



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-04810

Appearances

For Government: Andre Gregorian, Esq. Department Counsel
For Applicant: *Pro se*

08/11/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On January 19, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).¹ The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017. A notice of hearing was issued on March 23, 2017, scheduling the hearing for May 18, 2017. Government Exhibits (GX) 1-4 were

¹At the hearing, the Government withdrew SOR allegations ¶ 1.a-1.d under Guideline C allegation.

admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. The transcript was received on May 30, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural Issues

Department Counsel requested that I take administrative notice of relevant facts about Israel. The request and supporting documentation are in the record as Hearing Exhibit I. Applicant did not object to the document. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations under Guideline B. He also provided explanations about the allegations. He also admitted the allegations under Guideline C. (AX A)

Applicant is a 54-year-old professor (chair of the computer science department) at an American university working on a defense project. He was born in Israel in 1963 and came to the United States in 1995. He is married and has three children who were born in the United States. He became a naturalized citizen in 2004. In 1985, Applicant obtained an undergraduate degree in Israel. After that, he obtained his Master's in 1990, and in 1995, his Doctorate, in Jerusalem. He has worked for his current employer since 1995. Applicant completed his security clearance application in June 16, 2014.² (GX 1)

Applicant is also the co-founder and chief science officer for two non-governmental companies which provide global networking and consulting for secure networking. (Tr. 23) The two companies serve the media industry. (Tr. 28)

Foreign Influence

The SOR alleges that Applicant's two brothers, mother and father and mother-in-law and father-in-law are citizens and residents of Israel. Applicant's spouse, and three children reside in the United States with him and are U.S. citizens. Applicant and his wife are dual citizens of Israel and the United States. He served on active duty in the Israeli military from 1985-1995, beyond the three year mandatory service. He left the military as a Captain. Applicant acknowledged the existence of his relatives in Israel, but denies that they create a risk of foreign influence because none of his relatives are affiliated with the Israeli government. (GX 2)

Applicant's wife and three children live with him in the United States. They are U.S. citizens. However, both Applicant and his spouse consider themselves dual

²Applicant emphasized that he was asked to obtain a security clearance to best serve the United States due to his world-wide expertise..

citizens. He holds a U.S. passport, as well as an Israeli passport. He travels to Israel every year. He will not renounce his Israeli citizenship. (GX 1)

Applicant's mother and father are retired. They are both in their 80s. Applicant speaks to them almost daily. He sees them when he visits Israel every year. (Tr. 32) He disclosed on his security clearance application his two brothers are citizens and residents of Israel. Applicant talks to them weekly and visits them each year in Israel. None of them have knowledge of his work. They were both in the Israeli military. He noted that they are not affiliated with any political organization. (Tr. 34)

Applicant's mother-in-law and father-in-law are citizens and residents of Israel. His mother-in-law visits the United States each year, but Applicant advised that due to her age, she may not be able to continue to do so. Applicant's wife maintains contact with her mother. (Tr. 40)

Applicant has no financial interest or property in Israel. Applicant and his wife had bank accounts in Israel, but they are now closed. He has not provided financial support to any foreign national. He has had no foreign government contact. He also stated that he had no relatives associated with any foreign government. Applicant remains in touch with friends with whom he was in the Israeli military. As an academic, he is in touch with many international professors. (GX 2)

Applicant stated that he has \$1.6 million in liquid assets and another \$1.8 million in other assets. He owns two companies. He owns his U.S. home. He also has significant savings in his bank accounts. He and his wife earn about \$550,000 a year. (Tr.) His wife is a co-founder of one of the the non-governmental agencies referenced above. She is the chief technology officer for the non-governmental agency. (AX C)

Applicant submitted a letter of reference from a retired Colonel, who advocates for a security clearance for Applicant due to an experimental project that could be crucial to the Government. Applicant has the technical leadership and expertise to conduct future experimental projects. (AX B)

When Applicant was questioned, he stated he visits friends from his military days. He sees them when he visits Israel. Applicant emphasized that he has no confusion about his loyalty to the United States. He also noted that he would prefer it if one of his American PhD students be given a security clearance. (Tr. 22) But the U.S. Government wants Applicant to be involved in a project which requires the security clearance. (Tr. 22)

Administrative Notice

DOHA administrative judges may accept for administrative notice uncontroverted, easily verifiable facts regarding a foreign country derived from official U.S. Government reports, the official position of appropriate federal agencies, or the pertinent statement(s) of key U.S. Government officials. The source document(s) (or, at

a minimum, the relevant portion(s) of the source document should be included in the record for potential appellate review regarding the accuracy and relevancy of the fact(s) administratively noticed. See *generally*, ISCR case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

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. 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 United States 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.

Israel generally respects the rights of its citizens. When human-rights violations have occurred, they have involved Palestinian detainees or Arab-Israelis. Terrorist suicide bombings are a continuing threat in Israel, and U.S. citizens are advised to be cautious.

Israel considers U.S. citizens who also hold Israeli citizenship or have a claim to dual nationality to be Israeli citizens for immigration and other legal purposes. U.S. citizens visiting Israel have been subjected to prolonged questioning and thorough searches by Israeli authorities upon entry or departure to Israel.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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(d) 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests, or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U. S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Three disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “contact, regardless of method, 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.” AG ¶ 7(a). In addition, AG ¶ 7(b) provides that “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology.”

AG ¶¶ 7(a) and 7(b) are raised by Applicant’s relationship with his relatives who are citizens and residents of Israel. His spouse and three children are U.S. citizens and they reside with Applicant in the United States. However, Applicant and his spouse consider themselves dual citizens of Israel and the United States. AG ¶ 7(e) which provides that “shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion” is also raised.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is

significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The Government submitted country summaries of Israel in its request for Administrative Notice. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationship with his family members living in Israel does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in Israel.

I conclude that Applicant's ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with his relatives in Israel creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives in Israel.

The mere possession of close ties with a family member in Israel is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. *See generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case NO. 99-0424 (App. Bd. Feb. 8, 2001).

While there is no evidence that intelligence operatives, terrorists, or criminals from within Israel seek or have sought classified or economic information from or through Applicant or his family, it is not possible to rule out such a possibility in the future. Applicant's wife and three children who reside in the United States with him are U.S. citizens, but Applicant's relatives are citizens and residents of Israel. The Government produced evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

Security concerns under this guideline can be mitigated by showing that "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 United States." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United

States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶ 8(b).

AG ¶¶ 8(a), and 8(b), are applicable. Applicant’s relatives have no connections to the foreign government. Applicant maintains contact with them, and he travels to Israel every year. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1995. He has worked for an American university and has been assigned to work on projects for the U.S. Government in the past years. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Israel with extensive terrorist activities, and human rights issues. Even though Israel is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Israel could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Israel could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. He left Israel to pursue his academic career in the United States. He is a naturalized U.S. citizen and has been in the United States for many years. Due to his specific technological expertise, the United States Government asked Applicant to obtain a security clearance so that he could continue to help with certain projects. Applicant was candid and stated that he would be quite happy with not having a security clearance. His life is in the academic world. Applicant’s wife and three children who are U.S. citizens live with him in the United States. He has no financial interests in Israel. He has firm ties to the United States and considers it his home.

Applicant’s loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. Applicant has met his heavy burden to show that his relatives living in Israel do not cause a security concern.

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 an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d)

- (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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 54 years old. He is an educated man who is a naturalized U.S. citizen. He has a wife and three children who live here with him as U.S. citizens. He has spent many years working in academia. He has been asked to help with certain U.S. projects that require a security clearance.

Applicant has lived in the United States since 1995. His professional and personal life are in the United States. He owns two companies that provide global networking for media services.

Applicant chose to leave Israel. He has no financial interests in Israel. His career is in the United States. Although he has relatives in Israel and has familial ties to them, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His relatives do not know the specifics of his work.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guideline B (foreign influence). Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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	WITHDRAWN
Subparagraphs 1.a-1.d:	Withdrawn
Paragraph 2, Guideline B:	FOR APPLICANT

Subparagraphs 2.a-2.e:

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. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge