



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



In the matter of:)
)
) ISCR Case No. 11-07156
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Alan K. Hahn, Esq.

May 9, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by his parents and sisters that reside in Israel. His request for a security clearance is granted.

Statement of the Case

On October 11, 2012, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on November 1, 2012, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 25, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2013, scheduling the hearing for April 22, 2013. The hearing was

convened as scheduled via video teleconference. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection. Applicant testified on his own behalf and called one witness. DOHA received the transcript of the hearing (Tr.) on April 30, 2013.

Procedural Ruling

At the hearing, the Government requested I take administrative notice of certain facts relating to Israel. Department Counsel provided a 4-page summary of the facts, supported by 11 Government documents pertaining to Israel, identified as Hearing Exhibit (HE) I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.a, and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He has been employed with the defense contractor since 2005. He has had a security clearance since 2009. Applicant has been married to his wife since 2003. His wife is a U.S. born American citizen. They have two daughters who were both born in the United States and only possess U.S. citizenship. Applicant's mother-in-law is also a native born U.S. citizen. (GE 1; Tr. 28, 48-51, 67-68, 78.)

Applicant was born in Israel. He lived in the United States with his parents from 1980 to 1982, when his parents moved his family back to Israel. When he was 18 years old, he entered the Israeli Air Force. Military service is compulsory for all Israeli citizens. As a result, he served on active duty in the Israeli Air Force from 1990 to 1993. From 1993 to 1995, he served in the Israeli Air Force Reserve. He achieved the rank of staff sergeant. (GE 1; GE 2; Tr. 40-43.)

In July 1996 after completing his compulsory military service obligation, Applicant moved to the United States to attend college. He completed both a Bachelor's degree and a Master's degree at the same U.S. university. Toward the end of his education, he decided to make the United States his permanent home. (GE 1; Tr. 44-46.)

After graduating with his Master's degree, Applicant received a work authorization visa and applied for a green card. He applied to become a U.S. citizen as soon as was legally permissible. He was naturalized as a U.S. citizen in November 2007. (GE 1; Tr. 46-47.)

From 2007 to October 2012, Applicant was a dual citizen of both Israel and the United States. Applicant applied for, and was granted, a formal waiver of his Israeli

citizenship in October 2012. Applicant never used his Israeli passport after becoming a U.S. citizen and it has been destroyed. He has not traveled to Israel after acquiring U.S. citizenship. (GE 1; AE A; Tr. 36-37, 47-48.)

Applicant's father and mother are citizens and residents of Israel, although they possess permanent resident status in the United States. Applicant's father is 67 years old. From 1968 to 1972, Applicant's father served in the Israeli Navy as a low ranking officer. After finishing his military service, he earned a Ph.D. in a scientific field and taught at one of Israel's public universities. He retired from the university in 1996 and receives a pension from the university. After retirement, Applicant's father became an independent consultant for an Israeli government contractor that evaluates commercial proposals for government issued grants. Applicant explained, "It's kind of like a technology incubator . . ." Applicant's father is hired by the contractor to verify that the prospective grant winners are making true and appropriate claims. Applicant's mother is 65 years old. She was a master sergeant in the Israeli Defense Force prior to 1975, but has been a homemaker since her discharge from Israeli military service. Applicant communicated with his parents by email "once or twice a month." They visit the United States twice a year for two weeks each time to visit. (GE 1; Tr. 51-61, 70-74, 82-84.)

Applicant has twin sisters that are citizens and residents of Israel. One is a medical doctor. She served in the Israeli Defense Force from 1992 to 1998, but has no further affiliation with the Israeli military. Applicant communicates with her on a monthly basis. His other sister is currently in the Israeli Defense Forces Reserve member and works as an "honorary lieutenant in an office that informs families that loved ones had been killed in action" on an "as needed basis." Applicant communicates with her "once every few months." (GE 1; GE 2; Tr. 61-65, 74-75.)

He has not told any member of his family that he holds a security clearance. He does not maintain contact with any members of his extended family. (Tr. 51-53.)

Applicant is active in his community as a volunteer hobbyist. He owns a home in the United States valued at approximately \$500,000. He testified his net worth was approximately \$400,000. He has no financial assets in Israel. He intends to retire in the United States. He has voted in the United States on "every opportunity," but has not voted in Israeli elections since he left Israel in 1996 (Tr. 50, 66, 79-81.)

The Chief Executive Officer and owner of the defense contractor that employs Applicant testified on Applicant's behalf. He testified he has known Applicant since 2001 in both a professional and personal capacity. He indicated that, "I have had no hesitation whatsoever as far as loyalty and dedication and commitment to the job and to his endeavors . . ." Applicant also presented character reference letters from colleagues that attested to his allegiance to the United States, personal integrity, trustworthiness and good judgment. All references recommended Applicant for a security clearance without reservations. (AE B; Tr. 27-39.)

Administrative Notice

Israel has become a major global leader in arms exports. Over the last two decades, the United States and Israel have periodically disagreed over Israeli sales of sensitive U.S. and Israeli technologies to third-parties, including the People's Republic of China.

There have been several cases of U.S. citizens convicted of selling or attempting to sell classified documents to Israeli embassy officials, or Israeli nationals subsequently 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. Israel was listed as one of the most active collectors of Industrial Espionage in a 2000 Report to Congress issued by the National Counterintelligence Center. Israeli military officers have been implicated in this type of technology collection in the United States.

U.S. citizens visiting Israel have been subject to prolonged questioning and through searches by Israeli authorities upon entering or departing Israel. In some cases, Israeli authorities have denied U.S. citizens access to U.S. consular officers during the temporary immigration detention.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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]ny 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, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Guideline B, Foreign Influence

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

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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

(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.

Applicant has strong ties to his Israeli family members. He has frequent contact with his parents via email and he sees them in person for two weeks approximately every six months. His contacts with his sisters, although less frequent, are still significant. To be fully applicable, 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 or substantial assets in a foreign nation. In this instance, a heightened risk is present because Applicant's father and sister are supported, in part, by their work for the Israeli government. Further, the government of Israel has been known to target sensitive U.S. technologies and proprietary information. In this instance, a heightened risk is present. The evidence is sufficient to raise this disqualifying condition.

Additionally, a risk is present in Applicant's familial relations with his father and one sister. His father receives a pension from a public university in Israel and works for an Israeli contractor evaluating government grant recipients. One of his sisters is an honorary lieutenant in the Israeli Defense Force. Applicant's ties with his father and sister could potentially create a conflict of interest between his obligation to protect sensitive information or technology and his desire to help his family members by providing that information. AG ¶ 7(b) is applicable.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (a) the nature of the relationship 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.;
- (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 interests in favor of the U.S. interests; and
- (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.

Applicant maintains relationships with his parents and sisters, who are citizens and residents of Israel. His contact with his parents is the most frequent. The Appeal Board has held that there is a rebuttable presumption that ties with immediate family are

not casual.¹ The evidence shows that Applicant maintains his relationship with his parents during the year through email and their semi-annual visits. He also keeps in regular contact with his sisters through email. While none of Applicant's foreign family members are aware of his security clearance, given these facts, and Applicant's close ties to his foreign family members, I cannot confidently conclude that Applicant could not be placed in a position of having to choose between the interests of foreign individuals and the interests of the United States. AG ¶ 8 (a) and (c) do not apply.

However, Applicant has established deep and longstanding relationships in the United States. He spent a formative part of his youth in the U.S. and decided to move here after he completed his compulsory military service in Israel. He chose to stay in the United States after finishing his education. He became a U.S. citizen as soon as it was permissible. He has formally renounced his Israeli citizenship and destroyed his Israeli passport. He votes in U.S. elections. He is involved in his community through his hobbyist group. He owns property and has invested all of his retirement savings in the United States. He is married to an American citizen who has few ties to Israel. His children are solely U.S. citizens. Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is mitigating.

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 relevant 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

¹ ISCR Case No. 00-0484 at 4-5 (App. Bd. Feb. 1, 2002).

Applicant has a distinguished history of working in the defense industry and is respected by his colleagues and his Chief Executive Officer. He performs well at his job. While he was born Israeli, he is an American by choice. As an adult, he elected to renounce his Israeli citizenship and destroy his Israeli passport that he held as a result of his birth in Israel. He has been residing in the United States for the past 17 years. He is entrenched in his community as demonstrated by his property, hobbies, and financial investments. His closest familial ties are with his wife, daughters, and mother-in-law, all of whom are American citizens. Aside from his extended family, he has severed all of his ties Israel. Applicant's father does not work directly for the government of Israel, but instead for a government contractor. His sister's honorary position with the Israeli military involves comforting bereaved families and involves little risk of compromising classified information. While he loves his parents and sisters, he can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence 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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge