DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-04013
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has close ties and ongoing contact with his brother and sister-in-law in Israel. Personal conduct concerns are not established because Applicant did not intend to conceal these foreign contacts when he completed his security clearance application. Foreign influence concerns, heightened primarily because his sister-in-law is an officer in Israel's military, are not fully mitigated. Clearance is denied.

Statement of the Case

On February 3, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, foreign influence, and Guideline E, personal conduct, and explaining why it was unable to grant a security clearance to Applicant. The DOD CAF acted 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 (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR allegations on February 26, 2014, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). By letter dated May 6, 2014, Department Counsel provided discovery to Applicant of the potential Government exhibits (GEs). On May 15, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and I scheduled a hearing for June 4, 2014.

At the hearing, two Government exhibits (GEs 1-2) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 11, 2014. The Government requested that I take administrative notice of several facts pertinent to Israel and its foreign relations, including with the United States.[1] Applicant did not object to the facts submitted for administrative notice or to my consideration of the source documents relied on by the Government. Applicant proposed no facts for administrative notice. Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (*see* ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice of the facts set forth in the Government's administrative notice request and of other relevant and material facts substantiated by the reliable source documentation.[2] The facts administratively noticed are set forth in the Findings of Fact below.

Summary of SOR Allegations

The SOR alleges Guideline B (foreign influence) security concerns because Applicant's sister-in-law is a resident citizen of Israel (SOR 1.a) and a major in a branch of the Israeli military (SOR 1.c), and because Applicant's brother is a resident of Israel (SOR 1.b). Under Guideline E (personal conduct), Applicant is alleged to have deliberately falsified his July 2011 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing his close and continuing contact with his sister-in-law in response to whether, in the last seven years, he had close and continuing contact with any foreign national to whom he is bound by affection, influence, or obligation (SOR 2.a).

[1]The Government's request for administrative notice, dated May 6, 2014, and source documents were incorporated in the record as a hearing exhibit. Department Counsel provided Applicant with a copy before the hearing, and he indicated that he had an adequate opportunity to review it. (Tr. 16.)

[2] The Government's request for administrative notice was based on the U.S. State Department's *Country Specific Information: Israel, the West Bank and Gaza*, dated February 6, 2014 (I); the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2000* (II) and its *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage–2005* (III); excerpts from the Interagency OPSEC Support Staff's *Intelligence Threat Handbook*, dated June 2004 (IV); the Congressional Research Services' publication *CRS Report for Congress–Israel: Background and U.S. Relations*, dated February 28, 2014 (V); an order from the U.S. Department of Commerce's Bureau of Industry and Security, dated May 5, 2010 (VI); and six news releases from Commerce's Bureau of Industry and Security reporting export violations committed by U.S. firms, and in one case, by an Israeli citizen (VII-XII).

When he answered the SOR, Applicant admitted the Guideline B allegations. Concerning the Guideline E allegation, he acknowledged that his response to the e-QIP's foreign contact inquiry was "erroneous," but he denied that he deliberately failed to disclose his contacts with his Israeli sister-in-law. He attributed his error to "a simple mental lapse, an honest mistake."

Findings of Fact

Applicant's admissions to his sister-in-law being an Israeli resident citizen and a major in the Israeli military, and to his brother being a resident of Israel, are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 33-year-old engineer, who has worked for a DOD contractor since March 2005. (GE 1.) Applicant seeks his first DOD security clearance for his duties in engineering research and development.

Applicant and his two brothers (both older) are native U.S. citizens. In June 2005, Applicant was awarded his master's degree in engineering. He married his spouse, also a native U.S. citizen, about two weeks later. (GE 1.)

Around 2005, the younger of Applicant's brothers began dating his future wife. An Israeli college student who was spending the semester in the United States, she was in an Israeli program that allowed her to attend college before fulfilling her commitment of about four years of active duty military service for Israel. (Tr. 32-34.) Applicant's brother was employed by a U.S. defense contractor, although there is no evidence that he held a security clearance. (Tr. 45.) Starting in 2006, Applicant had contact with his brother and future sister-in-law once a year when they visited him. In September 2007, Applicant's sister-in-law switched to her present branch of the Israeli military. (GE 2.)

Applicant's brother moved to Israel around 2007. (Tr. 33.) He continued to maintain a residence in the United States until 2012. (GEs 1, 2.) In September 2008, Applicant's brother and sister-in-law married in Israel. Applicant traveled to Israel for the wedding with his immediate family (parents, older brother and his wife) and some extended family members (aunts, uncles, and cousins). Over the course of his nine days in Israel, Applicant also went on sightseeing trips. (GE 2; Tr. 30.)

Applicant and his spouse traveled to Israel and Jordan for pleasure in July 2010. They spent time with Applicant's brother and sister-in-law, and they also had dinner with Applicant's sister-in-law's family during their trip. (GEs 1, 2; Tr. 30, 43-44.) Applicant had no problems with Israeli authorities during either of his two trips to the country. (GE 2.)

On July 21, 2011, Applicant completed and certified to the accuracy of an e-QIP. Applicant provided U.S. addresses for his immediate relatives (parents, siblings, and parents-in-law); including for his brother living in Israel because "it was the address . . .

that he was keeping in the United States at that time." Applicant did not consider at the time that the U.S. government would want to know that his brother was actually living in Israel. (Tr. 29, 39.) Applicant did not disclose his contacts or relationship with his Israeli sister-in-law, and he responded "No" to question 19 concerning foreign contacts, which inquired as follows:

> Do you have or have you had close and/or continuing contact with foreign nationals within the last 7 years with whom you, your spouse, or your cohabitant are bound by affection, influence, and/or obligation? Include associates, as well as relatives, not already listed in Section 18. (A foreign national is defined as any person who is not a citizen or national of the U.S.).

In response to question 20C concerning any foreign countries visited in the last seven years, Applicant disclosed trips to the Bahamas for tourism in June 2005; to Israel in September 2008 "to visit family or friends;" and to Israel and Jordan in July 2010 for tourism and to visit family and friends. (GE 1.) Applicant attributes his failure to disclose his contacts with his Israeli sister-in-law to "a simple mental lapse." He expounded at his hearing, as follows:

> Immediately my mind started thinking, okay. We've been to the Bahamas, we've been to Israel. Have I met anyone over there that are foreign nationals that I'm continuing to be bound to affection and my instinct said no. I haven't met any close friends over there during those trips. And so I checked off no without—I think without reading carefully the following sentence which says include associates as well as relatives not already listed in section 18. And this was 2010 [sic]. She had been my sister-in-law for two years. It was kind of new. Just wasn't burned into my—into my mind yet that I had a family member who is, in fact, a foreign national. (Tr. 26.)

On September 7, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant disclosed that he had ongoing contacts with his sister-in-law, an Israeli citizen, whom his brother first met around 2005. Since his brother's marriage in September 2008, Applicant has had email contact six times a year and personal contact once or twice yearly in the United States, when his brother and sister-in-law visit from Israel. Applicant indicated that his brother and sister-in-law continue to maintain an apartment in the United States, although their primary residence is in Israel. Applicant did not know his sister-in-law's birthdate or her place of birth. About her occupation, he knew only that she has been in the Israeli military (branch unknown) for four years, holds the rank of captain, and works with computers. Applicant added that his sister-in-law was unaware that he was being considered for a DOD security clearance. She had not shown any undue interest in his employment. Applicant admitted that he had met his sister-in-law's parents, but he had spoken to them only twice. Her mother works as an interior decorator, and her father installs security doors on homes and businesses. Applicant also disclosed that his

sister-in-law has a younger sibling, who is in high school in Israel. When asked why he had not disclosed these foreign contacts on his e-QIP, Applicant responded that he did not think of them as friends. About his foreign travel, Applicant denied any problems with customs or law enforcement during his trips. (GE 2.)

In September 2013, the DOD CAF asked Applicant about his foreign contacts. Applicant responded affirmatively to whether he had any relative (other than immediate family member) employed by a foreign government, military, or business. He indicated that his sister-in-law has been in the Israeli military since September 2005 and affiliated with her current branch since September 2007.[3] He listed her rank as major with duties involving base "ERP development & support."[4] Applicant also answered "Yes" to whether any immediate family member, other relative, friend, or business associate lives in a foreign country. He disclosed the Israeli residency of his brother and the Israeli residency and citizenship of his sister-in-law. He reported in-person contact with them twice a year since 2006, at Christmas and in the summer during family visits. Applicant also disclosed this contact with his sister-in-law in response to whether he had ever had contacts with any foreign citizens not related to official U.S. government business. (GE 2.)

At the request of the DOD CAF, Applicant reviewed the report of his September 2011 personal subject interview. Applicant updated information about his brother's apartment in the United States in that it was sold in 2012, about his brother and sister-in-law's address in Israel, and about his sister-in-law's military rank and service branch in Israel. Applicant corrected the record to indicate that his sister-in-law had two younger brothers in addition to the sister previously disclosed, and that he had been accompanied by several family members when he went to Israel for his brother's wedding in September 2008. (GE 2.)

In 2013, Applicant's brother and sister-in-law moved into a new home that they had built in Israel. (Tr. 37.) Applicant's brother works as a liaison for a manufacturing company in Israel that makes components for, and apparently is now owned by, the U.S. defense contractor for which he had worked in the United States. Applicant's brother ensures that the Israel-based manufacturer meets its production schedule for the U.S. defense contractor. (Tr. 31.) Applicant has telephone contact with his brother about once a month. They also correspond by email about once a month. Applicant's contact with his sister-in-law is more sporadic. He speaks to her if she answers the home phone when he calls his brother, and he seldom emails her directly. Usually, "it's just to share some pictures of the kids or something like that." (Tr. 27-28, 36.) Applicant does not discuss work, politics, or religion with his sister-in-law. (Tr. 27.) Applicant continues to have in-person contact with his brother and sister-in-law when they visit the

[3] Applicant contacted his sister-in-law for information about her current status in the Israeli military because he knew that he had "to get these things straight." (Tr. 35-36.) He informed his sister-in-law that he needed accurate information for his security clearance. (Tr. 36.)

[4] Applicant testified that his sister-in-law "logistically keeps computer systems running." (Tr. 25.)

United States, which is "typically in the summer and then around Christmastime" for about a week each time. (Tr. 36.)

Applicant believes that his sister-in-law plans to remain in the Israeli military for her career. Applicant's brother and sister-in-law have two children, a nine-month-old infant and a two-year-old toddler. (Tr. 42.) His sister-in-law has good daycare through the military. (Tr. 41.) Applicant does not know whether his sister-in-law has an Israeli security clearance. He has not asked her about her clearance status. (Tr. 39-40.)

Applicant's brother owns a home in the United States, which had previously belonged to his grandparents. Applicant has been led to understand that in the future, about 20 years from now, Applicant's brother intends to spend half his time in Israel and half in the United States. (Tr. 37-38.) To Applicant's knowledge, his brother has not acquired Israeli citizenship. (Tr. 44.)

Administrative Notice

Administrative notice is not taken of the source documents in their entirety, but of specific facts properly noticed and relevant and material to the issues.[5] After reviewing the documents submitted by the parties concerning Israel and its foreign relations, including with the United States, I take administrative notice of the following facts:

Israel is a parliamentary democracy of about 7.71 million people with a modern economy with ongoing regional security concerns. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a diversified, technologically advanced market economy focused on high-technology electronic and biomedical equipment, chemicals, and transport equipment. Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem as a result of the 1967 war. In 1994, the Palestinian Authority was established in the Gaza Strip and West Bank, although the Islamic Resistance Movement (HAMAS), a U.S. designated foreign terrorist organization (FTO), took control of the Gaza Strip in June 2007. Terrorist attacks are a continuing threat in Israel, many of which are directed at American interests. The U. S. State Department advises U.S. citizens to take due precautions when traveling to Israel, the West Bank, and Gaza. U.S. citizens, including tourists, students, residents, and U.S. government

[5] Concerning the Government's request that I take administrative notice of the fact that Israeli military officers have been implicated in collecting or attempting to collect protected technology from the United States, the incident reported in the *Intelligence Threat Handbook* occurred in 1986. Like the Jonathan Pollard case, that information must be evaluated in light of its dated nature. As for the Department of Commerce press releases, which were presumably presented to substantiate that Israel actively pursues collection of U.S. economic and proprietary information, none of the cases involved Applicant personally or involved espionage through any family relationships. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, given there is no evidence that Applicant or any member of his family was involved in any aspect of the cited cases.

personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. All persons applying for entry to Israel, the West Bank, or Gaza are subject to security and police record checks by the Israeli government and may be denied entry or exit without explanation. The Israeli government considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. Children born in the United States to Israeli parents usually acquire both U.S. and Israeli nationality at birth. U.S. citizen visitors have been subjected to questioning and thorough searches by Israeli authorities on entry or departure. Israeli authorities have denied access of some U.S. citizens to U.S. consular officers, lawyers, and family members during temporary detention.

The relationship between Israel and the United States is friendly and yet complex. Since 1948, the United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. In 1985, Israel and the United States concluded a Free Trade Agreement designed to strengthen economic ties by eliminating tariffs. The United States is Israel's largest single trading partner. Other than Afghanistan, Israel is the leading recipient of U.S. foreign aid and is a frequent purchaser of major U.S. weapons systems.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being, predicated on Israel maintaining a "qualitative military edge" over other countries in its region. The United States is the principal international proponent of the Arab-Israeli peace process. Negotiations to end the Israeli-Palestinian conflict are presently at a stalemate. Israel perceives threats from Iran and Iranian-sponsored non-state actors, such as the Lebanese Shiite group Hezbollah, as well as Hamas and other Sunni Islamist Palestinian militants in Gaza. Israel's concerns about a nuclear-weapons-capable Iran as an imminent threat to its security have led Israel to seek increasingly punitive international measures against Iran's nuclear program. Recently, Israel has become more concerned about the threats to its security posed by violent jihadist terrorist groups in light of the political upheaval in Egypt and Syria's civil war. Demographic trends in Israel have led to the emergence of nationalistic and conservative elements, more hawkish on foreign policy and security.

Strong U.S. congressional support for Israel has resulted in the country being designated as a "major non-NATO ally" and receiving preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. U.S. bilateral aid to Israel is in the form of foreign military financing (FMF). Under a 10-year bilateral memorandum of understanding, the United States is committed to $3.1 billion in FMF annually to Israel from fiscal years 2013 to 2018, subject to continuing congressional appropriations. Israel uses approximately 75% of its FMF to purchase arms from the United States. Israel and the United States are partners in the "Star Wars" missile defense project, and have concluded numerous treaties and agreements aimed at strengthening military ties, including agreements on mutual defense assistance, procurement, and security of information. Israel and the United States have established joint groups to further military cooperation. The two countries participate in

joint military exercises and collaborate on military research and weapons development. U.S. military aid has helped Israel build a domestic defense industry, and Israel in turn is one of the top 10 exporters of arms worldwide.

The transfer by sale of U.S. defense articles or services to Israel and all other foreign countries is subject to the Arms Export Control Act and implementing regulations as well as the 1952 Mutual Defense Assistance Agreement between the United States and Israel. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. The United States is concerned about Israeli settlements; Israel's sales of sensitive security equipment and technology, especially to China; Israel's inadequate protection of U.S. intellectual property; Israel's suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. U.S. government employees (e.g., Jonathan Pollard in 1985, who acted as an agent for Israel; Lawrence Franklin, who pled guilty in 2006 to disclosing classified information to an Israeli diplomat; and Ben-Ami Kadish, who pled guilty in 2009 to conspiracy to act as an unregistered agent for Israel) and U.S. government contractors have been implicated in providing classified and sensitive information to Israel. Israel was listed as one of the nations that aggressively targeted U.S. economic intelligence in 2000.

Unlike China and Russia, both of which were specifically identified as aggressive collectors of sensitive and protected U.S. technologies, Israel was not named specifically in the National Counterintelligence Executive's (NCIX) *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage—2005.* However, there have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel. In March 2005, a U.S. company pleaded guilty to exporting digital oscilloscopes to Israel without a license. The items were reportedly capable of being utilized in the development of weapons of mass destruction and in missile delivery fields. In 2009, a U.S. government employee, Ben-Ami Kadish, pleaded guilty to one count of conspiracy to act as an unregistered agent of Israel. In May 2010, the U.S. Department of Commerce assessed a civil penalty of $76,000 against a company, in part for exporting controlled oscilloscopes to Israel in 2007 through a scheme to avoid the required export license. In March 2011, a U.S. company agreed to pay a civil penalty to settle allegations that it violated Export Administration Regulations related to the export of titanium alloy and aluminum bar to Israel in July 2007 without the required export license.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of 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).

Analysis

Guideline B—Foreign Influence

The security concern about foreign influence is set forth in AG ¶ 6:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by

> any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant's brother and sister-in-law live and work in Israel. Applicant understandably has some affection for his brother. He traveled to Israel for his brother's wedding in September 2008 and with his spouse to visit his brother and sister-in-law in July 2010. Applicant has telephone contact with his brother about once a month. They also correspond by email once a month. Applicant's contact with his sister-in-law is more sporadic. He talks to her if she happens to answer the family phone when he calls his brother. Applicant has in-person contact with his brother and sister-in-law at Christmastime and in the summers. AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence:

> (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.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Israel and the United States have long had a close friendship. The United States is committed to Israel's security, to the extent of ensuring that Israel maintains a "qualitative military edge" in its region. Israel receives preferential treatment in bidding for U.S. contracts and substantial economic aid from the United States. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." *See* ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Recent reports of economic espionage do not show direct involvement by the Israeli government targeting the United States. However, U.S. government employees and

U.S. government contractors have been implicated in economic espionage activity in the United States to benefit Israel. The United States remains concerned about Israeli settlements, Israel's military sales to other countries such as China, and Israel's inadequate protection of U.S. intellectual property.

There is no evidence that Applicant's brother or his sister-in-law in Israel have been targeted or pressured. Considering the nature of the Israeli government and society, it is unlikely that the Israeli government would attempt coercive means to obtain sensitive information. There is no evidence that Israel has used coercive methods. However, it does not eliminate the *possibility* that Israel would employ some non-coercive measures in an attempt to exploit a relative. Israel faces threats by jihadist groups, other terrorist organizations, and states in the region that are avowedly anti-Israel. Within Israel, many of those attacks are directed at, not only Jewish or Israeli interests, but American interests as well. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to combat and minimize the risk presented by terrorism. Also, there is no evidence that terrorists have approached or threatened Applicant's brother or sister-in-law for any reason.

Yet, there are several factors, which collectively, if not also on their own, create the heightened risk addressed in AG ¶ 7(a), and which create a potential conflict of interest under AG ¶ 7(b), which provides as follows:

> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's brother enjoys the protections of U.S. citizenship, and he works for a company now owed by a U.S. defense contractor. Yet, he remains subject to Israeli laws because of his residency in Israel, and he is married to an officer in the Israeli military. In addition to having to comply with the obligations of her Israeli citizenship and residency, Applicant's sister-in-law presumably is required to directly serve Israel's interests and to follow the orders of her military superiors, which may at times be adverse to the interests of the United States. Furthermore, Applicant's sister-in-law's military duties involve information technology, a field targeted for economic collection and espionage activities in the past. The primary risk may be indirect (i.e., through his brother's marital bond), but the evidence also establishes that Applicant has positive relations of his own to his sister-in-law. Applicant does not know whether his sister-in-law holds an Israeli security clearance. However, he has told his sister-in-law that he is being considered for a U.S. DOD security clearance. There is no indication that Applicant's sister-in-law would unethically use that information for her advantage or to benefit Israel. Yet, without knowing more about her military duties, activities, and associates in Israel, the risk of a potential conflict of interest cannot be ruled out.

Concerning potential factors in mitigation, AG ¶ 8(a) provides as follows:

> (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.

AG ¶ 8(a) is difficult to satisfy because of Applicant's family ties to his brother and sister-in-law in Israel; Israel's history of economic espionage directed at the United States; and the risk of terrorist activity in Israel, which has led the U.S. State Department to strongly caution travelers to the country.

Applicant has no direct ties to Israel of his own. He has demonstrated no particular affinity for Israel. His travels to Israel were for family reasons and tourism. Nonetheless, given the close family ties, Applicant also cannot arguably make a case for mitigation under the first prong of AG ¶ 8(b), which provides that the loyalty or obligation to the family members be so minimal:

> (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.

Applicant could satisfy AG ¶ 8(b) by an adequate showing of deep and longstanding relationships and loyalties in the United States. Applicant is a life-long resident and citizen of the United States. He is married to a U.S. native citizen. He was educated in the United States and has chosen to make his career here. His only ties to Israel are familial and not chosen by him other than to understandably maintain sibling ties. Even so, the foreign influence guidelines acknowledge that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member. *See* ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009). Applicant has not been tested in this regard. Some concerns arise about whether he would recognize and react appropriately to any attempt at undue foreign influence, given it did not occur to him that he should be circumspect with his sister-in-law about his DOD security clearance application or that the Government might want to know that his brother was residing in Israel and not in his apartment in the United States (*see* Guideline E, *infra*). Under the circumstances, it is difficult to fully apply AG ¶ 8(b).

AG ¶ 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," cannot reasonably apply because of the ongoing sibling ties. Applicant has regular contact with his brother in Israel. Applicant's brother and sister-in-law intend to remain residents of Israel, and Applicant has no reason to believe that his sister-in-law

plans to resign her commission in the Israeli military in the near future. The foreign influence concerns are not fully mitigated in this case.

Guideline E, Personal Conduct

The security concerns about personal conduct are set forth in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant responded "No" to question 19 on his July 2011 e-QIP concerning whether he had "close and/or continuing contact with foreign nationals within the last 7 years with whom [he, his spouse, or his cohabitant] are bound by affection, influence, and or obligation?" A reasonable inference of falsification arises because Applicant's sister-in-law is a resident citizen of Israel. Applicant indicated during his subject interview that he has known his sister-in-law, an Israeli citizen, since approximately 2005, and that he had in-person contact with her once a year before her marriage to his brother in September 2008. After she became his sister-in-law, they have had email contact about six times a year and in-person contact about twice a year. Applicant has consistently denied intentional falsification, attributing his admittedly erroneous response on the e-QIP to "a simple mental lapse." He misread the question as pertaining solely to whether he had met any close friends in Israel during his trips. He added that it "just wasn't burned into [his]—into [his] mind yet that [he] had a family member who is in fact a foreign national." (Tr. 26.)

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant's relationship to his sister-in-law is conspicuously absent from his e-QIP, and Applicant's decision to provide his brother's U.S. address in

lieu of his brother's actual residency in Israel could be viewed as further evidence of an intent to conceal his ties to Israel. However, Applicant plausibly explained that his brother maintained his U.S. apartment until 2012, and the evidence shows that Applicant listed his foreign travel to Israel "to visit family or friends." When asked during his September 2011 subject interview about his foreign contacts and the reason for his trips to Israel, Applicant disclosed his ties to his Israeli sister-in-law. Under the circumstances, his denial of any intent to conceal is accepted as credible. Disqualifying condition AG ¶ 16(a) is inapplicable without the requisite intent:

> (a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant corrected his error by disclosing his family ties in Israel to the OPM investigator. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," applies. AG ¶ 17(d) is established in that Applicant's disclosures of his foreign ties during his interview, in response to DOD CAF interrogatories, and at his hearing, are positive steps to correct his mistake on his e-QIP. AG ¶ 17(d) provides as follows:

> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability," also applies in that deliberate falsification of the e-QIP was not established.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[6] Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

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[6] The factors under AG ¶ 2(a) are as follows:

> (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.

> Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. *See* ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant is a victim of circumstance in that one of his brothers married an officer in the Israeli military. It would be unreasonable to expect Applicant to terminate his personal relationship with his brother over this marriage. At the same time, Applicant has the burden of overcoming the security concerns that arise from his ongoing ties and contacts to his brother and sister-in-law in Israel. Applicant heightened the security risk somewhat by informing his sister-in-law that he is being considered for a DOD security clearance, and he is somewhat naive about the risk of foreign influence.[7] It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After considering the facts and circumstances before me in light of the adjudicative guidelines, I cannot conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

[7] Applicant's testimony is illustrative:

> As I understand it the premise of this case is or the reason for being denied security clearance is not because I have an Israeli—a sister-in-law who is Israeli and in the military, but rather that I deliberately failed to disclose her. And if I had not made the mistake on the initial e-QIP security clearance application it is my opinion that the clearance would have sailed through with no questions asked. (Tr. 24.)

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.

Elizabeth M. Matchinski
Administrative Judge