



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-12370
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

May 9, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on October 8, 2010. (Government Exhibit 1.) On July 12, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Preference), B (Foreign Influence) and F (Financial Considerations). 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 for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on August 3, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 4, 2012. I received the case assignment on September 10, 2012. DOHA issued a notice of hearing on October 3, 2012, and I convened the hearing as scheduled on October 24, 2012. The Government offered Government Exhibits 1

through 10, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through I, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on November 7, 2012. Applicant requested that the record remain open until November 16, 2012, for the admission of additional documents. He submitted further documents, which have been entered into the record without objection as Applicant Exhibits J through L. The record closed on November 16, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the State of Israel. (Tr. 16-23.) The request 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.

Issuance of Decision

DOHA received an email from the Facility Security Officer of Applicant's company on December 7, 2012. This email is attached to the record as Judge Exhibit I. It states, in part, "I formally request to remove the request for Security Clearance of [Applicant]." This email was received after the record closed on November 16, 2012, which was the deadline for receipt of additional information.

In addition, the Directive at Paragraph 4.4 states: "Actions pursuant to this Directive shall cease upon termination of the applicant's need for access to classified information *except* in those cases in which: 4.4.1. A hearing has commenced; 4.4.2. A clearance decision has been issued; or 4.4.3. The applicant's security clearance was suspended and the applicant provided a written request that the case continue." (Emphasis supplied.) Subparagraph 4.4.1. applies to this case. Therefore, a decision will be issued in accordance with the Directive.

Findings of Fact

Applicant is 56, married, and has a master's degree. He is a senior executive with a defense contractor and seeks a security clearance in connection with his employment in the defense industry.

Applicant admitted all the allegations in the SOR with the exception of subparagraph 3.a. Those admissions are findings of fact. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

Applicant was born in Israel in 1956. He attended college in Israel, then in 1980 he came to the United States to continue his education. He received his master's degree from an American university in 1984. (Tr. 69.) Applicant became an American citizen in December 2006. (Government Exhibit 1 at Section 9.) His wife is also a naturalized American citizen. His children are native-born American citizens. (Government Exhibit 1 at Section 17.)

Israel has mandatory military service. Applicant was obligated to perform that service between 1973 and 1976, which he did as an enlisted medic in the Israeli Defense Force. (Tr. 68-69.)

Applicant has a current and valid United States passport, which was issued to him in December 2006. This passport contains many immigration stamps from different countries, none are from Israel. (Applicant Exhibit J.)

Applicant also has a current and valid Israeli passport, which was issued to him in November 2006 and extended in January 2010. It is due to expire in November 2016. This passport contains many immigration stamps from Israel. Applicant testified that he traveled to Israel at least twice a year, and that he last went to Israel on this passport in 2012. (Tr. 79; Applicant Exhibit K.)

Because of his birth in Israel, he believes himself to be a dual citizen of Israel and the United States. Applicant has attempted to obtain from the Israeli government permission to travel to Israel using only his United States passport. Based on the documents provided by the Applicant, his last contact with the Israeli government on this point was in October 2011. If he is unable to succeed in that endeavor Applicant testified, "My intent is to surrender the Israeli passport and subsequently try to renounce my citizenship." (Tr. 49-56, 70-71, 80-82; Government Exhibits 2, 4 and 5; Applicant Exhibit L.)

Applicant was presented with a hypothetical regarding the unlikely event of armed conflict between Israel and the United States. He stated, "I'm going to be honest and straight forward. My immediate gut feeling would be that I would resign all of my responsibilities on both ends. I would not take sides, but I would not participate in any matter which would destroy the country I was born in. It's more than a country, a place is the refuge of the Jewish people. That is my honest answer." (Tr. 114-115.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability, or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

The allegations under this paragraph concern two very different areas. Subparagraphs 2.a through 2.l concern Applicant's family. Subparagraphs 2.m through 2.p regard Applicant's business dealings. For ease of discussion the family situation will be discussed first.

Applicant's immediate family is his wife and three children. As stated, his wife is a naturalized American citizen, and the three children are all native-born American citizens. All of them are also Israeli citizens and carry both American and Israeli passports. Applicant's wife and his two daughters lived in Israel at the time the record closed. They had lived there for approximately five years, while the daughters went to school. Applicant's son had been living and studying in Israel, but he now lives in Italy. Applicant testified that he hoped his wife and youngest daughter would return to the United States permanently by the end of 2012. One of the reasons Applicant's wife moved to Israel was to help take care of her parents, who are elderly citizens of Israel and reside there. Both of them are in their 90s. In addition, her brother is also a citizen of Israel and resides in the United States. (Tr. 86-94.)

In order to facilitate his family's ability to live in Israel for an extended period of time, Applicant bought a house in Israel worth approximately \$1.5 million. In addition, Applicant sends \$12,000 a month to a bank account in Israel to help his family live there. Applicant has been traveling to Israel at least twice a year to spend time with his family. (Tr. 71-79.)

Applicant's parents are citizens of Israel. His mother is also a French citizen. They are both permanent legal residents of the United States, and have resided in the United States since 1996. His brother and sister are also citizens of Israel who reside in the United States as permanent residents. (Tr. 84-86, 91-92.)

At this point it is appropriate to note that Applicant is a very intelligent and successful entrepreneur, establishing and running several companies that have had very lucrative Department of Defense contracts. He is a highly respected member of the defense industry. (Tr. 41-42, 48-49, 56-58, 65-67, 103-107.) Because of his business success he is a very wealthy individual. His financial status is supported by bank and other financial records. (Tr. 29, 48-49, 59-60; Government Exhibit 3; Applicant Exhibits C, D, E, H and I.)

Subparagraph 2.m of the SOR states security concerns of the Government regarding a business relationship Applicant has with an Israeli corporation (G

Company). (Government Exhibit 10.) Applicant testified that he had made the decision to terminate his company's relationship with G Company. (Tr. 42-47.)

Subparagraph 2.n states security concerns of the Government regarding a business relationship one of Applicant's companies has with the Binational Industrial Research and Development Foundation (BIRD Foundation). "The BIRD Foundation was established by the U.S. and Israeli governments in 1977 to generate mutually beneficial cooperation between the private sectors of the U.S. and Israeli high tech industries, including start-ups and established organizations. BIRD provides both matchmaking services between U.S. and Israeli companies, as well as funding covering up to 50 percent of project development and product commercialization costs." (BIRD Foundation, *What Is BIRD*, <http://www.birdf.com/?CategoryID=317&ArticleID=374> (accessed May 3, 2013.)) (See Government Exhibit 2 at 10-12.)

Subparagraph 2.o states security concerns of the Government regarding the fact that two of Applicant's employees are Israeli citizens. One of these employees is Applicant's father. The other has been in the United States since 1973. (Tr. 96-97.)

Finally, subparagraph 2.p states a security concern of the Government is the fact that Applicant's companies have sponsored Israeli citizens for work visas to be in the United States. Applicant stated his companies have sponsored many foreign citizens for work visas. However, "I have not personally sponsored anyone into the U.S." (Government Exhibit 2 at 12.) (See Tr. 97-98.)

Administrative Notice

Applicant has contacts with Israel. Accordingly, it is appropriate to discuss the situation in Israel at this time.¹ Israel is a parliamentary democracy. Israel's prime minister leads the executive branch of the government. The United States is Israel's leading trading partner. Israel respects the rights of its citizens; however, there are some concerns about Israel's detention and interrogation of alleged terrorists, and discrimination against Arabs. Terrorism is a continuing threat to Israel and American interests in Israel. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Occasionally, Israeli and American interests have diverged. Several U.S. government employees have been prosecuted for disclosure of classified information to persons connected to the Israeli government. Israel has an active program to gather proprietary information from U.S. companies.

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

Paragraph 3 (Guideline F - Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds.

3.a Applicant denied being indebted to a company for a judgment against him in the amount of approximately \$3,016,152. This situation occurred because Applicant signed financial guarantees for his brother, who wanted to get into an expensive, but potentially lucrative, business. The brother's business failed, and Applicant became financially responsible because he had the money to pay the debts. Applicant has come to an agreement with the company where he will pay \$1,415,000 in full settlement of the case. Applicant has already paid \$365,000 and will make similar payments in 2013, 2014, and 2015. He has the financial ability to make such payments. (Tr. 58-59, 61-63, 98-101; Applicant Exhibits A and B.)

3.b Applicant was indebted to his state taxing authority in the amount of approximately \$1,036, which resulted in a tax lien being filed. Applicant paid the tax debt and the lien was released on August 3, 2012.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2(a) describing 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Israel and the United States, that he has a valid Israeli passport, and that he served in the Israeli military in the 1970s.

Applicant has not mitigated the Government's concerns about the above conduct. The concern is stated thus under this Guideline at 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.

Disqualifying Condition AG ¶ 10 applies to the facts of this case:

Conditions that could raise a security concern and may be disqualifying include: (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:

- (1) possession of a current foreign passport; and
- (2) military service or a willingness to bear arms for a foreign country.

Applicant's military service occurred when he was an Israeli citizen, and before he came to the United States. Accordingly, AG ¶ 11(c) applies, "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." Subparagraph 1.b. is found for Applicant.

Applicant continues to hold and use his Israeli passport. He has asked permission of the Israeli government to only use his American passport, but that approval has not yet been granted. In fact, no evidence was presented to show that Applicant has been actively attempting to obtain such approval in two years. Accordingly, Mitigating Condition AG ¶ 11(e) does not apply since "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," is required by that condition.

Applicant obviously has a close and continuing emotional tie with the State of Israel. He has stated, "My intent is to surrender the Israeli passport and subsequently try to renounce my citizenship." (Tr. 82.) Mitigating Condition ¶ 11(b) states where it may be mitigating where, "the individual has expressed a willingness to renounce dual citizenship." However, this condition must be seen in the context of Applicant's statement that he would choose not to choose sides in a hypothetical conflict between Israel and the United States. Such a decision is, of course, his right. But it does not make him eligible for a security clearance since he continues to actively exercise rights and privileges of his Israeli citizenship.² Guideline C is found against Applicant.

²Mitigating Condition AG ¶ 11(a) also applies as his "dual citizenship is based solely on parents' citizenship or birth in a foreign country." However, under the circumstances of this case, it is not controlling.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at 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.

Applicant has extensive family, business and financial connections to Israel. Accordingly, the following Disqualifying Conditions apply to this case under 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;
- (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 the information; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

However, Applicant has not provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 apply to this particular case, given his particular background, except in part:

- (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.;
- (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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant is a conscientious and patriotic citizen, and member of the defense industry. He has lived in the United States for more than half of his life, and his wife and children are also citizens. What is of concern to the Government is the fact that Applicant and his family made the decision for his wife and children to live in Israel for most of the past five years. In order to facilitate this, Applicant has bought an expensive house there and also sent thousands of dollars to Israel to support his family.

Turning next to his business connections. First of all, Applicant has made a management decision to cease his business relationship with G Company. That will also have an impact on his relationship with the BIRD Foundation, which supplied a grant for Applicant to do business with G Company. Based on all of the available evidence, Applicant's relationships with both G Company and BIRD Foundation were routine and have now ended.

Finally, there is the concern that two Israelis work for Applicant's companies and that his business has legally sponsored Israeli citizens to enter the United States and work. Once again, these are routine business relationships. Under the particular facts of this case subparagraphs 2.m through 2.p are found for Applicant.

It is Applicant's responsibility to show that his admitted contacts and relationships with Israel do not make him vulnerable to coercion or pressure. He has not done so. There is a dearth of independent evidence to support his application for a security clearance. Based on my analysis of the available information, Applicant has not overcome the adverse inference arising from his family and financial interests in Israel. He has mitigated concern about his business interests. Guideline B is found against Applicant.

Paragraph 3 (Guideline F, Financial Considerations)

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, had an unsatisfied judgment against him in the amount of over \$3 million that was not resolved as of the date the SOR was issued. There was also a state tax lien. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.”

The evidence shows that both of the above mitigating conditions apply to Applicant. The judgment was the result of Applicant signing financial guarantees for his brother. Since Applicant is a wealthy individual, the creditor has come to him for payment. There is no evidence of poor judgment on his part. Rather, as shown above, he has been attempting to resolve this debt by means of a mutually agreeable payment arrangement.

As stated, Applicant has made acceptable payment arrangements with his primary creditor, and has already made a substantial down payment. He has also resolved the tax lien. Accordingly, based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). I also find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

As the DOHA Appeal Board has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”³

Applicant has acted in a way that shows good judgment. All of the stated mitigating conditions apply to the facts of this case. Guideline F is found for Applicant.

³ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B, C, and F analysis is applicable to the whole-person analysis as well. The evidence shows that Applicant is a patriotic American citizen. It is Applicant's personal situation, not his conduct, that is of concern here. As stated at length above, it is Applicant's responsibility to show that his admitted contacts and relationships with Israel do not make him vulnerable to coercion or pressure. He has not done so. I find that there is the "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has not mitigated the security significance of his alleged foreign preference and foreign connections and is not eligible for a security clearance.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons. Paragraph 3 is found for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a :	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.l:	Against Applicant
Subparagraphs 2.m through 2.p:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a and 3.b:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge