DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-02971
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Mary E. Kuntz, Esq.

08/25/2016

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Decision

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RIVERA, Juan J., Administrative Judge:

Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. The mitigating information is insufficient to fully overcome the foreign influence security concerns. Foreign preference security concerns are mitigated. Clearance denied.

Statement of the Case

On December 25, 2014, Applicant submitted his most recent security clearance application. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a security clearance. On June 23, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).[1] Applicant answered the SOR on July 20, 2015, and requested a

[1] The DOD acted under Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

hearing before an administrative judge from the Defense Office of Hearings and Appeals.

The case was assigned to me on March 3, 2016. The DOHA issued a notice of hearing on March 7, 2016, scheduling a hearing for April 4, 2016. At the hearing, Department Counsel offered four exhibits (Government Exhibit (GE) 1 through 4), and Applicant offered seven exhibits (Applicant Exhibit (AE) 1 through 7). AE 8 was timely received post-hearing. All exhibits were admitted into the record without objection. GE 3 (Request for Administrative Notice of facts concerning the government of Israel, and GE 4 (Discovery Letter)) were made part of the record but they are not substantive evidence. DOHA received the transcript of the hearing on April 14, 2016.

Procedural and Evidentiary Rulings

The Government requested that I take administrative notice of facts concerning the government of Israel based on documents published by the federal government. Applicant did not object, and I took administrative notice as requested. Applicant's attorney questioned the current relevance and materiality of the information contained on the "*Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005,*" considering it was published in 2006 – ten years ago. The timeliness of this report relate to its weight, not its admissibility, and I accepted this document for administrative notice.

Findings of Fact

Applicant admitted all the SOR allegations and submitted a one-page letter with comments to refute, extenuate, and mitigate the security concerns. Applicant's SOR and hearing admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 58-year-old senior manager employed by a Federal contractor. Applicant, his siblings, and extended family members, were born in Israel to Israeli parents. Applicant's father is a 90–year-old Holocaust survivor who immigrated to Israel in 1947. He worked for the Israeli government until his retirement, about 25 years ago. He receives a pension from the Israeli government and Holocaust survivor benefits. Applicant's mother passed away in 2002.

Applicant's 54-year-old sister and 50-year-old brother are resident-citizens of Israel. They both served in the Israeli military for their mandatory active and reserve periods. His sister worked for an Israeli municipality. Applicant testified his siblings currently work for private companies and have no connection to the Israeli government or military. Applicant served in the Israeli military on active duty from 1977 through 1981, and in the reserve until 1990. Applicant explained that he complied with his

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for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

mandatory military service. (GE 1) He was discharged with the rank of master sergeant. Applicant maintains contact with Israeli service members he met while in the service.

Applicant completed an associate's degree in electronics before joining the military. He received his bachelor's degree in 1986, and his master's in business administration in 1988. He also became certified public accountant (CPA) in Israel.

Applicant's wife was born in the United States. After high school, she went to study in Israel and exercised her "right of return" under Jewish law and was granted her Israeli citizenship. Applicant met his wife while she was studying in Israel in 1981. They were married in 1983, and his two daughters were born in Israel in 1985 and 1989. Applicant received his "U.S. green card" in 1989, and he and his wife and two daughters immigrated to the United States in 1990. Applicant's son was born in the United States in 1995. Applicant's wife and three children are dual citizens of Israel and the United States. He believes he last voted in Israel before 1989. Applicant became a naturalized U.S. citizen in 1997 and received his U.S. passport that same year.

Applicant purchased a home in the United States in 1992. He became a licensed U.S. CPA in 1993, and worked for private companies between 1993 and 1997. He has worked for federal contractors in the public sector since 1997. He was hired by his current employer, a federal contractor, in 2014. Applicant denied any professional connection to or having worked in Israel since 1990.

Applicant estimated his U.S. net worth to be about $1.2 million, including the value of his home, retirement accounts, stocks and mutual funds, cars, and bank accounts. Applicant denied any proprietary or financial interest in any foreign country, except for an apartment he and his wife own in Israel. Applicant purchased an apartment in Israel around the time he married his wife in 1983. After immigrating to the United States in 1990, Applicant's sister lived in the apartment for some time and then managed the rental of the apartment for Applicant. In 2007, Applicant sold his old apartment and purchased a new apartment with elevator facilities and moved his father into the apartment. Applicant claimed he intends to sell the apartment when his father no longer needs it. Applicant testified that he did not know the value of his apartment, but estimated it was around $150,000. Applicant's wife testified that she believed the apartment was worth between $400,000 and $500,000. (Tr. 95)

Applicant is considered to be an honorable, forthright, and honest person. He is highly regarded among his colleagues for his professional work, and because he has been a leader among his peers. He has held senior positions of responsibility among his colleagues for many years. According to his references, Applicant has a keen analytical mind, and his work is considered the best - exceptionally well done. His supervisors consider him to be a highly trusted member of his company, who is a reliable, dependable, and a loyal American. His references, some of which have known Applicant since the mid-1990s, believe Applicant is deeply rooted in the United States, and that he has no preference for Israel over the United States. His references endorsed his eligibility for a security clearance without reservations. They noted

Applicant has been securing clients' sensitive information and keeping it private for many years. (AE 2, 5-8)

Applicant maintained and used a valid Israeli passport after becoming a U.S. citizen and receiving his U.S. passport in 1997. Between 2006 and 2016, he traveled 12 times to Israel using his Israeli passport to visit his father, family members, and friends. He has a large extended family and tries to visit Israel at least once a year. He noted that under Israeli law, he was required to use his Israeli passport to travel to Israel. He testified he had no notion that his use of the Israeli passport would demonstrate a preference for Israel over the United States. (AE 1)

In addition to maintaining contact with his family in Israel, Applicant maintains contact with at least four long-time Israeli friends. One of his friends worked for the Israeli military industry, apparently as a civilian. Another friend was a military officer who recently retired. Applicant denied knowing his friends' rank or military occupational specialty even though they have been friends since Applicant's days in the Israeli military and them maintaining contact through the years. Applicant surrendered his Israeli passport to his facility security officer (FSO) in February 2016. (AE 2) He also expressed his willingness to renounce his Israeli citizenship.

Applicant noted that he has been living in the United States since 1990. He had to give up his professional license and career in Israel to move to the United States and was required to retest to obtain a U.S. professional certification to practice in the United States. He established and developed his professional life in the United States. Applicant and his wife raised their children in the United States as Americans and they do not intend to return to live or to retire in Israel. Applicant intends to retire in the United States and remain close to his children and their families.

I take administrative notice of the following facts concerning Israel. Israel is a parliamentary democracy with a diversified, technologically advanced economy. Almost half of Israel's exports are high technology, including electronic and biomedical equipment. Israel is a close ally of the United States, and the United States is its largest trading partner.

Israel has been identified as a major practitioner of industrial espionage against U.S. companies. There have been instances of illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel. Israeli citizens have been involved in criminal espionage and export control violations of U.S. restricted, dual-use technology with military applications. Illegal technology transfers, even to private Israeli entities, are a significant concern. Israel has become a major global leader in arms exports, and the United States and Israel have periodically disagreed over Israeli sales of sensitive U.S. and Israeli technologies to third-party countries, including China and Russia.

The U.S. and Israel have close cultural, historic, and political ties. They participate in joint military planning and training, and have collaborated on military

research and weapons development. Commitment to Israel's security has been a cornerstone of U.S. Middle East policy since Israel's creation in 1948.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

> When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying in this case:

> (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;
>
> (2) military service or a willingness to bear arms for a foreign country;
>
> (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
>
> (4) residence in a foreign country to meet citizenship requirements;
>
> (5) using foreign citizenship to protect financial or business interests in another country;
>
> (6) seeking or holding political office in a foreign country;
>
> (7) voting in a foreign election;
>
> (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
>
> (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and
>
> (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant is a dual citizen of the United States and Israel. He was born, raised, and educated in Israel by his Israeli parents and relatives. He immigrated to the United States in 1990, at age 33. Applicant became a naturalized U.S. citizen in 1997, and was issued a U.S. passport shortly thereafter. He possessed an Israeli passport before immigrating to the United States. After becoming a U.S. citizen and receiving his U.S. passport, Applicant renewed his Israeli passport and used it to travel to Israel, in preference to his U.S. passport.

Applicant used his Israeli passport to travel to Israel at least 12 times between 2006 and 2016. He explained that Israeli law required him to travel to Israel using his Israeli passport. He averred he used his U.S. passport exclusively to travel to any other country. At his hearing, Applicant expressed his willingness to renounce his Israeli citizenship. He surrendered his Israeli passport to his FSO in 2016.

Foreign preference disqualifying conditions AG ¶¶ 10(a) and (b) are supported by the evidence. If these conditions are not mitigated, it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship;
>
> (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
>
> (d) use of a foreign passport is approved by the cognizant security authority;
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
>
> (f) the vote in a foreign election was encouraged by the United States Government.

Applicant exercised his Israeli citizenship when he maintained and used an Israeli passport to travel to Israel in preference of his U.S. passport. He received privileges and benefits reserved for Israeli citizens, including that of owning property in Israel.

Applicant was made aware of the Government's concerns raised by his possession and use of an Israeli passport, and he surrendered the passport to his FSO.

He testified that he was not aware his use of the Israeli passport would indicate a preference for his Israeli passport. Applicant's surrendering his Israeli passport mitigates the security concerns alleged under Guideline C.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> [I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

The guideline indicates three conditions that could raise a security concern and may be disqualifying under AG ¶ 7 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;
>
> (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; and
>
> (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's father, siblings, and extended family members are citizens and residents of Israel. His father retired after being employed by the Israeli government and receives a retiree pension and Holocaust survivor benefits. Applicant and his siblings served in the Israeli military. He maintains contact with friends who are citizens and residents of Israel, including a retired military officer. Applicant's wife and children are dual citizens of Israel and the United States. Applicant owns an apartment in Israel, purchased in 2007, with an estimated value between $150,000 and $500,000.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in

a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[2]

Applicant has frequent contacts and a close relationship of affection and obligation with his father, siblings, extended family members, and friends living in Israel. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Israeli agents or individuals operating in Israel may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Israel create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through his family members in Israel.

The Government produced substantial evidence raising these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

> (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
>
> (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
>
> (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;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
>
> (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

[2] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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

Applicant is a dual citizen of the United States and Israel. He was born in Israel and immigrated to the United States in 1990, at age 33, with his wife and two daughters. He was raised and educated in Israel by his Israeli parents and relatives. He completed and MBA and was a certified CPA before he immigrated to the United States.

Applicant has been working for a government contractor since 1997. He is considered to be a top performer and was lauded for his professionalism, leadership, knowledge, and technical abilities. He is considered to be an honorable, forthright, and honest person. He is highly regarded among his colleagues for his professional work and because he has been a leader among his peers. His supervisors consider him to be a highly trusted member of his company, who is a reliable, dependable, and a loyal American. His references, some of which have known Applicant since the mid-1990s, believe Applicant is deeply rooted in the United States, and that he has no preference for Israel over the United States. His references endorsed his eligibility for a security clearance without reservations. They noted Applicant has been securing clients' sensitive information and keeping it private for many years.

Applicant testified that all of his financial and property interests (except for an apartment he owns in Israel) are in the United States, including a home he purchased in 1992, bank accounts, and retirement and investment accounts. His estimated U.S. net worth is around $1.2 million. Applicant owns an apartment in Israel with a value between $150,000 and $500,000. He explained he would sell the apartment when his aging father no longer needs it. He denied having any other financial or property interest in any other foreign country including Israel. Although Applicant expressed his willingness to renounce his Israeli citizenship, I have closely scrutinized his offer and afforded it less weight as it is clear that he would like to continue traveling to Israel to visit his family, and he still owns an apartment in Israel.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family members living in Israel. Although there is no evidence that Israeli government agents, or other entities, have approached or threatened Applicant or his family living in Israel, he is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against him when he visits Israel, or through his family members living in Israel.

Considering Israel's government, its relationship with the United States, and its history of espionage practices against the United States, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Israeli citizens and living in Israel] could create a risk for foreign influence or exploitation." AG ¶¶ 8(a) and (b) have limited applicability and do not mitigate the foreign influence concerns.

Applicant noted that he has been living in the United States since 1990. He established and developed his professional life in the United States. Applicant and his wife raised their children in the United States as Americans and they do not intend to return to live in Israel. Applicant intends to retire in the United States and remain close to his children and their families. Applicant references testified that Applicant and his family are deeply rooted in the United States and that he has never demonstrated any preference for Israel. Applicant promised to divest himself of the apartment he owns in Israel when his father no longer needs it.

Notwithstanding, the risk of coercion, persuasion, or duress are significant because Israel has been identified as a major practitioner of industrial espionage against U.S. companies. There are documented instances of illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel. Israeli citizens have been involved in criminal espionage and export control violations of U.S. restricted, dual-use technology with military applications. Illegal technology transfers, even to private Israeli entities, are a significant concern because the United States and Israel have periodically disagreed over Israeli sales of sensitive U.S. and Israeli technologies to third-party countries, including China and Russia.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines C and B in my whole-person analysis. I considered that Applicant lived in Israel the first 33 years of his life and in the United States during the most recent 25 years. He has distinguished himself working for government contractors since 1997. Applicant considers the United States his home and he considers himself an American. He has an outstanding reputation as a loyal American and a top-notch professional.

Notwithstanding, Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. The mitigating information taken together is insufficient to fully overcome the foreign influence security concerns. Foreign preference security concerns are mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the foreign influence and foreign preference security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

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

Conclusion

In light of all of the circumstances, 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.

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JUAN J. RIVERA
Administrative Judge