



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 12-00138
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

12/10/2012

**Decision**

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

On August 20, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). 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 a response to the SOR dated September 13, 2012, Applicant admitted all allegations raised under the two guidelines and requested a determination based on the written record. The Government compiled a Form of Relevant Material (FORM) on September 25, 2012. The FORM included a request that I take administrative notice of certain facts regarding the country at issue (Israel). Applicant did not respond to the FORM in the time allotted. I was assigned the case on November 29, 2012. Based upon a review of the exhibits and testimony, security clearance is denied.

## **Administrative Notice**

The Government requested 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. Based on those materials and summaries, currently referenced and previously submitted, 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 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. The two share strong ties related to history, culture, and mutual interests. The two work together in multiple joint efforts with regard to education, economics, and the war against terrorism.

Ongoing hostilities with its neighbors has created a volatile atmosphere in and around Israel. Israel's military is the Israel Defense Force (IDF). Conscription is universal for all Jewish people over the age of 18, although exemptions do exist. Male citizens are required to serve for at least three years.

## **Findings of Fact**

Applicant is a 30-year-old business administrator who has worked for the same defense contractor since April 2011. She was born in Israel to parents of Israeli citizenship. Applicant has been in the United States since at least 1999. In May 2004, she became a United States citizen. Since that time, she has considered herself a dual-citizen of both the U.S. and Israel. She has never attempted to renounce her Israeli citizenship. In 2007, Applicant married a United States citizen. The couple has since had two children. In 2009, she earned a bachelor's degree from an American university.

Since 1998, Applicant has visited Israel about nine times. Each visit varied in duration from about 11 to 42 days in length. Applicant maintains an Israeli passport. It was acquired or renewed in April 2007. It expires in April 2017. There is no indication that she intends to relinquish, destroy, or surrender the foreign passport.

The majority of Applicant's family remains in Israel. Her parents are citizens and residents of Israel. The reason is unclear, but Applicant noted that for legal reasons, her father "is no longer a resident of the United States and is no longer able to come here to even visit."<sup>1</sup> Applicant's sister is a citizen and resident of Israel. Her maternal grandmother and paternal grandparents are citizens and residents of Israel. Applicant has an uncle who is a citizen and resident of Israel who is an official in the Israeli military. Another uncle who is a citizen and resident of Israel is retired from the Israeli military. A third uncle is a resident and citizen of Israel. Scant information is provided about these individuals, including their current positions, their contact with Applicant, and their involvement with foreign powers.

In relying solely on the written record, little more is known about Applicant and her contacts abroad. Information regarding her current life in the United States is equally slight. The FORM contains no interrogatories or other documents that might tend to supplement the available information.

### **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. 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

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<sup>1</sup> FORM, Item 4 (Security Clearance Application), at 25 of 39.

Department Counsel. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>3</sup>

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.”<sup>4</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>5</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>6</sup> It is merely an indication that the 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,

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<sup>2</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Executive Order 10865 § 7.

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. The United States and Israel 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 an illegal recipient of classified information. Consequently, close scrutiny is warranted.

Applicant's parents, sister, maternal grandmother, paternal grandparents, and three uncles are residents and citizens of Israel. One of those uncles is an official in the Israeli military, while another uncle is retired from that military force. Based on the limited information available, Applicant maintains contacts with these foreign kin. 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 her circumstances are sufficient to raise one or more of the mitigating conditions noted at AG ¶ 8(a)-(f).

In responding to the SOR with direct admissions without explanations, the record regarding Applicant's relationships with her family in Israel is sparse. However, the Appeal Board has determined that family ties in a foreign country raise a *prima facie* security concern that requires an applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance. The few facts disclosed about these relatives are insufficient to raise any of the mitigating conditions available under Guideline B. Therefore, none of the Foreign Influence Mitigating Conditions, such as 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*) are applicable.

## 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 or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.<sup>7</sup> Conditions that could raise a security concern and may be disqualifying include the 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.<sup>8</sup> Here, Applicant obtained or renewed an Israeli passport in 2007, after becoming a U.S. citizen in 2004. That act constitutes the exercise of a right or a privilege of foreign citizenship after becoming a U.S. citizen. 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 (1) possession of a current foreign passport*) applies. With a disqualifying condition thus raised, the burden shifts to Applicant to mitigate security concerns.

Conditions that could mitigate foreign preference security concerns 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, dual-citizenship is not directly addressed as a concern in the SOR. Rather, the cited security concern arises from her acquisition of a current Israeli passport after becoming a United States citizen, and her continued retention of that passport, which does not expire until 2017. Due to the limited information provided by Applicant in this proceeding, her intentions with regard to this instrument are unknown. In light of the scant available facts, there is insufficient information to raise any of the available mitigating conditions.

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<sup>7</sup> AG ¶ 9.

<sup>8</sup> AG ¶ 10(a).

## **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. In so doing, I note that the available information regarding Applicant, her family, and her Israeli passport are limited. However, it is clear that Applicant is an educated, 30-year-old, emigrant from Israel. She has been a U.S. citizen since 2004. She married a U.S. citizen, and the couple now has two young children. Little more is known of Applicant's family life in the United States.

Information regarding Applicant's Israeli passport and her foreign relatives is equally scant. In these cases, when disqualifying conditions are raised, the burden moves to an applicant to provide additional information or evidence tending to mitigate the security concerns raised. Here, what is known is that Applicant obtained an Israeli passport in 2007, after she became a U.S., citizen. It is also known that Applicant has extensive family who are living in and citizens of Israel, including two uncles with current or former affiliations with the Israeli military. Applicant's failure to provide additional information about her passport and about these kin make it difficult to judge them in terms of the applicable guidelines. This process demands that 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. Consequently, 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-1.g:	Against Applicant
Paragraph 2, Guideline B:	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