



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



In the matter of:

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)	ISCR Case No. 11-03071
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Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

December 7, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the Government’s security concerns under Guideline C, Foreign Preference. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On September 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference. DOHA acted 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 on September 1, 2006.

Applicant timely answered the SOR and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 20, 2011. The FORM was mailed to Applicant and he received it on November 1, 2011. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on November 29, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He was born in the United States of an Israeli father and mother. Applicant's parents moved to the United States in 1976, where Applicant was born five years later. (Item 5) Applicant obtained his master's degree from an American university in August 2010. He has been with his current employer since September 2010. (Item 5)

Applicant has had a valid Israeli passport since he was one or two years old. In 2003, he visited his grandparents and other family members. He used his American passport, which was presented upon entry and exit and stamped both times. (Response to FORM). Applicant recalls that he did not have to show his Israeli passport. He renewed his Israeli passport in 2005. It will expire in 2015. He used his Israeli and American passports when traveling to Israel in 2008. (Item 6)

Applicant traveled to Israel in the summer of 2008 to visit family. He claims that he is required to show his Israeli passport because he is a citizen of Israel and a citizen of the United States. He wished to retain his Israeli passport because he wants to visit his family in Israel again. He reported that he is not willing to destroy, surrender, or invalidate his Israeli passport. (Item 7) Applicant emphasized that family is important to him and thus, he does not want to surrender the Israeli passport. He believes this has no bearing on his allegiance to the United States.

Applicant submitted his U.S. passport and his Israeli passport in response to the FORM that confirmed that acquisition of nationality by birth is granted to persons who were born outside of Israel, if their mother or father holds Israeli citizenship, acquired either by birth in Israel, according to the Law of Return, by residence, or by naturalization. (Response to FORM) By virtue of this fact, Applicant holds dual citizenship.

Applicant submitted the following from a Travel.State.Gov website concerning Israeli-Americans: The Government of Israel considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. For example, an American citizen child of an Israeli parent will

be considered an Israeli citizen by Israeli immigration officials, even if the child was born outside of Israel, and Israeli law will apply to the child's travel to, and departure, from Israel. U.S. citizens who are also citizens of Israel must enter and depart Israel using their current Israeli passport.

Applicant states that his allegiance is with the United States. He does not intend to live in Israel, but he wishes to visit his family in the future. He believes he needs his Israeli passport to do so. He has not attempted to renounce his citizenship with Israel, and has declined to invalidate, destroy or turn in, his Israeli passport. (Item 7) Earlier, in an interview, however, Applicant offered to renounce his citizenship with Israel provided it did not impede his ability to visit family members (grandparents) living in Israel. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching 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]née 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

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.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case NO. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

A disqualifying condition may arise from “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.” AG 10(a)(1). Applicant holds a valid Israeli passport.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG 11(a) Applicant initiated renewal of his Israeli passport when he turned 24 years old, after he was a minor. He claims he wanted to avoid any issues. He receives partial credit under this guideline.

Security concerns under this guideline may also be mitigated by if “the individual has expressed a willingness to renounce dual citizenship.” AG 11(b) Applicant offered to renounce his Israeli citizenship in a November 2010 interview, conditioned upon his ability to continue to visit his family in Israel. In his 2011 answer, he no longer seemed willing to consider this course of action because, as he claims, Israel requires him to show his Israeli passport upon entering and leaving the country. Applicant does not receive mitigation under this section.

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 was born in the United States of Israeli parents. He has lived in the United States his entire life. He holds dual citizenship with Israel and the United States. He visited Israel in 2003 and 2008. He wished to visit his family in the future. He renewed his Israeli passport in 2005, which expires in 2015. He has not made the decision to invalidate, destroy or turn in his Israeli passport. Applicant uses both his U.S. passport and his Israeli passport when he travels to Israel. I am not convinced that he would relinquish his passport if he could retrieve it to visit his family in Israel. He has not met his burden in the case.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Preference security 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 C:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge