



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00605

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

03/22/2017

**Decision**

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

**Statement of the Case**

On August 21, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) regarding his eligibility for a security clearance.<sup>1</sup> In a timely response, Applicant admitted the allegations raised under Guideline B and Guideline C, and requested a hearing. I was assigned the case on October 28, 2016. On January 23, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for February 28, 2017.

The hearing was convened as scheduled. The Government offered two documents, which were accepted into the record without objection as exhibits (Exs.) 1-2. Applicant gave testimony and offered seven documents, accepted into the record as Exs. A-G, including a request for administrative notice concerning certain facts related to the State of Israel (Israel). The transcript of the proceeding (Tr.) was received on March 8, 2017, and the record was closed. Based on a thorough review of the case file,

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<sup>1</sup>The action was taken under 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 within the DOD on September 1, 2006.

I find that Applicant carried his burden in mitigating security concerns arising under Guideline B and Guideline C.

### **Procedural and Evidentiary Rulings**

The Government requested I take administrative notice of information regarding Israel. Applicant made a similar request, and offered what was accepted as Ex. A for consideration. After reviewing the documents submitted, as well as official documents issued by the United States State Department and other frequently cited country information offered in these proceedings, I take administrative notice of the following:

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, and may be directed at American interests. The U. S. State Department advises U.S. citizens to take due precautions when traveling to the West Bank, Gaza, and Israel.

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. The Government notes that United States-Israeli defense, diplomatic, and economic cooperation has been close for decades. U.S. aid for Israel has been designed to maintain Israel's qualitative military edge over neighboring militaries since Israel must rely on better equipment and training to compensate for a manpower deficit in any potential regional conflict. Arms sales, information sharing, and co-development of technology between the United States and Israel raises questions about what Israel might do with the capabilities it acquires. To minimize any such concerns, the United States enacted the Arms Export Control Act (AECA) that specifically enumerates the purposes for which foreign governments can use U.S. military articles and limits their ability to transfer the products to third-parties without prior consent of the U.S. President.

The Government also cites to the 1986 case of Jonathan Pollard, who pled guilty to selling classified information to Israel; the 2005 Lawrence Franklin case, where the individual pled guilty to disclosing classified information to an Israeli diplomat and two lobbyists; and a 2011 case where a U.S. Government scientist pled guilty to attempted espionage, believing he was providing classified information to an Israeli information officer. (Ex. 3, Request for Administrative Notice at 5) In addition, the Government cites to five source documents, ranging from 2015 materials from the Congressional Research Service, the U.S. Department of Justice, and the U.S. Department of

Commerce; a 2014 document from the U.S. Department of State concerning travel information; and a 2006 Office of National Counterintelligence Executive Annual Report.

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. 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.

### **Findings of Fact**

Applicant is a 33-year-old man born in Israel, but also a United States citizen due having a parent of United States citizenry. He is a registered United States voter and has voted in federal and state elections since coming to the United States to settle permanently in about 2005. He has worked as a security researcher for the same entity since 2010. He has been married for a decade to a life-long United States citizen. The couple has one infant child, who is solely a citizen of the United States. (Tr. 17)

Growing up, Applicant's time was constantly split between Israel and the United States, due to his mother's dual United States-Israeli citizenship and constant movement. He found the experience frustrating. (Tr. 17-19) By the age of 13 or 14, he had become something of a shut-in, unable to speak Hebrew or play the popular sports. As a self-described "geek," he felt he did not fit in with his peers. (Tr. 20) He dropped out of high school because, despite excellent grades, he was punished for low attendance. He appealed a failing grade based on low attendance because attendance was not supposed to be part of the grade, but his efforts were rebuffed. This added to his feelings today that he has no happy memories of living in Israel. (Tr. 22) He dropped out of high school, later coming to the United States to earn a General Educational Development (GED) credential.

Applicant came to the United States and earned his GED, but then his mother returned to Israel with him. He was so desirous of being done with his life in Israel, he specifically gained the necessary weight to be found physically unfit for compulsory service in the Israeli Defense Force (IDF). (Tr. 39-41) This brought his service to a premature end. As a result, it also made him constructively unemployable within Israel for failing to honorably serve his compulsory term. While there, he once voted in an Israeli election. Noting that he was 20 and still employable at that time, Applicant stated, "I was told if I went to go vote I could take the day off, so I was like, I'll vote." (Tr. 42) It was the only time he voted in a foreign election. Shortly thereafter, in 2005, he came back to the United States for college.<sup>2</sup> He has remained a U.S. resident ever since.

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<sup>2</sup> There, he graduated at the top of his class and met his future wife. He was offered a scholarship in an esteemed graduate institution where he earned a master's degree in his field. During that program, he started interning for the entity for which he now works. At present, he is studying toward a doctorate.

Applicant's parents have been divorced for as long as he can remember. His father, a citizen of Israel, left the family home. By the time Applicant entered school, Applicant "basically just wrote [his father] off." (Tr. 23) When Applicant was a teen, his father tried to resume a relationship with Applicant, but that reconnection was foiled when his father replaced his most recent companion with a long lost acquaintance. (Tr. 23) Applicant no longer cares to hear of his father's various relationships, including a more recent female friend who is about Applicant's age. Their contact is by telephone. Generally, Applicant tends to not take calls from his father, not caring to hear his father "show off." (Tr. 25) Every month or so, Applicant will accept a call and listen until his father has stopped "talking about whatever horrible thing he has to say. . . ." (Tr. 25) Other than the occasional phone calls, Applicant depicts his relationship with his father as "estranged." (Tr. 26) He describes their telephonic conversations as "one ways communications." (Tr. 47) Applicant last saw his father at Applicant's wedding, about a decade ago.

Applicant was never happy living with his mother or with their relationship. Seeing his wife's relationship with her mother, he does not believe his unhappy maternal relationship was normal. (Tr. 26) He noted that with his mother, "everything is focused on her. Everything is about how things affect her, and there's no concept for other people, to an almost pathological degree." (Tr. 26-27) He cites to her taking him back and forth between the United States and Israel as contributing to his childhood unhappiness. Generally, they speak by phone about once a month.<sup>3</sup> She has no regard for Applicant's own wishes and desires, placing her own wants above his, even in situations involving his wife and child. (Tr. 29-30) Applicant avoids dealing with her as much as he can. (Tr. 31) As with his father, he tries to fend off parental contact by sending them pictures of his baby in lieu of conversation or interaction. (Tr. 31) Having spent much time in this country, Applicant's mother visits the United States occasionally. She attended Applicant's wedding and, more recently, forced herself upon him and his wife as his wife was in the hospital giving birth to their child. (Tr. 29-31, 47)

Neither of Applicant's parents know about his work. He would have no hesitation reporting them for any incident or act he found suspicious. He prefers not having contact with either parent. His familial focus is on his wife and child. He has a paternal aunt for whom he has no respect and scant contact. (Tr. 34-35) He no longer maintains regular contact with her son. (Tr. 50-51) At most, Applicant has sent his cousin electronic pictures of his child in order to avoid any other form of contact.<sup>4</sup> (Tr. 51)

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<sup>3</sup> Telephonic communications have been increased of late, only so they can sort out his late grandmother's affairs. Applicant noted that his best familial relationship was with this woman. She was a citizen and resident of the United States. He considers her house in this country to be his favored childhood home. Applicant also noted that his grandmother specifically left him her home so her daughter, Applicant's mother, would not sell it or squander the proceeds. (Tr. 27).

<sup>4</sup> Applicant repeatedly noted that it is his habit to send photos by mail or Internet in order to avoid contact with family. See, e.g., Tr. 51)

Applicant has no other family or friends in Israel with whom he maintains notable contact. He has some foreign Facebook contacts with whom he might send a note on a birthday. (Tr. 32-33). Time has diminished his knowledge of former contacts. (Tr. 50) He eschews social media and only signs in on Facebook three or four times a year, usually at his wife's urging regarding a specific issue or item. (Tr. 33). Working in the field of security, he is suspicious of using social media. (Tr. 52) His own page is structured so as to avoid individuals and advertisers from culling his data. (Tr. 52)

Applicant does not miss his time in Israel. He has no "endearing childhood memories about friends in Israel." (Tr. 33) One contact from his childhood served in his wedding party. This was at Applicant's mother's insistence, before he realized he was being manipulated by her to do so. (Tr. 33) He is no longer vulnerable to such attempts.

Applicant has no investments or interests in Israel. In the United States, in contrast, he has his family's home and the home he recently inherited from his grandmother. Combined, they represent about \$160,000 in real estate holdings. (Tr. 35-36) All his other financial interests, including his career, are also in the United States.

When he was two years of age, Applicant was granted an Israeli passport based on his birth in that country. He has only used it to travel to Israel because Israeli law requires anyone considered to be an Israeli citizen to only enter and exit that country on an Israeli passport. He last used the document about two years ago, when he took his wife to show her the country. The trip resulted in her acknowledging, "now I know why you hate going.' Because she got to see what my family is like in a native environment." (Tr. 37) He has since relinquished his foreign passport to his security office. (Tr. 37) No longer being able to visit Israel without use of the Israeli passport is "a great way to get out of being pressured" to visit his foreign kin. (Tr. 37) In the future, should he need to go to Israel, he will use his United States passport in conjunction with a letter of transit from the Israeli consulate, a solution suggested to him in response to a letter to his United States Congressman. (Tr. 38) He is willing to have his Israeli passport destroyed. (Tr. 39) It expired in 2015 and he has no plans to renew it. (Tr. 44)

Applicant has no intention to ever move back to Israel. (Tr. 43) He had a difficult childhood there and sees the country as having "a lot of issues." (Tr. 17) He noted that "it doesn't run like we run stuff here." (Tr. 18) Specifically, he has issues with its government, he does not want to be with his biological family there, and he prefers the United States. (Tr. 43-44) He has no preference for Israel. (Tr. 44) He has no contacts with any acquaintances from his time in the IDF or the Israeli government.

## **Policies**

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 used in evaluating an applicant's eligibility for access to classified information. These guidelines are not

inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information must be considered in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 the applicant may deliberately or inadvertently fail to safeguard 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**

Under 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.

Two disqualifying conditions under this guideline are relevant:

AG ¶ 7(a): contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(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.

As a threshold issue, the evidence reflects that interests within Israel have been shown to use United States citizens to obtain protected information. Consequently, on its face, there is a risk that Applicant could be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or be vulnerable to pressure or coercion by any foreign interest. Such evidence demands that the facts be examined in terms of a "heightened risk." Here, Applicant's mother, father, an aunt, a cousin, and former contacts from his youth are citizens and residents of Israel. These facts raise the above-referenced disqualifying conditions. Accordingly, Applicant's mitigation case must be examined through the lens of heightened scrutiny.

In meeting this higher standard of proof and persuasion, an applicant is not required to sever all ties with a foreign country before he can be eligible for a security clearance. What factor or combination of factors will mitigate concerns raised by an applicant with family members in a foreign country, however, is not easily identifiable or quantifiable. An administrative judge's predictive judgment in these types of cases must be guided by a commonsense assessment of the evidence and consideration of the adjudicative guidelines, as well as the whole-person factors set forth in the Directive. A judge's ultimate determination must also take into account the overarching standard in these cases, namely, that any doubt raised by an applicant's circumstances must be resolved in favor of the national interest.

The following mitigating conditions are potentially relevant in this matter:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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.

The country at issue is Israel. Applicant's mother, father, an aunt, and a cousin, plus some contacts from his past, are citizens and residents of Israel. There is no evidence any of these individuals has any nexus with the Israeli government or military, barring the fact the male kin most likely completed compulsory service in the IDF, as regularly required. Regarding his aunt, cousin, and former contacts, Applicant's contacts can best be described as irregular, scant, and casual. They are not close.

Applicant's contacts with his parents are, at best, complicated. He has had and still has what he described as an unhealthy relationship with these two individuals, people he described as being more interested in themselves than they are in him. He has gone from wanting to normalize relations with them to simply minimizing their contact. To avoid disruption and complete acrimony, he occasionally listens to their comments by telephone. Otherwise, he sends them photos of his child to keep them at bay. He is not intimate with them and his contact is haphazard. Indeed, he has gone to extremes just short of barring them from his life to minimize his contact with his parents.

In contrast, Applicant is devoted to his wife of a decade and their new child. He enjoys his profession and his ability to work happily as a "geek." He owns two homes in the United States, maintains his profession in this country, and has built a life here over the past 12 years. He is firmly settled in the one country where he found comfort as a child, namely, the United States, where his late grandmother maintained her home. Given the content and passionate delivery of his testimony, I find it highly unlikely that he would put the interests of his family in Israel over the interests of the United States, his wife, his child, or his life in this country. I find AG ¶ 8(a) through AG ¶ 8(c) apply.

### **Guideline C - Foreign Preference**

AG ¶ 9 sets out the security concern relating to Foreign Preference:

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.

Applicant possesses an Israeli passport, served in the IDF, and voted in an Israeli election. These facts are sufficient to raise:



Disqualifying Condition AG ¶ 10(a):

. . . exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (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; . . . (7) voting in a foreign election.

Mitigating conditions under Guideline C are:

AG ¶ 11 (a) dual citizenship is based solely on parents citizenship or birth in a foreign country;

AG ¶ 11 (b) the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11 (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;

AG ¶ 11 (d) use of a foreign passport is approved by the cognizant security authority;

AG ¶ 11 (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

AG ¶ 11 (f) the vote in a foreign election was encouraged by the United States Government

Dual citizenship is not a bar to a security clearance. However, it is notable that Applicant's United States-Israel dual citizenship is based on a circumstance of his birth. His Israeli passport was obtained when he was a minor. It was surrendered to his security office, it is now expired, and he has no intent to renew it or travel on again travel on a foreign passport. These facts give rise to AG ¶ 11(a), (c), and (e).

Regarding AG ¶ 10(a)(2), although service in the IDF is generally acknowledged as a compulsory obligation of Israeli citizenship, he purposefully and knowingly rendered himself physically unfit in order to discontinue his service as soon as possible. Indeed, he did so to his detriment to the extent it made his constructively barred him from gainful employment in that country.

Regarding AG ¶ 10(a)(7), Applicant admits he voted in a foreign election. Having obtained citizenship in both the United States and Israel at birth, his singular incident of voting in Israel cannot be readily mitigated under AG ¶ 11, alone. However, that act was

obviously the act of a 20-year-old seeking a day off from work, not an conscientious and intentional expression of foreign preference. Since becoming free to support himself and settle permanently in the United States, he has lived in this country and voted in U.S. elections exclusively. These factors are significant under the whole-person analysis.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Specifically, I considered those findings of facts and described above that are relevant in light of the AG ¶ 2(a) adjudicative factors. I have also considered them in light of AG ¶ 2(c) and the considerations set forth under Guideline B and Guideline C.

The record is replete with testimony and evidence demonstrating Applicant's unhappy upbringing, and how it has soured him with regard to both his parents and Israel. His testimony clearly rebuts the assumption that a child has a warm and close relationship with his parents and blood relatives. He supports his sentiments in this regard with credible explanations. He keeps his parents at arm's length, minimizing contact with them as much as he can. His relations with his aunt, cousin, and former acquaintances are just as credibly depicted as distant. Applicant has also gone through great strides to distance himself in other ways from his Israeli family and that country. He has no interest in returning. Applicant has mitigated the security concerns generally associated with foreign influence.

Applicant's relinquished his now expired Israeli passport and he has no intention to renew it. While he was subject to compulsory service in the IDF, he purposefully and knowingly vexed the system by gaining weight and becoming eligible for continued military service. He did so to his disadvantage to the extent his act of not supporting that government constructively barred him from employment in that country. Although 20

years of age at the time, his motivation in voting in an Israeli election on one occasion was completed not to exercise his rights as an Israeli citizen, but as a method for gaining a day off from work. These are not facts that reflect a preference for another country over his clear commitment to the United States. Given all these facts, I find it unlikely that Applicant would be compromised over secure information by his foreign relatives or past life in Israel. Overall, the record leaves me without questions about Applicant's security clearance eligibility.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge