



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-06577
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Larry Loigman, Esquire

11/21/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response to the SOR, Applicant admitted with explanations the two sub-allegations raised under Guideline B. He also requested a hearing. I was assigned the case on July 18, 2012. The parties agreed to a hearing date of September 5, 2012, and a notice to that effect was issued on August 17, 2012. The hearing was convened as scheduled.

During the hearing, Applicant gave testimony, introduced two witnesses, and offered eight documents, which were accepted into the record without objection as exhibits (Exs.) A-H. He was given until October 5, 2012, to submit any additional materials. Department Counsel introduced four exhibits, which were accepted into the record without objection as Exs. 1-4. In addition, Department Counsel offered a request

for administrative notice regarding certain facts pertaining to the State of Israel. Against objection by Applicant, but with the understanding that the proffered administrative notice documents would be given appropriate weight, the administrative notice request and country-specific facts were accepted as Hearing Exhibit (HE) 1.¹

At the conclusion of the hearing, Department Counsel moved to amend the SOR by repeating SOR allegation ¶ 1.a under a second guideline, Guideline C (foreign preference), as allegation ¶ 2.a. Noting no objection from Applicant, the SOR was so amended.² The transcript (Tr.) was received on September 21, 2012. On September 28, 2012, I issued my decision in the matter.

Applicant timely appealed the decision, correctly noting that I issued the decision before his October 5, 2012, deadline for post-hearing submissions. The Appeal Board remanded the decision on November 9, 2012, so that I could consider six documents timely submitted between October 4, 2012, and October 5, 2012. Noting no objection from the Government, I include those exhibits in the record on remand as Exs. I-N. Based upon a review of the exhibits and testimony, security clearance is denied.

Administrative Notice

The Government requested I take administrative notice of certain facts and materials regarding the State of Israel. It referenced materials issued by U.S. Governmental entities, such as the U.S. Department of State, to support its request and proffered summary.³ Upon request, those materials were later provided for fuller consideration of the country at issue. Absent objection by the parties, I hereby take additional notice of U.S. Department of State, *Background Note: Israel*, February 22, 2012. In addition, Applicant submitted supplemental information written by an Israel-based attorney and private consultant commenting on and supplementing the Government's materials.⁴ Based on those materials and summaries, I note the following facts:

A parliamentary democracy with a modern economy, the State of Israel achieved independence in 1948. Since that time, it has faced numerous conflicts with its neighbors. Several groups operating within Israel have been designated as Foreign

¹ Tr. 11-13. At the hearing, the Government presented a summary of information regarding the country at issue, followed by citations to 12 official documents, which were provided to Applicant and, available upon request, to the Administrative Judge. In light of Applicant's objection to the summary, I requested copies of the cited documents and, after the hearing, received no objection to my taking administrative notice of the State Department's *Background Note: Israel*, cited below. These documents were requested to provide me with a more balanced description of the country pursuant to AG ¶ 6.

² The SOR contained in the Official Case File consists of one page, containing the Guideline B allegation and 2 suballegations. It was confirmed that the second page (containing a signature and no additional allegations) was missing.

³ See HE-1, attachments 1-12.

⁴ Ex. I (Israel-based attorney's memorandum, undated).

Terrorist Organizations (FTO). United States citizens have been injured or killed by such terrorists in the past. Moreover, in 1985, a U.S. Naval Intelligence employee was sentenced to life in prison for selling classified documents to Israel. Israel was cited as an active collector of proprietary information in 2000. In 2009, a U.S. citizen pled guilty to conspiracy to act as an unregistered agent of Israel after being arrested on suspicion of giving classified documents concerning military equipment and systems to Israel between 1979 and 1985. There have been other cases involving the illegal export or attempted illegal export of U.S. restricted, dual use, technology to Israel. In addition, Israel has become a major global leader in arms exports, and has been known to sell sensitive U.S. and Israeli technologies to third party countries, most notably China.

Despite these factors, commitment to Israel's security and well-being has been a cornerstone of U.S. foreign policy in the Middle East since Israel's creation 1948.⁵ The two countries and their citizens share strong ties related to history, culture, and mutual interests. The two countries are also close allies.⁶ On a bilateral level, relations between the United States and Israel are continually strengthening in every field.⁷ From 1983 to date, the two countries have maintained the Joint Political Military Group, which meets twice a year to discuss coordinated efforts. Other joint efforts continue in regard to the war against terrorism, education, and economics.

Ongoing hostilities with its neighbors have created a volatile atmosphere in and around Israel. Israel's military is the Israel Defense Force (IDF). Conscription is universal for all Israeli citizens over the age of 18, although exemptions do exist.⁸ Male citizens are required to serve for at least three years. The Israeli 2009 defense budget represented about 16.3% of total governmental expenditures. The United States provides military aid to the IDF.

Findings of Fact

Applicant is a 22-year-old applicant for a security clearance. He is a U.S. citizen who was born in Israel to American parents who have never sought Israeli citizenship. At birth, he was registered solely as a U.S. citizen.⁹ At 17, he graduated from high school and moved to the United States to attend college. During his freshman year, Applicant turned 18. He met with a recruiter from the U.S. Navy on multiple occasions, and began considering a naval career. When the recruiter came to his collegiate residence, Applicant's parents, who reside in Israel as non-citizens, were in the United

⁵ U.S. Department of States, *Background Note: Israel*, February 22, 2012.

⁶ Ex. 1, *supra*, note 4 at 2.

⁷ *Id.*

⁸ *Id.*

⁹ Applicant's parents actively denounced any rights he might have as an Israeli citizen. Tr. 20.

States visiting. When they learned of Applicant's plans, they "freaked out."¹⁰ They noted that the IDF had a shorter period of commitment for non-citizen recruits (14 months). They suggested that a tour in the IDF could let him experience military life and see if it was the right career path for him before committing himself to a longer period in the U.S. Navy.

A "compromise" was struck under which Applicant "would go for a year and two months to the Israeli army [because his parents] felt . . . if something should go wrong, they would be close by."¹¹ In September 2008, Applicant enlisted in the IDF as a non-citizen, where he worked in national defense and in areas related to policing terrorists and their activity.¹² He never sought or was granted any form of security clearance. In December 2009, at the end of his term of commitment to the IDF, he was honorably discharged.

Applicant returned to the United States in around January 2010. He completed college over the next two years, earning a degree in psychology. He has been offered a position by a defense contractor. The job involves liaison work with the IDF and requires a security clearance.

Meanwhile, Applicant's parents, two sisters, and brother remain U.S. citizens, but reside in Israel in an apartment Applicant's father purchased. Applicant's family visits the United States regularly. His father visits three to four times a year, usually to tend to business; his mother visits for a month or longer about twice a year; his younger sisters visit "whenever they can get a chance to go shopping," including summers; his brother visits when he can in order "to get away."¹³ Otherwise, Applicant speaks by telephone with his family a couple of times a month. His family's visits to the United States are facilitated by an automobile that Applicant's father leases and maintains here. His father's business is based in the United States, but the nature of his work and research demands he spend considerable time in Israel.¹⁴ Applicant's mother works for an American private school in Israel with no connection to the Israeli government. Applicant's elder sister is attending college in Israel, but derives no benefits from that country. She chose an Israeli institution when she was not accepted to her first choice, a leading U.S. university near Applicant. Applicant's other siblings are in secondary school. None have a connection with the government of Israel.

¹⁰ Tr. 19.

¹¹ Tr. 18-19.

¹² Tr. 19-20.

¹³ Tr. 24. In contrast, Applicant's visits to Israel have been infrequent.

¹⁴ Tr. 25-26.

Applicant has a U.S. passport. He has never had a passport issued by another country. Applicant timely registered for the U.S. Selective Service. He bought a home in the same state where he graduated from college, where he cares for a pet dog. He maintains two domestic bank accounts. He does not maintain a bank account or any significant holdings in Israel. In the United States, he owns a mutual fund account worth nearly \$400,000. Aside from his immediate family, Applicant's family lives in the United States; most of them have been settled in the same state for the past five generations.

Over the years, Applicant has never been questioned about his time in the IDF, and he has not encountered problems traveling to Israel. Applicant affirmatively stated that he is and remains solely a U.S. citizen noting, "my core loyalty lies here. It's the only place I've ever really been connected to."¹⁵ While alluding to sympathies he has for those men and women with whom he served in the IDF, Applicant stated that "if these loyalties ever came to clash, my loyalty would tee over [to the United States], just because I've always been an American ever since I was a kid."¹⁶ It is his intention to maintain the United States as his home. He has only infrequent contact with his former colleagues from the IDF.¹⁷

In his community, Applicant is considered to be a decent, honest fellow who is known for helping his neighbors, and he is known to be a loyal citizen.¹⁸ One reference wrote that Applicant is an "asset to his friends."¹⁹ A family friend who once studied with Applicant's father noted that Applicant is a loyal American citizen first, but also loyal to Israel.²⁰ Applicant is also an active volunteer with local charities.

Policies

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 required 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.

¹⁵ Tr. 33.

¹⁶ Tr. 33.

¹⁷ Tr. 37.

¹⁸ Tr.51; Ex. K (Reference, undated).

¹⁹ Ex. J (Reference, dated Sep. 5, 2012).

²⁰ Tr. 55.

Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”²¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²²

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 an applicant may deliberately or inadvertently fail to protect or 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁵ It is merely an indication that the

²¹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²³ *Id.*

²⁴ *Id.*

²⁵ Executive Order 10865 § 7.

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Analysis

Guideline B – Foreign Influence

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism.

At issue is the State of Israel. Israel is a longtime ally of the United States. The two countries share significant cultural and historical ties, as well as mutual interests. Although terrorist activity occurs in Israel, it is not conducted by the state, but rather by FTOs. However, Israel has been cited as a collector of proprietary information and illegal receipt of classified information. Consequently, close scrutiny is warranted.

Applicant's parents and three siblings are U.S. citizens who reside in Israel the majority of the year. Due to ongoing disputes with its neighbors, Israel is an often volatile country. U.S. tourists have been killed in Israel due to terrorist activity in that country. Israel is known as a collector of proprietary information from the United States. In addition, Applicant voluntarily chose to serve in the IDF for 14 months, ending in December 2009. Such facts are sufficient to give rise to Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion*) and AG ¶ 7(b) (*connections to a foreign person, group, or 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*). With disqualifying conditions thus raised, the burden shifts to Applicant to address how his circumstances are sufficient to raise one or more of the mitigating conditions noted at AG ¶ 8(a)-(f).

Applicant and his family are close. He maintains monthly telephonic contact with family. His family members visit Applicant when they return to the United States multiple times each year. Their transit to and from Israel appears to be regular, easy, and unhampered. They consider the United States to be their homeland. They have specifically avoided obtaining Israeli citizenship. They reside in Israel a majority of each year because of the nature of Applicant's father's research and academic business.

None of the family receives benefits from Israel or is otherwise associated with the government of that country. His parents' fear of conflict suggests that they would be prepared to return to the United States should conditions in Israel worsen. The family has lived the majority of each year in Israel since Applicant was born. They have never faced undue scrutiny. It is unlikely Applicant would ever have to choose between his family's interests and those of the United States. Foreign Influence Mitigating Conditions 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.*) and 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*) apply with regard to Applicant's family members residing in Israel.

With regard to Applicant's IDF service, that service ended with his honorable discharge in December 2009. Prior to that service, Applicant resided in the United States for one academic year. Since his IDF service, he has lived in the United States as a student for two years, then as an unemployed resident for nearly a year. Although he has bought a house and made neighborhood friends, there is presently insufficient demonstrable evidence that he has a superior sense of loyalty to the United States over Israel, the country for which he served in its military for over a year. None of the mitigating conditions are clearly applicable with regard to Applicant's IDF service.

Guideline C – Foreign Preference

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S.²⁶ Conditions that could raise a security concern and may be disqualifying include 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.²⁷ Applicant admitted that despite an interest to serve in the U.S. Navy, he chose to serve in Israel's IDF between 2008 and 2009. Therefore, Foreign Preference Disqualifying Condition 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. This includes, but is not limited to (2) military service or a willingness to bear arms for a foreign country*) applies. With a foreign preference disqualifying condition raised, the burden shifts to Applicant to mitigate security concerns.

²⁶ AG ¶ 9.

²⁷ AG ¶ 10(a).

Foreign preference mitigating conditions are provided under AG ¶ 11:

- a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (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;
- (d) use of a foreign passport is approved by the cognizant security authority; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Here, neither dual citizenship nor a passport is at issue. This case involves Applicant's voluntary enlistment in a foreign military after turning 18. Therefore, none of the available mitigating conditions apply.

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). 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, as well as the whole-person factors. Applicant is a credible, earnest, and affable 22-year-old man who is considered to be a reliable, honest, and patriotic member of his community. He is well-educated, has gained considerable life experience, is active in his community, and has already made plans for his future by investing in a home and a mutual fund account. When he was 18 years old and in college, he decided to join the U.S. Navy. With his parents concerned for his safety, Applicant compromised and agreed to enlist in the IDF for a 14-month term of service. There, he served in the areas of national defense and the policing of terrorists. He ultimately determined that military life was not what he had expected. He completed his commitment to the IDF with an honorable discharge, and then returned to college.

Applicant credibly testified that his loyalties are with the United States. His loyalty to the United States is not in question. Rather, the issue is whether his loyalties are divided or whether his loyalty to Israel is superior to his loyalty to the United States. He also termed his joining the IDF as being a compromise. It was, in fact, an adult decision to enlist in a foreign military over enlistment in the U.S. military. In ISCR Case No. 10-02902 (App. Bd. May 14, 2011), the Appeal Board noted:

From a security standpoint, voluntarily serving in the military of a foreign country is a serious matter. The Board has noted that a person who is willing to bear arms for a country demonstrates a willingness to risk life and limb for that country. Such a willingness is strong evidence of a profound, deeply personal commitment to the interests and welfare of that country. See, e.g., ISCR Case No. 10-02902 at 3 (App. Bd. May 15, 2011); ISCR Case No. 08-05869 at 5 (App. Bd. Jul. 24, 2009); ISCR Case No. 00-0317 at 4 (App. Bd. Mar. 29, 2002)

In this situation, Applicant's IDF service is not a permanent bar from being granted a security clearance; it only fortifies the burden he has to face in mitigating security concerns related to foreign preference. To that end, he has made some progress. Applicant left Israel when he was 18 to live in the United States. After his December 2009 discharge from the IDF and completing college in about December 2011, he stayed in the United States, making it his permanent, non-student, residence. He began looking for a job here after completing college. He bought a home and a pet last year. He has been developing friendships with neighbors in his community. Applicant's financial assets are in the United States, including two bank accounts and a significant mutual fund balance. He only maintains a U.S. passport. For the most part, Applicant's family regularly visits him, rather than him regularly visiting them in Israel.

In short, Applicant is in the process of defining himself both as an adult and as an American with a demonstrably undivided preference for only the United States. However, in contrast to an entire youth spent in Israel and 14 months serving in the IDF, his subsequent time in the United States as a full-time resident has been too brief for him to develop a demonstrably notable commitment to the United States that can overcome the preference shown in enlisting in the IDF. While the facts tend to mitigate foreign influence security concerns with regard to his family residing in Israel (allegation ¶ 1.b), foreign preference security concerns about his IDF service cannot be overcome through the available mitigating conditions and, at present, do not overcome the strength of present security concerns under a whole-person analysis.

The ultimate burden of persuasion is put squarely on the Applicant in these cases. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Here, Applicant failed to mitigate such concerns. Clearance is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.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. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge