



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-09625
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

March 1, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires For Investigations Processing on December 22, 2010. (Government Exhibit 1.) On October 5, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 November 5, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 6, 2012. A notice of hearing was issued on December 12, 2012, scheduling the hearing for January 17, 2013. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4 that were admitted without objection. The Applicant called one witness and presented seven exhibits, referred to as Applicant's Exhibits A through G that were admitted without objection. He also testified on his own behalf. The record remained open until close of business on January 24, 2013, to allow the Applicant an opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit referred to as

Applicant's Post-Hearing Exhibit A which was admitted without objection. The official transcript (Tr.) was received on January 29, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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. 18.) 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 54 years of age and has a Ph.D in Applied Mathematics and a Masters in Science Degree in Electrical Engineering. He is employed as a Project Manager for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (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 the two allegations set forth under this guideline of the SOR. The Applicant was born in Israel in 1958. He grew up in Israel and moved to the United States in 1987, at the age of twenty seven, to complete his Post-doctoral studies. He served a three year mandatory term of enlistment in the Israeli Army. He met his wife in 1988, and they were married in 1989. She is a native-born American citizen. It was at that time that he decided to make the United States his permanent home. They have two adult children who are attending American Universities. He became a naturalized citizen of the United States in October 1993. In 2005, the Applicant and his wife revoked the Israeli citizenship of their children automatically given to them at birth. (Applicant's Exhibit D.) They did this to ensure that they would not have to serve in the Israeli military. (Tr. p 45.) The Applicant indicates that he is willing to renounce his Israeli citizenship if it is necessary in order to obtain a security clearance. (Tr. p. 63.)

The Applicant has worked for his current employer since 1989, for twenty-three years. (Tr. p 57.) He has held a security clearance in the past but it was allowed to lapse when it was no longer needed. He has never had a security violation nor has he been counseled or disciplined for any misconduct. (Tr. p 58.) Over the years he has held positions of increasing responsibilities including Group Supervisor, Deputy Section Manager and Project Manager. He now holds the highest regular technical rank at this company, as Principal Technologist. He has received numerous awards and recognitions for his contributions to the United States. (Applicant's Exhibits E and F.)

The Applicant's mother and sister are citizens and residents of Israel. His mother is 78 years old and is a retired teacher. His sister is 53 years old and is a teacher. Her husband is a commercial pilot. The Applicant contacts his mother on a weekly basis for about five minutes by skype calls, and with his sister through a few telephone calls per year. He visits his mother and sister in Israel once a year. As a family, they visit Israel once every five years or so. His mother and sister do not know about his security clearance application or any projects that he is working on.

The Applicant last traveled to Israel in December 2012. When he travels he uses his United States passport, as he does not possess an Israeli passport. (Tr. p. 64) The Applicant has no assets of any kind in Israel. In the unlikely event that the United States got into a conflict with Israel, the Applicant testified that he would follow his explicit loyalties to the United States. He also testified that his feelings toward his wife and children are much stronger than his feelings toward his mother. (Tr. p. 61.) The Applicant testified that he would never give classified or restricted information to anyone under any circumstances that is not authorized.

All of the Applicant's property and financial assets are in the United States. He has a house, a bank account and a retirement fund. He estimates his net worth at about a million and a quarter dollars. (Tr. p. 50. and Applicant's Post-Hearing Exhibit A.) He provides no financial support to his mother or sister in Israel. (Tr. p. 33.)

A letter from the Applicant's supervisor who has known the Applicant for over twenty years, indicates that the Applicant has been one of his highest performing employees due to Applicant's outstanding technical skills, ingenuity, dedication and hard work. The Applicant has at times helped him with the management responsibility for over 100 engineers in his section. The Applicant is described as loyal to his superiors, honest, caring, direct and ethical. He has received multiple awards for his many valuable and important contributions to the defense industry. (Applicant's Exhibit C.)

Letters of recommendation from other professional colleagues and long time friends who know the Applicant well or have worked with him attests to his impeccable character, loyalty, and hard working nature. They also consider him to be caring, trustworthy, and dependable. (Applicant's Exhibit B.)

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 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; and

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

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.(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;

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.

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 Guideline 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 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 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;* and 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* 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.,* 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 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 are also applicable.

It is noted that the current political situation in Israel elevates the cause for concern in this case. The evidence shows that the Applicant was born in Israel, but since moving to the United States he has lived the American dream. He became a naturalized United States citizen in 1993. For the past twenty-five years he has lived in the United States where he has established his home and his family. His wife and children are native-born American citizens. He also has long standing friends and work associates in the United States. He has devoted his work and academic training to advancing the capabilities and interests of the United States for the past twenty-three years. Furthermore, all of his assets of any kind are in the United States. There is no conflict of interest here because of the Applicant's deep and longstanding relationships and loyalties in the United States.

The Applicant admits that he has some limited contact with his mother and sister in Israel. However, this contact is minimal. His mother, who is elderly and retired, and his sister are not affiliated with the Israeli government. They do not know anything about what the Applicant does for the United States nor does he plan to ever tell them. When he travels to Israel to visit his mother and sister, he uses an American passport. Thus, it is unlikely that the Applicant will be placed in a position of having to choose between the interests of the Israeli government and the interests of the United States. The possibility of Foreign Influence does not exist nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for 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 willing to renounce his Israeli citizenship and he has previously surrendered his Israeli passport. 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 good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has demonstrated that his ties to the United States are much stronger than any ties to Israel. He is a loyal American who long ago committed himself to this country by declaration and by action. He has demonstrated that he is a valuable member of American society and its institutions. He is sufficiently trustworthy, and clearly meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For the Applicant.
Subpara.1.a.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge