



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-02842
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

March 26, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires For Investigations Processing on June 27, 2002, and August 6, 2010. (Government Exhibits 1 and 7.) On July 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B 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) effective within the Department of Defense after September 1, 2006.

The Applicant responded to the SOR on July 25, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 30, 2011. Notices of hearing were issued on December 7, 2011, and January 18, 2012, scheduling the hearing for January 30, 2012. At the hearing the Government presented nine exhibits, referred to Government Exhibits 1 through 9 that were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F that were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on February 9, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Israel. The Applicant had no objection. (Tr. p. 92.) The requested administrative notice was taken. The requests 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 following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 55 years of age and has a Bachelor of Science Degree in Engineering. He is employed as President and owner of a defense contracting company. 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 acted in such a way as to show a preference for another country over the United States.

The Applicant admitted each of the allegations set forth under this guideline, except 1(e). (See Applicant's Answer to SOR.) The Applicant was born in Israel in 1956. He grew up in Israel, and served his mandatory time in the Israeli Army for four years from 1976 to 1980. In December 1980, he immigrated to the United States for educational purposes and to attend college. In January 1992, he became a naturalized United States citizen. His spouse and two children were born in the United States.

The Applicant considers himself a dual citizen of Israel and the United States. (Tr. p. 69.) Prior to 2003, and after becoming a naturalized United States citizen, the Applicant possessed a valid Israeli passport. He used his Israeli passport to travel to Israel to visit his family members there from 1996 to 1999. With the understanding that his foreign passport could jeopardize his chances of obtaining a security clearance, the Applicant told the Government that he would surrender his Israeli passport to the Israeli Consulate and renounce his Israeli citizenship. (Government Exhibits 3 and 4.) At a previous DOHA hearing held on June 8, 2003, before a different DOHA Administrative Judge, the Applicant testified that he realized that by renouncing his Israeli citizenship and surrendering his Israeli passport it would be difficult for him to travel to Israel but that he was willing to do it. (Government Exhibit 5.) Based upon the evidence presented at the DOHA hearing, on July 23, 2003, the Administrative Judge reached a favorable determination in the case. (Government Exhibit 6.)

The Applicant testified that following his DOHA hearing in 2003, he tried to surrender his Israeli passport and renounce his Israeli citizenship but he encountered problems. He testified in part that, . . . "I can't get in and out of Israel without them holding me for hours and, you know, torturing me basically to use Israeli passport because, you know, they can tell that I'm Israeli by my accent. And they say, no, you can't travel with non-Israeli passport. And they give you a really hard time those guys. It's no joke." (Tr. p. 89.) The Applicant never completed the process and therefore

never received his security clearance. (Tr. pp. 84 -85.) The Applicant testified that it is a priority for him to be able to travel every once in a while to Israel to see his family there. (Tr. p. 78.) In 2007, he exercised his Israeli citizenship by obtaining a renewed Israeli passport in order to travel to Israel to visit his brother and attend a family wedding. His current Israeli passport will not expire until 2017. He states that he traveled to Israel on three separate occasions since 2003. On two occasions he used his United States passport to enter and exit Israel. During his most recent trip in 2007, he used his Israeli passport. He states that he is willing to surrender or destroy his Israeli passport, however, he has not done so. The Applicant admitted that his company does not have a Facility Security Officer and that he is not familiar with many Department of Defense policies and procedures. (Tr. pp. 77 and 86.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admitted each of the allegations set forth under this guideline of the SOR. The Applicant has a brother, a sister-in-law, cousins and a cousin's spouse who are citizens and residents of Israel. The Applicant continues to maintain close and continuing contact with his relatives in Israel. (See Applicant's Answer to SOR.) In regard to his brother, Applicant has traveled to Israel to visit him on a number of occasions. His brother is a bus driver. The Applicant travels to Israel every three years to visit his family members in Israel. There is no evidence that any of his relatives have worked for or have been affiliated with the Israeli government.

The Applicant has significant financial assets in Israel. He owns one-half interest in an apartment in Israeli worth \$200,000 that he states that he intends at some point to transfer to his brother. The Applicant's interest in the apartment is worth approximately \$100,000. (Tr. p. 59.) In 2003 at the previous DOHA hearing, the Applicant indicated that he was at that time planning to transfer his interest to his brother for the benefit of his daughter. (Government Exhibits 5 and 6.) He failed to do this. He now states that he plans to transfer his interest to his brother when his nieces and nephews are older. (Tr. p. 81.) The Applicant also has a bank account in Israel that contains approximately \$100,000 that he has states he has blind trusted to his brother. (Tr. p. 58.)

He states that his net worth in the United States is about twenty million dollars, which includes his primary residence, a rental house and a vacation property. (Applicant's Exhibit F.) He states that his annual salary is now one million dollars. (Tr. p. 82.) The Applicant has not provided sufficient documentary evidence to establish his purported net worth.

He testified that he would never do anything to jeopardize the national security of the United States, and that he would bear arms against Israel if it came down to it. (Tr. p. 90.)

Letters of recommendation from professional associates of the Applicant, who have worked with the Applicant and his company for several years, indicate that he is honest, trustworthy and responsible. (Applicant's Exhibit A.)

I have taken official notice of the following facts concerning the country of Israel. Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel has a diversified ,technologically advanced economy that is growing at five percent annually. The United States is Israel's largest trading partner. The threat of terrorist attacks in Israel is an on-going concern. Terrorist organizations have launched rockets and mortars from the Gaza Strip. The U.S. government has previously issued warnings that American 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. As a result, American citizens have been urged to exercise a high degree of caution when visiting places associated with U.S. interests and/or located near U.S. official buildings. The United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. There are some issues in U.S. - Israeli relations. The United States is concerned with Israeli military sales to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases involving Israeli citizens.

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.

Condition that could raise a security concern:

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; This includes but is not limited to:

- (1) possession of a current foreign passport.

Conditions that could mitigate security concerns:

- 11.(b) the individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

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;

7.(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

7.(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Conditions that could mitigate security concerns:

8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

8.(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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 and surrounding circumstances;

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 the participation was voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral 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 Guidelines C (Foreign Preference) and B (Foreign Influence) 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, which demonstrates that the past adverse conduct is unlikely to be repeated and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections and is subject to foreign influence 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.

CONCLUSION

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.

Under Foreign Preference, Disqualifying Condition 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. This includes but is not limited to: (1) possession of a current foreign passport* applies. Mitigating Condition 11(b) *the individual has expressed a willingness to renounce dual citizenship* also applies, but is not controlling in this case.

Under Foreign Influence, Disqualifying Condition 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; 7.(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and 7.(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation* apply. Mitigating Condition 8.(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and 8.(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual* also apply, but are not controlling.

The evidence shows that the Applicant is a dual citizen of Israel and the United States. In 2003, he told the Government that he would surrender his Israeli passport and renounce his dual citizenship with Israel. This did not happen. Although it appears that he gave it some effort, he did not complete the process. After becoming a citizen of the United States in 1992, and following his DOHA hearing in 2003, he renewed his Israeli passport in 2007 that does not expire until 2017, in order to travel to Israel to visit his family there. He now again states that he is willing to surrender his Israeli passport, but he has failed to do so. He also indicates that if he does not have his Israeli passport he cannot travel to Israel to see his family, which is a priority for him. Under these particular circumstances, a situation may occur that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure,

or coercion against the interests of the United States. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign preference. Accordingly, I find against the Applicant under Guideline C (Foreign Preference).

The Applicant has significant financial assets in Israel. Although his financial assets in the United States purportedly far exceed what he owns in Israel, he has not provided sufficient evidence to establish his purported net worth in the United States.

Despite the fact that the Applicant has lived in the United States for well over thirty years, he is still very close to his family in Israel. He wants to be able to visit his family in Israel and continues to possess his Israeli passport in order to do so. It is noted that the current political situation in Israel elevates the cause for concern in this case. The evidence shows that the Applicant has a strong bond and affection with his foreign family members, to any foreign individual, and to Israel, in a way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. There may be the possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 55 year old President of a defense contracting company who wants to be able to travel to Israel to visit his family on an Israeli passport whenever he wants to. He is aware of DoD policy that prohibits possession of a foreign passport while holding a security clearance and obviously disagrees with the policy. 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 judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has failed to demonstrate that he is sufficiently trustworthy, and that he clearly meets the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines C (Foreign Preference) and B (Foreign Influence).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

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.: For the Applicant
- Subpara. 1.b.: Against the Applicant
- Subpara. 1.c.: Against the Applicant
- Subpara. 1.d.: Against the Applicant
- Subpara. 1.e.: Against the Applicant
- Subpara. 1.f.: Against the Applicant

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant
- Subpara. 2.b.: Against the Applicant
- Subpara. 2.c.: Against the Applicant
- Subpara. 2.d.: Against the Applicant
- Subpara. 2.e.: Against the Applicant
- Subpara. 2.f.: Against the Applicant
- Subpara. 2.g.: Against the Applicant
- Subpara. 2.h.: Against 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

