



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



In the matter of:

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) ISCR Case No. 14-02739  
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Applicant for Security Clearance

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel

For Applicant: John W. Sorrenti, Esq.

03/23/2015  
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**Decision**  
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MASON, Paul J., Administrative Judge:

Based on a review of the case record, including the pleadings, the exhibits, and administrative facts about the country of Israel, Applicant has mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on May 20, 2013. He was interviewed by an investigator from the Office of Personnel Management (OPM) on June 12, 2013.

On August 1, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on September 10, 2014. A notice of hearing was mailed to Applicant on December 29, 2014, scheduling a hearing for January 21, 2015. The hearing was held as scheduled. The Government's two exhibits (GE 1, GE 2) and Applicant's 14 exhibits (AE A-AE N) were admitted in evidence without objection. All exhibits were stipulated to by the parties on January 21, 2015. The stipulation also contains the Government's Administrative Notice documents and Memorandum. The record in this case closed when the transcript was received by the Defense Office of Hearings and Appeals (DOHA) on January 29, 2015.

### **Ruling on Procedure**

Department Counsel requested that I take administrative notice of certain facts about Israel. The administrative notice source documents are listed at I-XVII, on pages 1-3 of the Stipulation. The facts which I will administratively notice appear after Findings of Fact. The facts administratively noticed are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. References to the transcript (Tr.) will be followed by the page number.

### **Findings of Fact**

The SOR contains two allegations under foreign influence (Guideline B). Applicant admitted that he has one cousin who is a citizen and resident of Israel. (SOR ¶ 1.a) He denied that he has had regular contact (approximately four to five times per year) with an Israeli government official since May 2006. (SOR ¶ 1.b). Based on the entire record, I make the following factual findings.

Applicant is 37 years old and single. He was born in the United States in December 1977. He has been employed as an associate general counsel by a defense contractor since July 2013. Before his current employment, Applicant occupied associate positions with two law firms and was a consultant with an energy company. He lives in a home he has owned since 2004. (GE 1 at 7, 11, 19-22; AE A; Tr. 47, 97, 100)

After Applicant's second year of college in 1998, he received credit for studying in Israel for approximately eight months in the fall of 1998, continuing into a portion of 1999. He obtained a bachelor's degree in May 2000. After spending a year as a television sports reporter, he entered law school and received a juris doctor (J.D.) degree in May 2004. Applicant is a member in good standing of two state bars. He seeks a security clearance. (GE 1 at 8-10, 20-22; Tr. 15, 18-21, 25-27)

**SOR ¶ 1.a.** "Applicant has at least one cousin who is a citizen and resident of Israel." The 89-year-old person is a second cousin who has been retired for years from the public health ministry of Israel. Applicant did not know his second cousin's ministry job or whether he draws retirement benefits. Applicant first met his second cousin in 1994 while on a high school trip. He saw his second cousin again while studying abroad in 1998 and 1999, and a few times since then. (GE 2 at 3; Tr. 49, 51-55, 81-82, 83-86, 94)

During Applicant's last trip to Israel in November 2008, he dined with his second cousin. The last face-to-face contact was in December 2014, when Applicant travelled to another part of the United States to celebrate the birth of the second cousin's son's first child. The celebration afforded Applicant an opportunity to see his distant cousins. He contacts his second cousin by email or phone every six months. He provides no support to his second cousin. His second cousin has never asked Applicant about his job, though he knows what Applicant does for a living. If Applicant learned that his second cousin was threatened in Israel unless Applicant relinquished some type of sensitive information, Applicant would notify his employer's facility security and the appropriate U.S. authorities. (GE 2 at 3; Tr. 52, 55, 83-86, 94)

### **Applicant's Involvement in Faith-Based Charitable Organizations**

Applicant is involved in primarily two Jewish charitable organizations in the local area. One charitable organization (CO), which Applicant has worked with since 1995, donates money to other charitable efforts in the local region, and around the world, including Israel. Applicant has helped raise money and participated in telethons for this CO. He has also participated in cultural and religious events with this CO. In November 2008, he travelled to Israel with the organization's young leadership group to see for himself the charitable programs that the CO supports in Israel. Applicant also works with a charity (RO) that distributes food to the needy in the local area in the United States. Occasionally, he meets at the RO's warehouse to package food and deliver it to locations where it is needed. (GE 1 at 26; Tr. 56, 61-63)

**SOR ¶ 1.b.** "Since approximately May 2006, you have had regular contact (approximately four to five times a year) with [Y], the Deputy Consul General to the Consulate General of Israel." Applicant did not have contact with Deputy Consul Y (deputy consul) until 2012, when the deputy consul began working for the Israeli consulate in the local area. Applicant recalled telling the OPM investigator that he periodically interacted with members of the consulate staff when he was associated with the CO's young leadership program. On one occasion in 2006, the program toured the consulate. Applicant is no longer a member of the program. (GE 1 at 25, GE at 4; AE J; Tr. 75-77, 86-88)

Applicant met the deputy consul at a happy hour event in 2012 sponsored by the CO and many other philanthropic organizations. About 150 persons attended the event. Applicant considers the deputy consul an acquaintance that Applicant sees at Jewish cultural events. (Tr. 65, 67)

Applicant also saw the deputy consul by accident at a soccer game in the summer of 2012, and greeted him. On one occasion in January 2013, Applicant received an email from his former girlfriend that forwarded an email invitation for dinner at the deputy consul's home on January 24, 2013, to discuss the Israeli election results which had just occurred. Applicant attended because of his general interest in Israeli elections and not because the deputy consul was speaking. There were about 24 people who attended the dinner. On January 28, 2013, Applicant received an email form letter from the deputy

consul thanking those who had attended the dinner event on January 24, 2013. Applicant's personal email address appears on the invitation to the dinner but does not appear on the 'thank you' email from the deputy consul. Though he did not speak with him, the last time Applicant saw the deputy consul was at a Jewish holiday event in December 2014, sponsored by a local Jewish museum. (AE H, I, J; Tr. 67-72, 90-93, 101)

Applicant has never been alone with the deputy consul at the charity or cultural events. Their interaction is generally limited to greeting each other. Applicant has not spoken with the deputy consul since he began working for his current employer in July 2013. Applicant does not believe the deputy consul knows that he is applying for a security clearance. (Tr. 64-67, 92-93)

Applicant's family tree appears at AE K. Applicant's mother and her three sisters (Applicant's aunts) are U.S. citizens. Applicant's father and his father's two brothers (Applicant's uncles) are U.S. citizens. Applicant's three aunts and two brothers have a total of ten children (Applicant's cousins) born in the United States. Applicant's two brothers are U.S. citizens. As noted earlier, Applicant travelled to Israel in 1994, and 1998/1999. His last trip to the country was in November 2008 for tourism, when he visited the projects funded by the CO and when he had dinner with his second cousin. Applicant has no property interests in Israel. He never applied for dual citizenship or an Israeli passport. The home that Applicant purchased in 2004 is now worth approximately \$430,000. He has a U.S. retirement account amounting to about \$300,000, and \$230,000 in U.S. stocks. Applicant is a registered U.S. voter. (GE 1 at 26; Tr. 11, 36-47, 58-60, 106)

## **Character Evidence**

Six individuals provided character references supporting Applicant's security clearance application. The general counsel of warfare systems and supervisor of in-house and outside counsel at Applicant's current employer, indicated that she has been Applicant's manager since July 2013. She praised Applicant's trustworthiness, dependability, and problem solving ability. She noted Applicant's most recent performance evaluation was assessed at "significantly exceeded," a rating that less than 25% of the workforce receives at Applicant's employer. In 2014, the general counsel presented Applicant with an award for his significant contributions to his employer. (AE A; Tr. 30)

The vice president of mission systems and Applicant's second level manager, considers Applicant a diligent employee who is also a good negotiator, having developed expertise in handling government contracts. The vice president is impressed with Applicant's commitment to compliance with the rules even though he does not have a security clearance. (AE B)

Applicant's former law firm associate between 2005 and 2010, saw him on a daily basis at work. Applicant showed dedication and a team-player attitude. He was known

for always following the rules. (AE C) The author of AE D is manager of a law firm and has known Applicant for over 20 years. They socialize once every two months and have phone contact almost every day. Applicant has a strong work ethic and is trustworthy. (AE D)

A president judge of the state superior court, and Applicant's aunt, interacts with him on a regular basis. In her view, he displays a model quality of character and has a reputation for following the rules. Applicant participates in various Jewish charitable causes, including the delivery food to those in need. (AE E)

A senior financial analyst has known Applicant since 1990, having attended middle and high school with him. It is his opinion that Applicant is trustworthy, honest, and demonstrates good judgment. Applicant has a reputation for following the rules rather than cutting corners. (AE F)

### **Administrative Notice**

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. The country is a diversified, technologically advanced economy that is growing at about 5% a year, and the United States is Israel's largest trading partner. The country's major industrial sectors include high-technology electronic, military, and biomedical equipment, chemicals, and transportation equipment. While the United States and Israel have maintained a close-knit bond because of shared democratic and religious values, Israel's ongoing exports of military equipment and sensitive technologies to India, China, and Russia, remain an issue of disagreement in overall U.S-Israeli relations. In addition, Israel has engaged in military and industrial espionage against hostile and friendly countries like the United States.

As a general rule, Israel respects the rights of its citizens. The country does not sponsor terrorism and has been a reliable U.S. ally in combatting terrorism. Because of the geographical location of Israel in the Middle East, U.S. citizens are advised to be vigilant in public places within the country, particularly near U.S. interests. Terrorist attacks against Israeli citizens and security forces by Palestinian terrorist groups have continued.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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.”

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 as to obtaining a favorable security decision.

## **Analysis**

### **Foreign Influence**

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two potential disqualifying conditions that may be pertinent in this 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 individual’s desire to help a foreign person, group, or country by providing that information.

The mere possession of ties and contacts with a family member in a foreign country is not disqualifying under Guideline B. On the other hand, if an applicant has

contact with an immediate or extended family member living in a foreign country, this single factor may create a potential for foreign influence that is disqualifying under the guideline. The Government must establish that these family connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or would create a potential conflict of interest between his obligations to protect classified information and his desire to help his family member who may be experiencing foreign influence.

The foreign influence guideline is not limited to countries hostile to the United States, but applies to friendly nations whose disagreements with the United States may or may not motivate them to engage in some kind of adverse activity against U.S. interests.

AG ¶ 7(a) and 7(b) apply to Applicant's second cousin who is a citizen and resident of Israel. (SOR ¶ 1.a) He contacts his second cousin every six months by phone or email. After meeting his second cousin in 1994, Applicant saw him again while studying abroad in Israel in 1998 and 1999. He and the second cousin had dinner during Applicant's last trip to Israel in November 2008. He last saw his second cousin in December 2014, when the second cousin was in the United States to celebrate the birth of his son's first child. These contacts since 1994 create a potential for foreign influence.

On the other hand, having weighed and balanced the entire record, I find that AG ¶¶ 7(a) and 7(b) do not apply to Applicant's contacts with the deputy consul. First, I find as credible Applicant's testimony regarding his ties and contacts to the deputy consul. Applicant did not have regular contact with the deputy consul four to six times a year since May 2006. Rather, his contact did not begin until 2012 when the individual became deputy consul to the consulate general of Israel in 2012, as documented by the consul's resume in AE J. Applicant has not been at the consulate office since 2006, when he was participating in the CO's young leadership program. Applicant considers the deputy consul an acquaintance. Unintentional meetings with the deputy consul at a holiday bar event and a soccer game in 2012, and a happenstance sighting of the deputy consul at a December 2014 religious holiday event at a Jewish museum, do not create a heightened risk of foreign exploitation or potential conflict of interest within the ambit of AG ¶¶ 7(a) and 7(b). Applicant's attendance at the deputy consul's dinner in January 2013, before he began working for his current employer in July 2013, was motivated by Applicant's interest in Jewish election results and not in cultivating a relationship with the deputy consul.

The Government has presented sufficient evidence under AG ¶¶ 7(a) and 7(b) regarding Applicant's second cousin. The burden then moves to Applicant to present evidence under AG ¶ 8 that demonstrates he is unlikely to be placed in a position of having to choose between his family member and U.S. interests. The potential mitigating conditions are:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position or activities of those persons in

that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and long-lasting relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that I could create a risk for foreign influence or coercion.

Applicant's second cousin is 89 years old and has been retired for years from the Israeli public ministry. While there is always the possibility that Applicant could be targeted through his Israeli relative for sensitive information, the close relationship between the United States and Israel militarily, politically, and strategically, would make such activity incompatible with the country's respect for the human rights of its citizens. The security concerns raised by AG ¶ 7(a) are mitigated by AG ¶ 8(a). Assuming that a heightened risk of foreign influence exists regarding Applicant's relationship to the deputy consul, the primarily coincidental nature of the relationship makes it unlikely that Applicant would be placed in a position of choosing between the interest of the deputy consul and the interests of the United States.

Applicant has "deep and longstanding relationships and loyalties in the U.S." Applicant was born in the United States. His parents, their siblings and his cousins, and his siblings were born in the United States. Applicant received his bachelor's and J.D. degree in the United States. He has been a homeowner for ten years. He has substantial investments in the United States. He has been very active with the CO and RO charitable organizations. His lengthy membership in the CO and CO's youth leadership program, raises negligible security concerns under the foreign influence guideline. Applicant's employment has always been in the United States. Persuasive evidence from his current managers, former colleagues, and longtime friends, show that Applicant has always demonstrated integrity, trustworthiness, and a determination to follow the rules. The potential conflict of interest concerns defined by AG ¶ 7(b) pale in comparison to Applicant's deep and longstanding relationships and loyalties in United States. AG ¶ 8(a) fully applies for both his second cousin and the deputy consul.

### **Whole-Person Concept**

Under the whole-person concept, I must evaluate an applicant's security clearance eligibility by considering the entirety of Applicant's conduct and all the surrounding circumstances. I now consider my foreign influence findings in the context of the nine general factors of the whole-person concept identified 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 the participation was 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the specific guidelines and nine factors for the whole-person concept.

Applicant and his immediate family members were born and live in the United States. He has been educated in the United States. He has owned his own home since 2004, and has substantial financial investments in the United States. Applicant's managers, his former colleagues, and longtime friends, have praised his trustworthiness, honesty, professionalism, and habit for following the rules. During the security clearance investigation and the hearing, I found Applicant was forthright about his ties to his second cousin. In both his May 2013 e-QIP and June 2013 interview, he credibly detailed the instances in which he saw the deputy consul at cultural sports events of mutual interest in the local area. During the hearing, he credibly testified about the invitation and his attendance with about 25 other people to the deputy consul's home in January 2013 to discuss the Israeli election results. He also explained that he saw the deputy consul in December 2014, at a religious holiday at a Jewish museum. Based on an evaluation of this case in the context of the whole-person concept, Applicant has mitigated the security concerns associated with foreign influence.

### **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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a, 1.b: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Paul J. Mason  
Administrative Judge