DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-03162
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines C (Foreign Preference) and B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on August 3, 2010. On June 4, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines C and B. 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on June 13, 2012; answered it on June 14, 2012; and requested a hearing before an administrative judge. DOHA received the request on June 18, 2012. Department Counsel was ready to proceed on September 1, 2012, and the case was assigned to me on September 7, 2012. DOHA issued a notice of hearing on September 20, 2012, scheduling Applicant's hearing for October 11, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I held the record open until October 18, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX G, H, and I, which were admitted without objection. Department Counsel's comments regarding AX G, H, and I are attached to the record as Hearing Exhibit (HX) II. (HX I is discussed below.) DOHA received the transcript (Tr.) on October 26, 2012.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Israel. The request and the documents attached as enclosures to the request are attached to the record as HX I. Based on Department Counsel's disclosure that HX I was not received by Applicant before the hearing, I provisionally granted the request to take administrative notice, but I gave Applicant seven calendar days to examine the request and supporting documentation and to submit any objections to my taking administrative notice as requested by Department Counsel. (Tr. 23.) Applicant did not submit any objections, and I granted Department Counsel's request. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted all the factual allegations in the SOR, but denied that the facts indicated a preference for a foreign country or made him vulnerable to foreign influence. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old consultant employed by a federal contractor since December 2009. He has a bachelor's degree in political science and a master's degree in international policy studies from U.S. universities, and he has worked as a consultant in democracy assistance for the last 12 years. (Tr. 48.) He was employed by a non-government agency from July 2002 to April 2008. He served his last two years as a resident senior program manager in Afghanistan for democracy development programs funded by the U.S. Government. He held several key positions, frequently worked in dangerous situations, and had a reputation for faithful service and careful protection of confidential information. (AX D; AX E; AX F; Tr. 54.) He has never held a security clearance.

Applicant came from Israel to the United States with his parents in 1976, when he was three years old. He and his family lived in the United States for four years and

then returned to Israel in 1980. They returned to the United States in 1984, when Applicant was 11 years old, and they have lived in the United States since that time. His family spoke English rather than Hebrew at home. He became a U.S. citizen in 1999. He has visited Israel five times since 1984 for family-related reasons, and only once in the last 17 years. He last visited Israel in 2008, and he has no plans for future visits. (Tr. 46-47.)

Applicant married in November 2005. His wife is a native of Sweden. She became a U.S. citizen in April 2012. (Tr. 28.) She recently completed law school in the United States and was admitted to practice in her current state of residence. (Tr. 32.) Applicant and his wife have a two-year-old son and are expecting a second child in October 2012.

Applicant's parents and three siblings reside in the United States. His parents and younger brother are dual citizens of the United States and Israel. His father was born in Germany and his mother was born in South Africa. His younger brother was born in the United States. His older brother and his sister were born in Israel and are citizens of Israel residing permanently in the United States. (GX 1 at 37-39.) They do not intend to return to Israel, but they have not applied for U.S. citizenship because they are unwilling to swear that they will bear arms for the United States. (AX B; AX C; Tr. 52-53.)

Applicant's father is a medical doctor, and his mother is a school principal. His younger brother is a restaurant manager, his older brother works for a U.S.-based non-profit company involved with youth programs, and his sister is a school teacher. (GX 2 at 5-6.)

Applicant was issued a temporary Israeli passport in December 2007 that he used for a one-month trip to Israel in June and July 2008. When he entered Israel, he was required to show his U.S. passport, because his Israeli passport had no immigration stamps, indicating that he had a passport from another country. (Tr. 42.) During the trip, Applicant and his wife toured the country; visited an aunt, uncle, and two cousins who live in Israel; and stayed for seven to ten days with friends of Applicant's parents. Applicant's aunt and uncle are natives of South Africa who moved to Israel and became Israeli citizens. His aunt and uncle have a third child who lives in the United States. Applicant and his wife have not had any contact with his extended family in Israel since the June 2008 visit, except for email contact about once a year and seeing the aunt at another cousin's wedding in Australia in December 2010. (Tr. 28-31, 49, 60.)

Applicant's Israeli passport expired in December 2008. During an unsworn personal subject interview in November 2010, Applicant stated that he was willing to relinquish his Israeli passport if necessary. (GX 2 at 7.) In response to DOHA interrogatories in March 2012, Applicant stated that he intended to renew his Israeli passport. He explained, "I have close family and friends who live in Israel, and whom I would like to visit in the future. The Israeli government requires that I enter Israel on my Israeli passport." (GX 3 at 3.)

In response to additional interrogatories in April 2012, asking Applicant to identify his close friends, associates, and family members who are citizens or residents of Israel, he listed an aunt, an uncle, and two cousins who are citizens and residents of Israel, with whom he has email contact once a year. He also listed two friends who are Israeli citizens living in the United States, with whom he has face-to-face contact about twice a month. His aunt is a retired human resources manager for a U.S.-based computer software company. His uncle is a self-employed economist who previously worked for a government-owned coal company in Israel. One cousin is a privately-employed occupational therapist. The other cousin is a marketing manager for an Israeli company. One friend is an "interaction designer" for a U.S. company, and the other is the deputy director of a "center for juvenile justice" in the United States. (GX 2 at 2; Tr. 53.)

In Applicant's response to the SOR in June 2012, he stated, "I have traveled to Israel twice in the last 20 years, both for holidays and to visit family and friends. If I want to travel to the country of my birth, even doing so infrequently, I am required to renew my passport. This is why I renewed it in 2007, and it is the reason why I may do so again some time in the future." He subsequently learned that he can travel to Israel on a U.S. passport if he renounces his Israeli citizenship. (Tr. 50.)

Applicant considered renouncing his Israeli citizenship around 2006, because it was a liability while traveling in Afghanistan and Pakistan in connection with his employment. He travelled on his U.S. passport, but it reflected his birthplace as Israel. He mitigated the problem by having his U.S. passport changed to reflect the town where he was born instead of the country of Israel. (Tr. 34-35, 56.)

At the hearing, Applicant presented a sworn statement, declaring that he does not intend to renew his Israeli passport, is willing to surrender or destroy his expired Israeli passport, and is willing to renounce his Israeli citizenship. He further declared that he understands that for future travel to Israel he will be required to renounce his Israeli citizenship and enter Israel on his United States passport. Finally, he declared that his loyalty is solely to the United States. (AX A; Tr. 52.)

After the hearing adjourned, Applicant went to the Israeli Consulate, where he obtained and completed a citizenship renunciation form. The consular officer informed him that he could not submit the renunciation form until he obtained documentation of his marriage and the birth of his son. Since the birth of his second child is imminent, he likely will be required to document the birth of this child as well. He was informed by the consular officer that the renunciation process usually takes about a year from the time an application is submitted. (AX H; AX I.)

Applicant has no property or financial interests in Israel. He lives in a rented apartment. He has a retirement account in the United States worth about $50,000. (Tr. 65-67.)

The United States and Israel, a parliamentary democracy, have a close relationship based on common democratic values and security interests. In 1948, the United States was the first country to officially recognize Israel.

Despite the instability and armed conflict that have marked Israel's relations within the region, Israel has developed a diversified, technologically advanced market economy. In 1985, Israel and the United States concluded a free trade agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest trading partner. In 2009, Israel imported $9.5 billion in goods from the United States and exported $18.7 billion in goods to the United States. From 1976-2004, Israel was the largest annual recipient of U.S. foreign assistance. Since 1985, the United States has provided nearly $3 billion in annual grants to Israel.

Almost all U.S. aid to Israel is in military assistance. Israel and the United States have concluded numerous treaties and agreements aimed at strengthening military ties. They have established joint groups to further military cooperation, participate in joint military exercises, and collaborate on military research and weapons development. The United States has pledged to ensure that Israel maintains a qualitative military edge over its neighbors.

Israel and the United States have serious disagreements on several issues involving national security. The United States is concerned about Israel's military sales to China, Israel's inadequate protection of U.S. intellectual property, and espionage-related incidents implicating Israeli officials. There have been several cases of U.S. citizens convicted of selling or attempting to sell classified documents to Israeli embassy officials, and Israeli nationals indicted for espionage against the United States. There also have been instances of illegal export or attempted export of U.S. restricted, dual-use technology to Israel.

Several groups designated as foreign terrorist organizations by the U.S. Department of State operate in Israel, the West Bank, and Gaza. On several occasions, they have kidnapped, injured, or killed tourists, students, residents, and U.S. government personnel. They have attacked highly frequented shopping areas, pedestrian areas, and public buses. They have used foreign hostages as bartering tools.

Israel strictly enforces security measures. U.S. visitors have experienced prolonged questioning and thorough searches upon entry or departure. Israel considers U.S. citizens who also hold Israeli citizenship to be Israeli citizens for immigration and other legal purposes. Israel generally respects the human rights of its citizens, but there have been allegations of mistreatment of Palestinian detainees and discrimination against Arab citizens.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline C, Foreign Preference

The SOR alleges that Applicant was issued an Israeli passport in December 2007, after he became a U.S. citizen, and he has expressed an intention to renew it. (SOR ¶¶ 1.a and 1.b). The concern under Guideline C 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."

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).

The security concern under this guideline is not limited to countries hostile to the U.S. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

The following disqualifying conditions under this guideline are relevant:

> AG ¶ 10(a)(1): exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen [including but not limited to] possession of a current foreign passport; and
>
> AG ¶ 10(d): any statement or action that shows allegiance to a country other than the United States.

AG ¶ 10(a)(1) is established by the evidence that Applicant obtained and used an Israeli passport after becoming a U.S. citizen. AG ¶ 10(d) is established by Applicant's statement of intent to renew his Israeli passport.

The following mitigating conditions are relevant:

AG ¶ 11(a): dual citizenship is based solely on parents' citizenship or birth in a foreign country;

AG ¶ 11(b): the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11(c): 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; and

AG ¶ 11(e): the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant came to the United States with his family when he was 11 years old, and he has resided in the United States since that time. However, he exercised his Israeli citizenship by obtaining an Israeli passport in 2007, after he became a U.S. citizen. Thus, I conclude that AG ¶ 11(a) is not established. AG ¶ 11(b) is established because Applicant has declared his willingness to renounce his Israeli citizenship and has taken the first steps in the renunciation process. AG ¶ 11(c) is not established because Applicant applied for, obtained, and used his Israeli passport after he became an adult. AG ¶ 11(e) is established because Applicant's passport has expired and is invalid, and he has declared under oath that he does not intend to renew it.

Guideline B, Foreign Influence

The SOR alleges that Applicant's aunt, uncle, cousins, and friends are citizens and residents of Israel (SOR ¶¶ 2.a-2.d). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

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; and
>
> AG ¶ 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.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has extended family members who are citizens and residents of Israel, a country that has aggressively targeted the United States for industrial espionage and acquisition of sensitive technology. Insurgents in Israel have been known to target persons with connections to the United States. Although Applicant does not have frequent contact with his extended family, he described them as "close" family members in his responses to DOHA interrogatories. These circumstances are sufficient to establish the "heightened risk" in AG ¶ 7(a) and create the "potential conflict of interest" in AG ¶¶ 7(b).

The following mitigating conditions are relevant:

> AG ¶ 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;
>
> AG ¶ 8(b): 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; and
>
> AG ¶ 8(c): 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.

When family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's aunt and uncle are retired and have no connection to the Israeli government. His two cousins in Israel are not employed in high-technology industries or connected to the Israeli government. There is no evidence that Israel abuses its own citizens to obtain economic intelligence or protected U.S. technology. The two "friends" alleged in the SOR reside in the United States and are not involved in jobs involving the type of information sought by Israel. I conclude that AG ¶ 8(a) is established.

Applicant's sense of obligation to his extended family in Israel is not "minimal." However, he has deep and longstanding relationships and loyalties in the United States. He has lived most of his life in the United States and has been a citizen since 1999. He has been educated in the United States. He has spent most of his career as a consultant, advancing the goals of the United States. All his immediate family members reside in the United States. His parents and one sibling are citizens of the United States. His other two siblings are permanent residents of the United States. He has taken affirmative steps to renounce his Israeli citizenship. I conclude that AG ¶ 8(b) is established.

Applicant's contact with his aunt, uncle, and cousins in Israel is infrequent, but his description of them as "close" family members suggests that it is not casual. He maintains regular and frequent contact with his two friends who are Israeli citizens. I conclude that AG ¶ 8(c) is not established.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was sincere, candid, and credible at the hearing. His initial declaration that he intended to renew his expired Israeli passport was a demonstration of his understandable affinity for his country of birth. However, he has grown up in the United States, speaking English rather than Hebrew at home. His parents, spouse, child, and one sibling are citizens and residents of the United States. He has been educated in the United States and spent much of his professional life in support of U.S. interests. He has demonstrated his willingness to renounce his Israeli citizenship. His ties to the United States are much stronger than his ties to his extended family in Israel.

After weighing the disqualifying and mitigating conditions under Guidelines C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Paragraph 2, Guideline B (Foreign Preference): FOR APPLICANT

Subparagraphs 2.a-2.d: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge