and reside.[15] While here, he held jobs as a courier, truck driver, and scuba instructor.[16] Applicant became a naturalized U.S. citizen in February 1994.[17]

[9] Government Exhibit 1, *supra* note 1, at 14-19.

[10] Government Exhibit 3 (Affidavit, dated February 24, 2010), at 1. The Affidavit was prepared by a special investigator for the U.S. Office of Personnel Management (OPM).

[11] Government Exhibit 1, *supra* note 1, at 6.

[12] Tr. at 32-33.

[13] *Id.* at 33-34.

[14] Government Exhibit 1, *supra* note 1, at 23; Tr. at 52-54.

[15] Tr. at 34-35.

[16] *Id.* at 35.

[17] Government Exhibit 1, *supra* note 1, at 8.

As he matured, Applicant started to contemplate marriage and family. He had previously met a young woman in Israeli, and they maintained a long distance relationship. She came to the United States, and when she departed for Israel after a brief visit in June 2001, he decided to go with her with the intention of getting married. He enrolled in technical school. Two weeks after his return to Israel, she broke up their relationship, or as he described it, "she dumped" him.[18] Applicant was devastated over the breakup, but he was already enrolled in, and paid the tuition for, school, so he decided to remain in Israel to complete his training in computer networking.[19] While studying in Israel, he resided in his grandmother's house, rent free.[20] Upon his return to Israel, as a returning resident, or as Applicant called it, a "return citizen,"[21] he received between 1,000 and 1,400 shekels from the Israeli Government.[22] He estimated the total to be $1,200,[23] or $200 per month for three to six months.[24] He has no military pension and no intentions of accepting any other money or benefits from Israel in the future.[25]

During an OPM interview in March 2010,[26] Applicant indicated he had "voted in the last Israeli election for prime minister . . . in 2001."[27] He did not remember the exact date, but voted because he "was in Israel" and it was the only Israeli election he had ever voted in.[28] He acknowledged the vote in answer to the SOR. During the hearing, he again acknowledged the election was in 2001, and stated he voted because he wanted to see what it was like.[29] Something is amiss, for while there was an Israeli election in 2001, and Applicant was in Israel in 2001, the election took place in February 2001, and Applicant did not arrive in Israel until June 2001, several months after the election. As Applicant was in Israel during the next election, held in January 2003, it

[18] Tr. at 36.

[19] Government Exhibit 2 (Personal Subject Interview, dated July 9, 2009), at 1, attached to Applicant's Answer's to Interrogatories. The report was prepared by the OPM special investigator; Government Exhibit 3, *supra* note 10, at 3.

[20] Government Exhibit 2 (Personal Subject Interview, dated February 10, 2010), at 1, 3, attached to Applicant's Answer's to Interrogatories. The report was prepared by the OPM special investigator.

[21] *Id.* at 1. *See also* the Israeli Ministry of Immigrant Absorption website, that describes who is a Returning Resident, at http://www.moia.gov.il/moia_en/ReturningCitizens/WhoIs.htm, as well as what financial assistance they are entitled to, at http://www.moia.gov.il/moia_en/FinancialAssistance/IncomeInsurance.htm.

[22] Government Exhibit 2, *supra* note 19, at 1.

[23] Tr. at 46.

[24] Applicant's Response to the SOR.

[25] Tr. at 47, 59.

[26] The report erroneously indicates the interview took place in 2011. *See* Government Exhibit 2 (Personal Subject Interview, dated March 4, 2010), at 2, attached to Applicant's Answer's to Interrogatories. The report was prepared by the OPM special investigator.

[27] *Id.* at 4.

[28] *Id.*

[29] *Id.* at 46.

appears that he may have actually voted in that particular Israeli election. He has no intentions of voting in future Israeli elections.[30]

Applicant returned to the United States in June 2003.[31] He attended computer classes in the United States from August 2003 until October 2003.[32] In April 2009, Applicant married his wife, a native-born U.S. citizen.[33] They have a daughter, born in the United States, in 2010.[34]

Applicant's father was born in 1935 in what is now known as Israel before the country was established. He was an Israeli citizen and resident.[35] Applicant's parents were divorced when Applicant was seven years old.[36] Applicant's father died in 1988.[37] Applicant's mother was born in 1936 in what is now known as Israel before the country was established. Since her marriage in 1983, she has been a dual citizen of Israel and the United States, and a resident of the United States.[38] She is a nurse in a local hospital.[39]

Applicant's only sibling, a brother, was born in 1963 in Israel.[40] He holds dual citizenship with the United States and Israel, and resides in both countries, traveling between them on a monthly basis.[41] He is the general manager for a privately owned Israeli company with offices in both countries.[42] Applicant's sister-in-law, his brother's wife, is an Israeli citizen, and she resides part-time in Israel where she works with autistic children, and part-time in the United States.[43]

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[30] *Id.* at 47.

[31] Government Exhibit 2, *supra* note 19, at 1; Government Exhibit 2, *supra* note 25, at 3.

[32] Government Exhibit 1, *supra* note 1, at 12-13.

[33] Government Exhibit 1, at 26-27; Tr. at 23.

[34] Tr. at 23.

[35] Government Exhibit 1, *supra* note 1, at 30.

[36] Government Exhibit 2, *supra* note 25, at 4.

[37] *Id.*

[38] Government Exhibit 1, *supra* note 1, at 29.

[39] Tr. at 30.

[40] Government Exhibit 1, *supra* note 1, at 30.

[41] Government Exhibit 2, *supra* note 19, at 1.

[42] Tr. at 28, 56.

[43] *Id.* at 28, 41, 57.

Applicant's uncle was born in 1942 in Israel,[44] and is an Israeli citizen and resident.[45] Applicant described him as a retired city employee who dealt with the bureaucracy when businesses needed land to operate,[46] as well as a manager of development and industry for the ministry of commerce and industry.[47] Applicant's cousin, whose last name he could not initially recall,[48] is an Israeli citizen, and she resides in Israel where she works as a teacher with autistic children.[49]

Other than his brother's service with the IDF, and his uncle's service with city government, none of Applicant's immediate family members (parents or brother), or extended family members (sister-in-law, uncle, or cousin) has ever had any affiliation with the Israeli government, intelligence service, or any political party.[50]

Applicant also has one high school friend in Israel who is an Israeli citizen and resident.[51] His friend works for an American bank in Israel.[52] Other than his service with the IDF, he has never had any affiliation with the Israeli government, intelligence service, or any political party.[53]

The frequency of Applicant's on-going contacts with the members of his family, extended family, and friend is varied. Of his family, only Applicant's mother, brother, and uncle attended his wedding in the United States.[54] Applicant sees his mother and mother-in-law (a native-born U.S. citizen) between two and four times a week as they both reside in the same area as Applicant and his family.[55] He sees his brother and sister-in-law about one time per year, especially when they come to town to see their mother.[56] Applicant and his brother generally speak with each other by telephone three or four times per year.[57] Applicant speaks with his uncle and his cousin by telephone about once every six months.[58]

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[44] Government Exhibit 2, *supra* note 19, at 1.

[45] Applicant's Response to the SOR.

[46] Tr. at 30.

[47] Government Exhibit 2, *supra* note 2, at 18.

[48] Government Exhibit 2, *supra* note 20, at 1.

[49] Tr. at 31, 57.

[50] *Id.* at 64, 72.

[51] *Id.* at 41, 43.

[52] *Id.* at 74.

[53] *Id.*; Government Exhibit 3, *supra* note 10, at 4.

[54] Tr. at 25.

[55] *Id.* at 26.

[56] *Id.* at 27, 57.

[57] *Id.* at 43, 57.

When Applicant became a naturalized U.S. citizen, he took an oath of allegiance to the United States. That oath included the words:[59]

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen.

There is some controversy regarding Applicant's willingness to renounce his Israeli citizenship. According to the OPM investigator, in July 2009, Applicant was "not willing to relinquish" his Israeli citizenship.[60] However, Applicant disputed that rendition in February 2010: "I never said that I am unwilling to renounce my Israeli citizenship. I said that I would give up my citizenship if it is the only reason to keep my job and get a security clearance."[61] He added: "Everything I have control over such as my Israeli citizenship or my U.S. company I would give up for my security clearance."[62]

In November 2010, Applicant stated:[63]

> My allegiance is with the U.S. I have a baby girl, she is a U.S. citizen and my wife is a U.S. citizen. But even if they did not live here I would still live here and pledge my allegiance to the U.S. Israel is still in my heart, I have family and friends in Israel. But the State of Israel does not pay my bills and even if they did my allegiance is still with the United States. . . . I also have allegiance to the U.S. because this is where I live. I would do whatever is needed to be done to protect the United States. . . . I would even join the U.S. military at my current age.

In July 2011, during the hearing, Applicant noted that once he completed his three years of IDF service, he no longer owed Israel anything else.[64] He also stated unequivocally that he is willing to renounce his Israeli citizenship.[65] To Applicant, Israel is like a mother, but the United States is home.[66] He has voted in two U.S. elections.[67]

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[58] Government Exhibit 2, *supra* note 19, at 1; Government Exhibit 2, *supra* note 20, at 1; Government Exhibit 2 (Affidavit, dated March 10, 2010), at 7. The Affidavit was prepared by the OPM special investigator.

[59] 8 C.F.R. § 337.1(a) (1995).

[60] Government Exhibit 2, *supra* note 19, at 1.

[61] Government Exhibit 2, *supra* note 20, at 2.

[62] *Id.*

[63] Government Exhibit 2 (Affidavit), *supra* note 58, at 10.

[64] Tr. at 33.

[65] *Id.* at 72.

[66] *Id.* at 47.

Applicant was initially issued an Israeli passport in about 1979,[68] and he has subsequently renewed it a number of times.[69] He also has a U.S. passport.[70] Whenever he traveled to Israel, Applicant used his Israeli passport because it was faster and more convenient to do so.[71] For all other foreign travel, Applicant used his U.S. passport.[72] Upon being informed of the security significance of possessing and using a foreign passport, on September 2, 2010, nearly five months before the SOR was issued, Applicant surrendered his Israeli passport to his employer's facility security officer (FSO), and it was destroyed.[73]

When Applicant resided in Israel he maintained a bank account, but that account has been closed.[74] He has no financial interests such as real estate, bank accounts, investments, or any other financial assets in Israel or anywhere else outside the United States, and he does not receive income of any type from any government, person, business or organization outside the United States.[75] He estimates his current net worth to be roughly $150,000, consisting of residence, bank account, and automobiles.[76]

Personal Conduct

On May 13, 2009, when Applicant finally completed and submitted his e-QIP,[77] he responded to a question set forth in the e-QIP. The SOR alleges Applicant falsified material facts when he deliberately failed to disclose complete information in response to § 19: Foreign Contacts – (*Do you have or have you had close and/or continuing contact with foreign nationals within the last 7 years with whom you, your spouse, or your cohabitant are bound by affection, influence, and/or obligation? Include associates, as well as relatives, not already listed in Section 18. (A foreign national is defined as any person who is not a citizen or national of the U.S.)*, to which he answered "no."[78] He

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[67] *Id.* at 46.

[68] Government Exhibit 2, *supra* note 19, at 1.

[69] *Id.*

[70] *Id.*

[71] Government Exhibit 3, *supra* note 10, at 4-5.

[72] Government Exhibit 2, *supra* note 19, at 1.

[73] Government Exhibit 3 (Letter from FSO, dated September 7, 2010); Tr. at 61.

[74] Tr. at 63.

[75] Government Exhibit 2, *supra* note 2, at 22-23.

[76] Tr. at 48. This figure is reduced from the $175,000 guesstimate he made in November 2010.

[77] Applicant thought he had completed and submitted the SF 86, but several months later, he was advised to accomplish the tasks anew, so he did so in about 90 minutes one evening. *Id.* at 39, 65, 75.

[78] Government Exhibit 1, *supra* note 1, at 31.

did not list his sister-in-law, his friend, his uncle, or his cousin, all of whom were Israeli citizens, residing in Israel. He denied the omission was deliberate or an attempt to falsify the material facts.[79] Applicant explained that he did not believe the inquiry referred to simple contact with foreign nationals.[80] He believed the only person who fulfilled the category was his brother, and he was already listed in response to the inquiry in § 18.[81] As for his sister-in-law, friend, uncle, and cousin, Applicant contended he did not have any influence over, or affection (or as he described it, love) for any of them, or any obligation to them, so they were not listed.[82]

While Applicant speaks and reads English with some facility, he sometimes misunderstands the meaning of English words and frequently asks his wife for assistance.[83] He did not seek her assistance while he completed the SF 86.[84] It was also noted during the hearing that Applicant's accent is thick and it is sometimes difficult to understand him.

Character References

Applicant's friends, co-workers, and clients (including a county law enforcement officer and a former supervisory special agent with the Federal Bureau of Investigation) are effusive in their praise for Applicant. Based on their combined observations and interaction with Applicant, Applicant has been characterized as "an honorable man who is committed to his wife and child, his work and his country." Applicant is a "hard working technology professional" who exhibits integrity, honesty, flexibility, persistence, responsibility, and trustworthiness.[85]

Israel

Israel is a parliamentary democracy of nearly 7.6 million people, drawn from more than 100 countries. As such, Israeli society is rich in cultural diversity and artistic creativity. Following a proposed United Nations (UN) partition plan under which Palestine would be divided into separate Jewish and Arab states, and a British withdrawal from the area, in May 1948, Israel proclaimed its independence. It was immediately invaded by armies from neighboring Arab states which rejected the UN partition plan. The initial conflict was concluded by armistice agreements in 1949. The United States was the first country to officially recognize Israel, only eleven minutes after Israel declared its independence.

[79] Applicant's Response to the SOR.

[80] Government Exhibit 2 (Affidavit), *supra* note 58, at 8.

[81] Tr. at 41.

[82] *Id.* at 41, 48

[83] *Id.* at 22.

[84] *Id.*

[85] Applicant Exhibit A (Various character references with various dates).

Following the armistice, Israel and its Arab neighbors have, over the ensuing decades, engaged in periodic hostilities involving national military forces attacking each other, as in 1956, 1967, 1973, 1978, 1982, and 2008. In addition, because of Arab support of several terrorist organizations, including Hamas, Al-Fatah, and Hezbollah, there have been an increasing number of terrorist incidents, including rocket attacks, kidnappings, and suicide bombings in Israeli cities, and retaliatory Israeli actions across Israel's borders. Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests. U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. Due to the volatile security environment in those areas, the United States continues to warn against any travel to them. Hamas, a U.S. State Department - designated foreign terrorist organization - violently assumed control over Gaza in 2007. No official travel is permitted inside the Gaza Strip and official travel to the West Bank is restricted to mission-essential business or mission-approved purposes.

In 1967, the UN Security Council adopted Resolution 242, the "land for peace" formula, which called for the establishment of a just and lasting peace based on Israeli withdrawal from all territories occupied in 1967 in return for the end of all states of belligerency, respect for the sovereignty of all states in the area, and the right to live in peace within secure recognized boundaries. In 1979, Israel and Egypt signed a peace treaty, and in 1994, Israel and Jordan signed a peace treaty. In 1995, Israel and the Palestine Liberation Organization (PLO) signed an interim agreement. Nevertheless, Israel's right to exist has been threatened and terrorist incidents occur with increasing frequency.

Most Israelis enjoy a middle class standard of living, and per capita income is on a par with some European Union member states. Israel generally respects the human rights of its citizens, although there have been some issues pertaining to the 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 1948, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, metal products, processed foods, chemicals, and transport equipment. Israel is a world leader in software development.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests, and the United States is Israel's largest single trading partner. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. As of 2009, 35 percent of Israel's exports went to the United States while 13.9 percent of its imports came from the United States.

Israel and the United States do not have a mutual defense agreement. Nevertheless, on several occasions, former President George W. Bush declared that the United States would defend Israel militarily in the event of an attack. 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. Strong congressional support for Israel has resulted in Israel receiving benefits not available to other countries. Israel is permitted to use part of its foreign military assistance grant for procurement spending from Israeli defense companies. Israel was one of the first countries designated "a major non-NATO ally," affording it 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 strategic defense initiative "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. The two countries participate in joint military exercises and collaborate on military research and weapons development. 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 has voiced concerns 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. Israel was listed as one of the seven nations, along with China, Japan, France, Korea, Taiwan, and India, that aggressively targeted U.S. economic properties in 2000. Israel was not specifically so identified in 2005, unlike China and Russia, both of which were specifically identified as aggressive collectors of sensitive and protected U.S. technologies. Of 23 specific economic espionage incidents cited in 2008, Israel was not one of the countries involved in the incidents. Nevertheless, some Israeli military members, as well as a variety of individuals and companies from the United States have been implicated in the improper export to Israel of protected U.S. technology and intellectual property.

Under Israeli law, Israeli citizens do not automatically lose their Israeli citizenship when they become U.S. citizens. Israeli citizens, including dual nationals, are required to enter and depart Israel using an Israeli passport. Israeli authorities may require persons whom they consider to be Israeli citizens by birth to obtain an Israeli passport before departing Israel.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[86] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[87]

[86] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[87] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[88] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and it has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[89]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[90]

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[88] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[89] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[90] *Egan*, 484 U.S. at 531

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[91] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

> 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[92] Applicant's relationship with his brother, sister-in-law, uncle, cousin, and best friend are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under 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*" is potentially disqualifying. I find AG ¶ 7(a) applies in this case. However, the security significance of this condition requires further examination of Applicant's respective relationships with his friend, family members, and extended family members who are Israeli citizen-residents, dual Israeli-United States citizens, or Israeli citizen-

[91] *See* Exec. Or. 10865 § 7.

[92] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

part-time residents, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "*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.*" Similarly, AG ¶ 8(b) may apply where the evidence shows "*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.*" In addition, AG ¶ 8(c) may apply where "*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.*" In this instance, Applicant's relationship with his brother and friend is neither casual nor infrequent. Accordingly, AG ¶ 8(c) does not apply as it pertains to them. However, considering Applicant's more casual and infrequent relationship with his sister-in-law, uncle, and cousin, AG ¶ 8(c) does apply.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.[93] In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."[94]

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. As noted above, Israel and the United States have a close friendship, with the United States committed to Israel's security. The United States' efforts on behalf of Israel are to see that Israel maintains a "qualitative military edge" in the region. Israel receives preferential treatment in bidding for U.S. defense

[93] *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

[94] ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

contracts and substantial economic aid. Nevertheless, the interests of the United States and Israel are not always completely aligned, for each country has its own self-interests, especially in the areas of national security and economics.

As recently as 2000, Israel was listed as an aggressive collector of sensitive and protected U.S. technologies. Considering the nature of the Israeli government and society, it is unlikely that the Israeli government would attempt coercive means to obtain sensitive information. There is no evidence that Israel has used coercive methods. However, it does not eliminate the *possibility* that Israel would employ some non-coercive measures in an attempt to exploit a relative. While Applicant's friend, uncle, and cousin, still reside in Israel, and his brother and sister-in-law reside there on a part-time basis, splitting the year between Israel and the United States, there may be speculation as to "some risk," but that speculation, in the abstract, does not, without more, establish sufficient evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

There is no evidence that Applicant's brother, sister-in-law, friend, uncle, or cousin are, or have been, political activists, challenging the policies of the Israeli government; have ever had any affiliation with the Israeli government, intelligence service, or any political party (other than his brother's service with the IDF and his uncle's employment with the city government); that terrorists have approached or threatened them for any reason; that the Israeli government has approached Applicant; that his family members and friend in Israel currently engage in activities that would bring attention to themselves; or that those individuals are even aware of Applicant's work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Israeli government, which may seek to quiet those who speak out against it.

Throughout the world, and especially in Israel, terrorist attacks are a continuing threat. Within Israel, many of those attacks are directed at, not only Jewish or Israeli interests, but American interests as well. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to combat and minimize the risk presented by terrorism. Also, there is no evidence that terrorists have approached or threatened Applicant for any reason. Applicant has met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence of exploitation. Applicant is fully involved in his daughter's life and activities. He and his U.S.-born wife have "such deep and longstanding relationships and loyalties in the U.S., that [they] can be expected to resolve any conflict of interest in favor of the U.S. interest." As to Applicant's brother, sister-in-law, uncle, cousin, and friend in Israel, AG ¶ 8(a) applies. As to his sister-in-law, uncle, and cousin, ¶ 8(b) applies.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

> 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a), "*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member*" is potentially disqualifying. This includes but is not limited to: under AG ¶ 10(a)(1), "*possession of a current foreign passport*;" under AG ¶ 10(a)(2), "*military service or a willingness to bear arms for a foreign country*;" under AG ¶ 10(a)(3), "*accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country*;" and under AG ¶ 10(a)(7), "*voting in a foreign election*," may raise security concerns. Applicant was initially issued an Israeli passport in about 1979, and he subsequently renewed it a number of times. Whenever he traveled to Israel, he used his Israeli passport because it required and was faster and more convenient to do so. In September 2010, Applicant surrendered his Israeli passport to his FSO, and it was destroyed. Applicant served in the IDF from 1983 until 1986. Although he became a naturalized U.S. citizen in 1994, upon his return to Israel in 2001, he received an estimated $1,200 from the Israeli Government. Applicant voted in one Israeli election while is Israel. By his actions, Applicant exercised the rights and privileges of foreign citizenship after becoming a U.S. citizen. AG ¶¶ 10(a)(1), 10(a)(2), 10(a)(3), and 10(a)(7), apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(a), the disqualifying condition may be mitigated where the "*dual citizenship is based solely on parents' citizenship or birth in a foreign country*." Similarly, AG ¶ 11(b) may apply where "*the individual has expressed a willingness to renounce dual citizenship*." In addition, AG ¶ 11(c) may apply if the "*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*." Also, AG ¶ 11(e) may apply where "*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*."

Applicant, a naturalized U.S. citizen, was born of Israeli parents in Israel, and his Israeli citizenship was based solely on those factors. Dual citizenship, by itself, is not an automatic bar to a security clearance. It is only a security concern if the individual has actively exercised the rights and privileges of the foreign citizenship after becoming a U.S. citizen. Applicant stated unequivocally that he is willing to renounce his Israeli citizenship. His military service with the IDF occurred before he became a U.S. citizen. His relocation to Israel in 2001 was associated with his romantic interest in a young lady, and when the relationship ended, he remained in Israel until 2003 only because he

was already enrolled in school. Applicant explained that his only motivation for using his Israeli passport was not an indication of a preference for Israel over the United States, but rather solely for his personal convenience in entering Israel, and because as a dual citizen, he was required to do so. Such actions, since 1994, have security significance. Thus, as to Applicant's dual citizenship, his residence in Israel during 2001-2003, and his possession and use of the Israeli passport, considering Applicant's explanations, and his subsequent actions, I find ¶¶ 11(a), 11(b), and 11(e) apply.

As noted above, Applicant also exercised the rights and privileges of Israeli citizenship after becoming a U.S. citizen by receiving about $1,200 from the Israeli Government, and by his voting in one Israeli election while he was a student in Israel. As to the monetary stipend, Applicant explained it was a small amount available to all returning citizens, and he was a qualified recipient. As to the election, he explained it was the first and only time he had ever voted in an Israeli election and he was curious about the process and experience. Applicant was not aware at the time he exercised such Israeli citizenship rights and privileges that they had any U.S. security significance. Applicant was both open and forthright about them, and neither action has since been repeated. Neither experience reflects attitudes by Applicant of greed or entitlement. Considering the relatively small amount of money involved, and the one-time election experience, under the circumstances herein, while ¶ 11(c) does not apply, those incidents are of minimal security significance.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> 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.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), a "*deliberate omission, concealment, or falsification of relevant 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*," is potentially disqualifying.

Applicant's omission in his response to the one inquiry in the e-QIP of critical information pertaining to foreign contacts, provides sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or was the result of misunderstanding, as he contends. In response to the question about "close and/or continuing contact with foreign nationals . . . with whom [Applicant] . . . [is] bound by affection, influence, and/or obligation*,"* Applicant answered "no." He did not list his

sister-in-law, his friend, his uncle, or his cousin, all of whom were Israeli citizens, residing in Israel. He denied the omission was deliberate or an attempt to falsify the material facts, and explained that he did not believe the inquiry referred to simple contact with foreign nationals. He believed the only person who fulfilled the category was his brother, and he was already listed in response to another inquiry. As for his sister-in-law, friend, uncle, and cousin, Applicant contended he did not have any influence over, or affection, or love, for any of them, or any obligation to them, so they were not listed. I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his misunderstanding was real and his explanations are consistent. Considering the quality of the other evidence before me, they have the solid resonance of truth. I find Applicant's explanations are credible in his denial of deliberate falsification. AG ¶ 16(a) has not been established.

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. 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and his "closest family" - his wife and child - are U.S. citizens residing in the United States. His Israeli-born mother is a naturalized U.S. citizen residing with her husband and working in the United States. His brother, also a dual citizen of the United States and Israel, resides and works in both the United States and Israel. Applicant's relationships with the other extended family members and his high school friend, all of whom are Israeli citizens residing in Israel, have evolved into more casual and distant relationships. Applicant is not vulnerable to direct coercion or exploitation through his brother, sister-in-law, uncle, cousin, or friend, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low.

Decisions concerning Israel must take into consideration the geopolitical situation in that country, as well as the potential dangers existing there. Israel, like the United States, is a democracy. Both countries have been victims of Islamic terrorists. Because both nations share a common vision for the future, it is in Israel's interests to maintain friendship with the United States to counterbalance international terrorism. It is very unlikely Israel would forcefully attempt to coerce Applicant through any of his close or casual relationships with those still residing in Israel. Furthermore, while there is evidence that Israel is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations, there is no evidence that Applicant has been targeted.

As noted above, Applicant's entire life is now centered in the United States. This is where his child is growing up and where his family, wife's family, and friends, reside. He has pledged his allegiance to the United States, and stated: "I would do whatever is needed to be done to protect the United States. . . . I would even join the U.S. military at my current age." Applicant is well respected by his friends and colleagues for his honesty, integrity, and truthfulness. That he and his brother, sister-in-law, uncle, cousin and friend keep in periodic contact should not be considered a negative factor. (*See* AG ¶¶ 2(a)(1) through 2(a)(9).)

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 foreign influence, foreign preference, and personal conduct concerns.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
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
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

Subparagraph 3.a: 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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ROBERT ROBINSON GALES
Administrative Judge