



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



In the matter of: )  
)  
) ISCR Case No. 15-02889  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Sheldon I. Cohen, Esq., Applicant's Counsel

February 13, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On December 8, 2015, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on or about December 31, 2015, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 15, 2016, scheduling the hearing for June 16, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 3, which were admitted. Applicant testified on his own behalf and called five witnesses. The record was left open until August 15, 2016, for receipt of additional documentation. Applicant presented 18 documents, which I marked Applicant's Exhibits (AppXs) A

through R. Department Counsel had no objection to AppXs A~R; and as such, they were admitted. DOHA received the transcript of the hearing (TR) on June 24, 2016.

### **Procedural Rulings**

At the hearing, the Department Counsel and Applicant Counsel both requested I take administrative notice of certain facts relating to Israel. Department Counsel provided a six-page summary of the facts, supported by Government documents pertaining to Israel, identified as GX 3. Applicant's Counsel provided a seven-page summary of the facts, supported by documents pertaining to Israel, identified as AppX N. The supporting documents provide elaboration and context for the summary. I take administrative notice of the facts included in GX 3 and AppX N. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since August of 2014 as a "Senior Scientist." (GX 1 at page 15.) He currently does not have a security clearance. He is married to a dual-national citizen; and has three children, who are also dual nationals. (X 1 at pages 22~28.) Applicant and his immediate family obtained Israeli citizenship during their nearly two-year stay in Israel from August of 2012~June of 2014. (TR at page 87 line 1 to page 90 line 13, at page 95 lines 13~25, and at page 98 line 17 to page 99 line 3.)

### **Guideline C – Foreign Preference**

1.a. Applicant is a native-born American. (GX 1 at page 5.) In 2012, he sought and was granted Israeli "citizenship under Israel's Law of Return" program, "Aliyah." (GX 1 at page 7, and TR at page 107 line 5 to page 109 line 16.) As noted above, he lived in Israel with his family until June of 2014, when they returned to the United States. He has since renounced his Israeli citizenship. (AppX R.)

1.b. While living in Israel, Applicant obtained an Israeli travel document (not a passport as alleged), which been cancelled and surrendered to the Israeli Consulate. (TR at page 161 line 8 to page 163 line 3, and AppX G at pages 1 and 3.)

While living in Israel, Applicant voted in Israeli national and municipal elections. (TR page 132 lines 1~25.) He and his family also accepted Immigration Absorption Benefits from the Israeli government worth about \$16,000. (TR page 96 line 10 to page 97 line 8, at page 119 line 20 to page 120 line 17, at page 121 line 16 to page 126 line 18, and AppX Q.)

## **Guideline B – Foreign Influence**

2.a. During Applicant's nearly two-year residency in Israel, he worked for "a start-up company, doing R&D (Research and Development)." (TR at page 126 line 19 to page 128 line 8.) He was "the engineering manager," and his employer did work for "the Israeli Ministry of Defense." (*Id.*)

2.b. Applicant has about 14 friends, as delineated by his very comprehensive list found at his Exhibit K, who are citizens and residents of Israel. His contact with these foreign nationals ranges from "a few times per year," to "very rare." (Exhibit K, see *also* TR at page 137 line 24 to page 152 line 12, and at page 167 lines 12~25.) Six of these individuals he describes as being a "work friend." (*Id.*)

2.c. Applicant has about seven relatives, as delineated by another very comprehensive list found at his Exhibit L, who are citizens and residents of Israel. All but one of these relatives are also U.S. citizens. (Exhibit L.) His contact with these relatives ranges from "a few times per year," to "rare." (*Id.*, see *also* TR at page 152 line 13 to page 156 line 21, and at page 168 lines 1~12.) One of his dual-national relatives is the "Chief Archivist at the Israel State Archives." (Exhibit L.) Applicant contacts this 60 or so year old "2<sup>nd</sup> cousin" (Applicant is unsure of his exact age), "one or two times per year by email; once every 1 or 2 years in person." (*Id.*)

I also take administrative notice of the following facts:

Israel remains the leading recipient of U.S. military financing, receiving over \$20.5 billion since 2009. . . . According to the U.S. Department of State, since Israel was founded in 1948 it has become and remains America's most reliable partner in the Middle East. . . . The United States is Israel's largest single trading partner. . . . Israel is a parliamentary democracy in which the prime minister is head of government and the president is a largely ceremonial head of state. (AppX N.) However, there is a significant documented history of classified information and controlled technologies being illegally imported by Israel. (GX 3.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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. 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 EO 10865 provides that adverse 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 relating to the guideline for Foreign Influence is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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 the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has a continuing relationship with his Israeli relatives, one of whom is "a Chief Archivist at the Israel State Archives." Applicant also worked for a company that had the Ministry of Defense as a client. Six of his friends still work for that company. These associations create that heightened risk. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

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

(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 interests in favor of the U.S. interests.

I find that none are applicable, in light of his continuing relationships, noted above.

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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable 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:

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

(7) voting in a foreign election.

Applicant was a native-born U.S. citizen when he sought dual citizenship with Israel. He exercised his Israeli citizenship when he obtained an Israeli travel document, accepted Immigration Absorption Benefits from the State of Israel, and voted in Israeli elections, despite that fact that he was a United States citizen at that time and had a U.S. passport. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

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

Applicant has, indeed, renounced his Israeli citizenship. However, AG ¶ 11(b) is not mitigating with respect to this guideline. Applicant lived in Israel for nearly two years as an Israeli, despite also being a native born American, and exercised his rights as an Israeli citizen by voting.

### **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 the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Applicant is well thought of both at work and in his community as evidenced by the testimony of his spouse, his supervisor, two rabbis, and a family friend. However, overall the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Preference and Foreign Influence security concerns.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

### **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.

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Richard A. Cefola  
Administrative Judge