



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



In the matter of: )  
)  
) ISCR Case No. 12-00356  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

01/25/2013

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated foreign preference security concern but has not mitigated the concerns related to foreign influence. His request for a security clearance is denied.

**Statement of the Case**

On August 20, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Adjudicative Guidelines (AG). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry (February 20, 1960)*, as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (January 2, 1992)* as amended; and the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, dated September 4, 2012, Applicant admitted the allegations under Guideline B, and denied the allegation under Guideline C. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 2, 2012, and I convened the hearing as scheduled on November 19, 2012. I

admitted two Government Exhibits (GE 1 and 2) and seven Applicant Exhibits (AE A - G). DOHA received the transcript of the hearing on November 29, 2012.

### **Procedural Ruling**

At the hearing, the Government requested I take administrative notice of certain facts relating to Israel. Department Counsel provided a 5-page summary of the facts, supported by 12 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's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant, 30 years old, was born in Israel. In 1992, after completing fourth grade, he left Israel at nine years of age. He has lived in the United States since then, and has earned a master's degree in aerospace engineering at a U.S. university. Applicant became a naturalized U.S. citizen on May 20, 2004.<sup>1</sup> He is a dual U.S.-Israeli citizen. Applicant has no obligation to perform Israeli military service because he applied for and received a waiver. Applicant was married in 2011 and has no children. His wife, a U.S. citizen, is a medical doctor and a captain in the U.S. Air Force. She currently serves in a military medical facility. Applicant was granted a position of public trust in 2008. He testified that he is willing to renounce his Israeli citizenship if required to receive a security clearance. (GE 1, 2; AE D; Tr. at 24-27, 31-32, 37-38, 61, 64-65)

In 2006, Applicant accepted his current position as a space systems engineer for a defense contractor, and is currently a division head. He submitted a character reference letter from the vice president of operations, who has been his direct supervisor for the past seven years. He noted that Applicant started as a project engineer, and rose to become a division head in charge of ten engineers. He described Applicant as technically excellent and a hard worker whose contribution to the Government customers is of "enormous value." A co-worker, the director of administration/finance, extolled Applicant's reliability, integrity, and trustworthiness. (GE 1; AE E, F; Tr. 30-31, 37-38)

Applicant's parents and two brothers live in the United States and are dual citizens of the United States and Israel.<sup>2</sup> His 60-year-old mother is a scientist at a U.S.

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<sup>1</sup> The evidence contains conflicting information about the date of Applicant's naturalization. In his security clearance application, he lists the date as May 20, 2004 (page 7), but on page 20, he notes that he was naturalized in 2006. (GE 1)

<sup>2</sup> Applicant's parents and brothers are not alleged in the SOR.

military research facility, and holds a public trust position. His 61-year-old father is Judaics director at a day school. Both hold Israeli passports and travel to Israel about once per year to see family. They own an apartment in Israel. Applicant testified that he has no inheritance interest in the property, because he expects his sister to receive it. One of Applicant's brothers is a college teacher and the other is a graduate student at a U.S. university. (Tr. 31-35, 66-68)

Applicant's sister is a dual citizen of the United States and Israel. She is a pediatrician, residing in Israel. She married an Israeli citizen in 2011, and has no children. Her husband works for an information technology company. Applicant is unsure if his brother-in-law's company has contacts or connections with the Israeli government, but stated in his security interview that his sister does not have such contacts. Applicant stated in his security interview that he is in touch with his sister about twice a week by telephone and email. They visit in person when he travels to Israel, or she visits the United States. (GE 2; Tr. 35-37)

Applicant has other family members who are citizens and residents of Israel, including 3 grandparents, 4 sets of aunts and uncles, and 16 cousins. When Applicant discussed his family during his security interview,<sup>3</sup> he stated that he has close relationships with his foreign family members. In his security clearance application, Applicant described his contact with his grandparents, aunts, and uncles as "Frequent phone conversations throughout the year, yearly trips to Israel to see [them] in person, and..." either email correspondence or meetings during their visits to the United States. Applicant visited Israel to see family in 2004 and annually from 2007 to 2012. In 2012, he visited family in Israel during his honeymoon. The frequency Applicant described at his hearing was less than that described in his security clearance application because of the demands of his wife's current schedule, but he remains in touch with his foreign family members several times per year. (GE 1, 2; Tr. 57-63)

Applicant's paternal grandmother is a homemaker. His paternal grandfather is retired. Previously, he held a clerical position in an Israeli military agency for more than two decades. He retired from that position approximately 20 years ago, and no longer has military contacts. Applicant's grandfather visits the United States frequently, most recently in 2012. Applicant sees his grandparents when he visits Israel, and when they come to the United States. He testified that he speaks with them by telephone about four times per year. Applicant's maternal grandmother, a homemaker, is a citizen-resident of Israel. He talks to her about four times per year by telephone, and visits her when he travels to Israel. His maternal grandfather is deceased. (GE 1, 2; Tr. 22, 39-41)

Applicant's aunt and uncle (allegations 1.d, 1.h, and 1.i) are citizen-residents of Israel. Applicant's aunt is also a U.S. citizen. His uncle is an attorney and his aunt is a

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<sup>3</sup> The Government did not present written documentation showing that Applicant had reviewed and adopted the summary of his security interview. However, Applicant testified that he had read the summary and agreed that it was accurate. (GE 2; Tr. 33)

nurse. At the time of his security interview (May 2011), Applicant spoke with them 8 to 15 times per year, but he now talks with them about three times per year. Applicant's aunt and uncle have three sons and one daughter. Two of the cousins are students. The older two sons served two years compulsory service in the Israeli military. Applicant was unsure of the younger brother's profession, or if he had finished his military service. The other son recently became a U.S. citizen and is now living in the United States and working for a "start-up." Applicant is in touch with them by telephone and e-mail about four times per year. He visits these relatives in Israel, and they have visited with him in the United States three times. (GE1, 2; Tr. 41-47)

Applicant's second set of relatives (allegations 1.e and 1.j) include an aunt, uncle and their five children. Applicant's aunt is a teacher, and he speaks with her one to three times per year. Applicant testified that his contact with his uncle of 8 to 15 times per year in 2011 has decreased to 3 to 6 times per year. His uncle worked for a private company in the aerospace field. However, he is no longer in that position and Applicant is unsure of his current employment. Applicant's cousins include a grocery store manager, a high school student, and a married architect with three children. He is unsure of the occupations of the other two cousins. Applicant speaks to these cousins about three to four times per year. (GE 1, 2; Tr. 47-52)

Applicant's third set of relatives includes his aunt, uncle and their three children (allegations 1.f and 1.i). His aunt works for a nonprofit organization. Applicant is in touch with her once every two to three months by email and Skype. His uncle is a U.S. citizen, but Applicant is uncertain about his Israeli citizenship status. They have lived in Israel for 16 years. Applicant's uncle is a physicist, working for a private company. Applicant is in touch with him every three to four months. Their children are students, and dual U.S.-Israeli citizens. Applicant sees them once or twice a year when he visits Israel, or his aunt visits the United States on business. (Tr. GE 1, 2; Tr. 52-54, 58)

Applicant's fourth set of relatives includes an aunt, uncle and four cousins (allegations 1.g and 1.k). His aunt and uncle are both medical doctors. His cousins include a high school student, a recent high school graduate who was working on social service projects in 2012, and two college students. He is in touch with them once or twice per year when he visits Israel. (GE 1, 2; Tr. 54-57)

Applicant has no financial interests, property, or bank accounts in Israel, and has never voted in Israeli elections. Applicant and his wife currently live in a condominium that she bought in 2007; its present value is approximately \$250,000. (Tr. 27, 39, 67)

Applicant held a valid Israeli passport after becoming a U.S. citizen in June 2004. He traveled to Israel in 2004, and annually between 2007 and 2012. He used his U.S. passport for foreign travel to countries other than Israel. However, he was required by Israeli law to use his Israeli passport to enter and exit Israel. When he traveled there in May 2011, he used both his U.S. and Israeli passports. In June 2011, Applicant's facility security officer (FSO) contacted the Israeli embassy, requesting that Applicant's passport be invalidated, because Applicant "is in the process of obtaining a U.S. Government

Security Clearance.” The embassy complied. The FSO destroyed Applicant's Israeli passport on June 30, 2011. (AE B; Tr. 58-60)

In January 2012, when Applicant went to Israel for his honeymoon, he no longer had his Israeli passport to enter and exit Israel. He met with officials at the Israeli embassy before leaving the United States, and provided information about his travel dates and flights. He was granted a waiver to use his U.S. passport to enter and exit Israel. (AE A, B, C, G; Tr. 23-25, 60-64, 68-70)

### **Administrative Notice**

The United States and Israel, a parliamentary democracy, have a close relationship based on common democratic values and security interests. Despite regional instability, it has developed a robust market economy. The United States is Israel's largest trading partner. In 1985, Israel and the United States concluded a free-trade agreement designed to strengthen economic ties by eliminating tariffs. From 1976-2004, Israel was the largest annual recipient of U.S. foreign assistance. Almost all U.S. aid to Israel is in military assistance. Israel and the United States have established joint groups to further military cooperation, participate in joint military exercises, and collaborate on military research and weapons development. The United States has pledged to ensure that Israel maintains a qualitative military edge over its neighbors.

However, Israel and the United States have serious disagreements on several issues involving national security. The United States is concerned about Israel's military sales to China, its inadequate protection of U.S. intellectual property, and espionage-related incidents implicating Israeli officials. There have been several cases of U.S. citizens convicted of selling or attempting to sell classified documents to Israeli embassy officials, and Israeli nationals 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.

Groups designated as foreign terrorist organizations by the U.S. Department of State operate in Israel, the West Bank, and Gaza. On several occasions, they have kidnapped, injured, or killed tourists, students, residents, and U.S. government personnel. They have attacked highly frequented shopping areas, pedestrian areas, and public buses. They have used foreign hostages as bartering tools.

In August 2012, the Department of State issued a warning concerning travel to Israel because of threats to U.S. citizens and U.S. interests. Israel strictly enforces security measures: U.S. visitors have experienced prolonged questioning and thorough searches upon entry or departure. Israel considers U.S. citizens who also hold Israeli citizenship to be Israeli citizens for immigration and other legal purposes; such citizens must enter and exit Israel using their current Israeli passport.

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and C.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>7</sup>

## Analysis

### Guideline C, Foreign Preference

AG ¶ 9 expresses the concern about foreign preference as follows:

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

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

provide information or make decisions that are harmful to the interests of the interests of the United States.

Under AG ¶ 10, the following disqualifying condition is relevant:

(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.

Applicant became a U.S. citizen in 2004. He continued to possess a valid Israeli passport after that date. In 2009, he renewed his Israeli passport, which was valid until 2019. Applicant's possession and renewal of his foreign passport were exercises of his rights of foreign citizenship, and they occurred after he became a U.S. citizen in 2004. AG ¶ 10(a)(1) applies.

AG ¶ 11 contains factors that can mitigate disqualifying conditions. I have considered all the mitigating conditions, especially the following:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant testified that he was willing to renounce his Israeli citizenship. In addition, when his FSO informed him that his foreign passport must be invalidated, Applicant complied. The Israeli embassy provided documentation stating that the passport has been invalidated. Applicant's FSO also forwarded a letter stating that she was present when the passport was destroyed. AG ¶ 11(b) and (e) apply. Security concerns under Guideline C are mitigated.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern under Guideline B:

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.

I have considered all the disqualifying conditions under AG ¶ 7, and find that the following are relevant to the 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.

The possession of family ties to residents or citizens of a foreign country is not automatically disqualifying under Guideline B. However, if an Applicant has a close relationship with even one relative in a foreign country, that is sufficient to create a potential for foreign influence, which could result in compromise to classified information.<sup>8</sup> The record evidence indicates that Applicant has ties of affection to his family in Israel. He keeps in touch with his sister in Israel often, and with numerous other family members several times per year. He travels to Israel regularly to spend time with them. In addition, the country in question must be considered. Terrorist groups operate in Israel, have attacked transportation and shopping hubs, and kidnapped or killed innocent parties. The Department of State recently issued a warning concerning the danger of travel to Israel. Applicant's ties to his foreign family members in Israel, with whom he is bound by affection, represent a heightened risk of exploitation and a potential conflict of interest. AG ¶ 7(a) and (b) apply.

I have also considered the mitigating conditions under Guideline B, AG ¶ 8, especially the following:

(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

(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.

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<sup>8</sup> See generally, ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).



Applicant maintains relationships with his foreign family members who are citizens and residents of Israel. They include his sister, a dual U.S.-Israeli citizen, as well as 3 grandparents, 4 aunts, 4 uncles, and 16 cousins. His contact with his sister, an immediate family member, is the most frequent. The Appeal Board has held that there is a rebuttable presumption that ties with immediate family are not casual.<sup>9</sup> The evidence shows that Applicant maintains his family relationships during the year by telephone calls, emails, and by visiting his foreign family annually. Although his marriage has resulted in somewhat less frequent contact, that change has occurred only in the past year, and his contacts are still as often as every other month with some relatives. The report of his security interview in May 2011, which Applicant agreed was accurate, noted that he closely identified with his foreign family members, and that he had continuing contact with them. In his security clearance application, Applicant described his contacts with his grandparents, two uncles and two aunts as, "Frequent phone conversations throughout the year, yearly trips to Israel to see [her/him] in person..." and either email correspondence or in-person visits in the United States.

In addition, the location of Applicant's relatives must be considered. Foreign terrorist organizations operate in Israel. They have targeted high-traffic areas, and kidnapped, injured, or killed tourists and residents. They have used foreign hostages as bartering tools. 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.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered

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<sup>9</sup> ISCR Case No. 00-0484 at 4-5 (App. Bd. Feb. 1, 2002).

the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

I considered the extent of Applicant's U.S. ties: his many years in the United States, his U.S. education, his economic ties through his employment, and his wife, who is a military officer. However, Applicant's attachment to his family in Israel raises security concerns. His attachment is evident in his ongoing relationships with his sister, his grandparents, and numerous aunts, uncles, and cousins. Even though most are extended family members, he has kept in close touch with them. Although the frequency of contact has decreased somewhat since his marriage a year ago, he has visited Israel annually for years, and continues to maintain frequent contact with his foreign family members. Such ties could place Applicant in a position of having to choose between the interests of his foreign family and the interests of the United States.

For all these reasons, I conclude Applicant has not mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.m	Against Applicant
Paragraph 2, Guideline C	FOR APPLICANT
Subparagraph 2.a	For Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge