



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



In the matter of: )  
(Redacted) ) ISCR Case No. 15-05466  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: Peter H. Noone, Esq. and Jennifer Barrett, Esq.

04/12/2017

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Foreign preference concerns are not established by Applicant's attendance in a ten-month religious seminary program in Israel. The risk of undue foreign influence that exists because his sister is a dual citizen of Israel and the United States residing in Israel and by the Israeli citizenship and residency of more distant relations is mitigated by his overwhelming ties to the United States. Clearance is granted.

**Statement of the Case**

On March 2, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence, and explaining why it was unable to grant or continue a security clearance to Applicant. The DOD CAF acted under Executive Order 10865 (EO), *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) effective within the DOD on September 1, 2006.

Applicant received the SOR on March 7, 2016, and on March 10, 2016, he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 24, 2016, he submitted a detailed response to the SOR allegations. On July 14, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 25, 2016, I scheduled a hearing for September 28, 2016.

The hearing was held as scheduled. One Government exhibit (GE 1) and ten Applicant exhibits (AEs A-J) were admitted without any objections. Applicant and two witnesses testified, as reflected in a transcript (Tr.) received on October 12, 2016. The SOR was amended at the Government's motion to conform to the evidence, as noted below. Additionally, the Government requested that I take administrative notice of several facts pertinent to Israel.<sup>1</sup> The Government's request for administrative notice, dated May 5, 2016, was based on the Congressional Research Service's *Israel: Background and U.S. Relations*, dated June 1, 2015; on a U.S. Justice Department publication *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases*, updated January 23, 2015; on the Office of the National Counterintelligence Executive's (NCIX) *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*; on a U.S. Commerce Department publication of July 2015 concerning investigations of export control and anti-boycott violations; and on the U.S. State Department's *Country Information-Israel, the West Bank and Gaza* updated September 11, 2014.<sup>2</sup> I agreed to take administrative notice, but held the record open after the hearing for Applicant to submit a response.

On October 12, 2016, Applicant submitted through his attorneys a Request for Administrative Notice. His request was based on two publications of the Congressional Research Service, i.e., *Israel: Background and U.S. Relations in Brief*, dated September 16, 2016, and *Aiding Israel After the Iran Deal: Issues for Congress*, dated October 30, 2015; on remarks by then Secretary of State John Kerry with Israeli Prime Minister Benjamin Netanyahu on June 27, 2016; and on a White House press release of March 1, 2015, *5 Things You Need to Know About the U.S.-Israel Relationship under President Obama*. Additionally, Applicant requested that I consider three DOHA administrative judge decisions involving applicants with ties to Israel. On October 13, 2016, I advised both parties that I would accept Applicant's Request for Administrative

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<sup>1</sup>The Government's formal request and the attached documents were not admitted into evidence but were included in the record. I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

<sup>2</sup>For some of the source information referenced by the Government in its Request for Administrative Notice-Israel, I was provided extracts but given the URL where the full document could be accessed. Some of the information relied on by the Government, such as the NCIX's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*, was reviewed for historical information because of its age. It is noted that the State Department issued *Israel, The West Bank and Gaza Travel Warning* on August 23, 2016, and updated its *Country Information-Israel, the West Bank, and Gaza* on February 21, 2017. Updated information can be accessed on the U.S. State Department's website at <https://travel.state.gov/content/passports/en/country/israel.html>.

Notice, but also that the DOHA Hearing Office cases are not binding on other Hearing Office judges or the Appeal Board. See ISCR Case No. 15-04472 at 4 (App. Bd. Feb. 9, 2017).

### **Summary of SOR Allegations**

The SOR initially alleged under Guideline B, foreign influence, that Applicant's sister is a dual citizen of Israel and the United States residing in Israel (SOR ¶ 1.a) and that Applicant has family members who are resident citizens of Israel, including one who is a member of Israel's parliament and another who is a commander in the Israeli reserves (SOR ¶ 1.b). Under Guideline C, foreign preference, Applicant allegedly attended school in Israel from September 2005 to June 2009 and from August 2009 to June 2010 (SOR ¶ 2.a).

In a detailed response (Answer) to the SOR allegations, Applicant admitted that his sister is a dual citizen residing in Israel; that his great-uncle served in Israel's parliament from 2013 to 2015; and that his mother's cousin is married to a commander in the Israeli reserves. He denied any vulnerability to foreign influence because of these family ties to Israel, citing his U.S. citizenship from birth and his life being firmly rooted in America. As for the foreign preference concerns, Applicant denied that he attended school in Israel from September 2005 to June 2009, but admitted that he took a gap year after high school and attended a religious program in Israel from June 2009 to August 2010. He explained that the program was designed to educate American students about their Jewish heritage and was held on a campus in Israel owned by a U.S.-based private university. He likened the program to study abroad, and he gave no consideration to establishing a life in Israel.

At the hearing, the Government moved to amend the Guideline C allegation to strike the dates of September 2005 to June 2009 from SOR ¶ 2.a. and to allege that Applicant attended school in Israel from August 2009 to June 2010. I granted the motion and amended the SOR with no objection from Applicant.

### **Findings of Fact**

Applicant's admissions to his family connections in Israel and to his schooling in Israel from August 2009 to June 2010 are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 25-year-old native-U.S. citizen with a bachelor's degree awarded in June 2014. (GE 1; AE F; Tr. 62.) During the summer in 2014, he worked full time as a senior staff assistant at a U.S. university. In October 2014, he began his current employment with a university-affiliated laboratory that has contracts with the DOD. (GE 1.)

Applicant is the eldest of five children born to U.S. native citizens active in their synagogue, local politics, and community charities in the United States. His parents raised him and his siblings with a sense of patriotism by celebrating U.S. holidays as a family. With his parents' encouragement, Applicant was involved in youth baseball and hockey programs, and in a charity that supported children with cancer. (AEs G, J; Tr. 67-71, 89.) During his youth, Applicant traveled to Israel six or seven times with his immediate family for events involving his extended family, including weddings and bar mitzvahs. (Tr. 75-76.)

Applicant attended a private high school in the United States from September 2005 to June 2009. (AE D; Tr. 46, 73.) An honor student, he was involved in a variety of activities, including several sports and mock trial, mathematics, robotics, and debate teams. (AE D.) For college, he was accepted into a prestigious private university in the United States. In April 2009, Applicant asked the university to defer his admission for one year so that he could attend a post-high-school program in Israel designed for American Jewish students to learn about their heritage and religion in historical context. (AEs A, E, J; Tr. 80.) His request for a gap year was granted. (AE E; Tr. 80.)

Applicant attended a religious seminary program in Israel from late August 2009 to late May 2010. (Tr. 80.) The program was affiliated with a U.S.-based private university and designed to accommodate students who would be returning home to a secular college in the United States. (AE A; Tr. 50-51, 78-79.) Several of Applicant's classes were taught by graduate and rabbinical students from the U.S.-based private university and the instruction was in English. There were no Israeli students enrolled in the program. (Tr. 77, 79.) While Applicant was in Israel, he had some contact with extended family members, although it was not frequent. (Tr. 82.) He had no contact with Israeli government employees during his stay in Israel. (Tr. 117.)

As he had always intended (Tr. 81, 110), Applicant began his university studies in the United States in September 2010. He joined a fraternity and was involved in some student organizations and activities on campus. (AE F; Tr. 49, 83-85.) Among his activities, he started a food club on campus. (AE J pp. 13-14.) He also worked as an assistant events coordinator, as an undergraduate researcher, and as a teaching assistant in college. (GE 1; Tr. 86-87.) In June 2014, Applicant was awarded a Bachelor of Science degree with a cumulative grade point average of 4.4 on a 5.0 scale. (AE F.) After graduation, Applicant began working as a researcher and senior staff assistant at a university laboratory where he had worked for three summers. He left that job for his current employment in October 2014. (GE 1; Tr. 87-88.)

Applicant was placed in a group at work with programs intended to further national security. (Tr. 88.) On October 17, 2014, Applicant completed and certified electronically to the accuracy of a Questionnaire for National Security Positions (SF 86). He signed the SF 86 on October 30, 2014. Applicant disclosed that the elder of his two sisters is a dual citizen of Israel and the United States residing in Israel. She worked at a nursery school and her Israeli citizenship application was approved in July 2014. Applicant indicated that he had weekly contact with his sister by telephone or electronic

media. Applicant listed additional foreign contacts, some from college but also including some extended family members in Israel related to his mother through marriage. He disclosed annual in-person contact with the spouse of one of his mother's cousins, who married into the family around 2006. Based on what Applicant was told by his sister in Israel, he reported that this extended family member (Israeli relative X) was a commander in the Israeli reserves. (Tr. 104-106.) Applicant also indicated that he had annual in-person contact with his great-aunt's husband, who was then a member of Israel's Knesset. Applicant listed his foreign travel for tourism to Europe in September 2008, April 2010, and June 2010; to Israel for his education (gap-year program) from August 2009 to June 2010; to Israel for tourism and to visit family in January 2011, in April 2012, and in April 2013; to Canada for tourism in January 2014; and to Israel to visit family in October 2014. During the October 2014 visit, his great-uncle arranged for a private tour of the Knesset building for him and his family. (Tr. 124.) Applicant reported no contact with any foreign intelligence, terrorist, security, or military organizations apart from his contacts with those family members who had fulfilled their compulsory military service in Israel. He reported no contact with law enforcement or with customs officials beyond routine border processing. (GE 1.) Applicant obtained most of the information concerning their extended relatives from his sister, who was visiting their family in the United States when he completed his SF 86. (Tr. 101, 118.)

Applicant's sister went to Israel in 2011 to attend a ten-month seminary program through an accredited Israeli college with transferable college credit to the United States. After the program, she spent four months in the United States before returning to Israel for college toward her degree in English literature and a teaching certificate in education that is transferable to the United States. (AE G; Tr. 90.) To qualify for free tuition, a work permit, and Israeli national health insurance, she obtained her Israeli citizenship and residency status in July 2014. She does not intend to renounce her U.S. citizenship. She was exempted from serving in the Israeli military. As of September 2016, she was working full time teaching English at a secondary school in Israel. She intends to live in the United States in the future. (AE G.) According to Applicant, his sister's spouse is from the United States but pursuing his law degree in Israel. He intends to take a state bar examination in the United States next year. (Tr. 91.)

Applicant's sister in Israel has contact with Applicant approximately twice a month, usually by telephone but on occasion by text messaging. She sees her great-aunt and great-uncle approximately once or twice a month. She is aware that her great-uncle served in Israel's Knesset for approximately two years, but she has observed him to be a loyal supporter of the United States and its relationship with Israel. Applicant's sister indicates that Applicant does not have a close relationship with their great-uncle. Applicant has seen their great-uncle only at family gatherings in Israel for weddings or holidays, and their conversations were brief. Applicant's sister believes Applicant could never be influenced by their great-uncle. As for Israeli relative X, who is their great-uncle's son-in-law, Applicant's sister indicated that he currently works in engineering for a camera company in Israel. She does not believe that he ever held a high-ranking position in Israel's military, although he had attended commander training and served as a commander for a short period. She sees Israeli relative X once every other month, but

she has a “minimal and distant” relationship with him. Based on her observations, Applicant has little contact with Israeli relative X apart from polite greetings at large family gatherings in Israel. She does not believe Applicant could be influenced by this relative. In her opinion, Applicant’s “entire life is rooted in the United States,” and he could not be influenced to take any action against U.S. interests. (AE G.) Apart from exchanging greetings and family news when they meet at family gatherings in Israel, Applicant denies any contact with Israeli relative X, who lacks fluency in English. (Tr. 105.)

At the request of Applicant’s sister, their great-uncle in Israel provided a declaration attesting to his former service in Israel’s Knesset for approximately two years. He was not part of any defense-related committees and has never discussed politics or his parliamentary duties with Applicant. He currently serves as director of a center at the Israeli university attended by Applicant’s sister. His contact with Applicant has been very brief, limited to greetings and conversations about family matters, and only at family gatherings in Israel. He knows where Applicant attended college but has not discussed Applicant’s education with him. Applicant’s great-uncle denied any knowledge about Applicant’s current employment or his work duties. (AE H.) Applicant believes that his great-uncle may know that he is under consideration for a national security position, although he did not tell his great-uncle that he has applied for a security clearance. (Tr. 120-122.)

Israeli relative X provided a statement (translated by Applicant’s sister) about his military service for Israel and his relationship with Applicant. He served in the Israeli military to fulfill his compulsory military service and is currently a member of the Israeli Defense Force Reserves. He denied ever holding a high-ranking position in Israel’s military. He has only a distant relationship with Applicant. Their contact has been limited to large family gatherings when Applicant has been in Israel with his family. They have exchanged only casual greetings because of his lack of English fluency, and he knows no details about Applicant’s personal life, including his current employment. (AE I.) Applicant has had no discussions with Israeli relative X about his military service for Israel. Applicant thinks his sister was mistaken when she told him that Israeli relative X was a commander in the Israeli reserves. (Tr. 107.) To Applicant’s knowledge, Israeli relative X is unaware that he is under consideration for a security clearance. Applicant described Israeli relative X as “a much more distant relation.” He talks to him less than to his great-uncle. (Tr. 121.)

Once every one to two years, Applicant travels to Israel with his parents and siblings to see his sister. He also sees extended family members during those trips, but his conversations with them are limited to pleasantries. (Tr. 76-77, 94, 98.) With the notable exception of his sister, Applicant does not maintain any contacts independent of his parents to any Israeli residents or resident citizens. (Tr. 133.) Two to three times a year, his sister visits their parents in the United States. Applicant went to Israel in April 2016 for eight days for a dinner party for a first cousin, who had gotten married. (Tr. 132.) Applicant stayed with his parents and his two youngest siblings when in Israel. (Tr. 125-126.) Applicant had only routine contact with Israeli officials. (Tr. 129.)

Applicant saw his sister most recently in July 2016. His sister was in the United States visiting their parents, and Applicant went home for the weekend. (Tr. 119.) His sister and her spouse visited Applicant once in his current locale. (Tr. 95.) His sister knows of Applicant's occupation and employer, but not the details of his work. (Tr. 123-124.)

Applicant has no financial assets outside of the United States. He owns no real estate. (Tr. 111, 129.) Applicant has a girlfriend whom he has been dating for about four years. A U.S. native citizen, she is pursuing medical studies. (Tr. 53, 116-117.) Applicant intends to pursue his graduate education locally. (AE J p. 12; Tr. 53.)

Raised to be politically engaged, Applicant has voted in several local, state, and federal elections since he turned 18. (Tr. 63-64.) He is registered to vote in his current state of residency. (AE B.) He registered with the U.S. Selective Service System in July 2009 when he was 17. (AE C; Tr. 66.) He has a current U.S. passport that was issued in February 2013, and he has never held citizenship or a passport with a foreign country. (GE 1; Tr. 67.) Applicant still participates in running events to raise funds for charitable purposes. (Tr. 72.)

Whenever anyone outside of the laboratory asks Applicant about his employment, he does not identify the laboratory as his employer. Instead, he indicates that he works at the affiliated university and that he cannot talk about his work because it involves proprietary information. (Tr. 99.) He expressed his commitment to maintain the nation's secrets if granted security clearance eligibility. (Tr. 111.)

### **Character References**

Applicant's direct supervisor at the laboratory attested to Applicant's dedication, often working overtime to perform research tasks. Applicant has shown himself to be particularly sensitive to the security concerns surrounding his work by initiating conversations with his supervisor about what he could relate to others outside the laboratory concerning his work. His supervisor has no reason to believe that Applicant has any non-U.S. loyalties or that he would be any less diligent in protecting classified information. (AE J p. 2.)

Applicant's officemate at work testified on his behalf. A longtime employee of the defense laboratory, she described Applicant as "the all-American boy." Applicant has an excellent reputation at work. This co-worker trusts Applicant completely. She is aware that Applicant's sister and some of his extended family members live in Israel. Applicant does not share much information about his sister, and she has not observed Applicant to have ongoing contact with the extended family members. (Tr. 31-34.)

A work colleague, who holds a top secret clearance and currently collaborates with Applicant on a printing program, was briefed by Applicant about the issues of security concern. This co-worker is confident that Applicant "is a born-and-raised loyal

U.S. citizen whose application is being held up by simple misunderstandings.” Applicant has shown himself to be very trustworthy and conscientious about ensuring that he is not exposed to classified information. (AE J p. 3.)

A former co-worker at the laboratory likewise found Applicant to be a conscientious, well-organized, diligent worker, who made “indispensable” contributions to their project. Applicant had expressed to him a desire to pursue his doctorate degree in the area in the future. Applicant has shared that he is closely bound to his local community. This friend is aware of the dual citizenship of Applicant’s sister and of the Israeli citizenship and residency of Applicant’s distant relatives, but he knows Applicant to be patriotic and have longstanding ties to the United States. (AE J p. 5.)

An alumnus of Applicant’s university, who has been employed in DOD-sponsored research and development since 1982 and has held a secret clearance for over 30 years, met Applicant six years ago through shared religious and university activities. He is aware of Applicant’s previous attendance at the religious seminary in Israel, which he considers to be without political implications. He believes Applicant is not the type of person who would allow family connections to Israel to compromise his loyalty and commitment to the United States. (AE J p. 4.)

Several family friends and some state and local politicians attested to Applicant and his immediate family’s involvement in local politics and volunteer work. Applicant is known as someone who takes his responsibilities seriously, acts on his commitments, and believes in the United States. (AE J pp. 6, 11, 17-26.)

Applicant’s present apartment mates have known him since they were in college together. (AEs A, J pp. 13-14; Tr. 38-40, 53.) One roommate works as the chief technical officer for a start-up company. He previously held a DOD secret clearance when he worked for Applicant’s employer. (Tr. 38-39.) He had attended a program in Israel with a higher level of religious rigor than Applicant’s program. (AE A; Tr. 50-51.) He has no concerns about Applicant’s family connections in Israel or about Applicant’s loyalty to the United States. (AE A; Tr. 54.) Over the six years of their friendship, Applicant has shown himself to be “deeply integrated into American society.” Based on his observations, Applicant contacts his parents a couple of times a week, while Applicant has “relatively little interaction” with his sister in Israel. (AE A; Tr. 41-44.) Applicant’s other roommate is an electrical engineer with a 3D printing company. He attested to Applicant being “highly devoted to all of his different communities” for as long as he has known him. During the past two years of sharing living quarters with him, Applicant has further demonstrated his commitment to U.S. culture. They play video games and watch sporting events together. This roommate first learned that Applicant had a sister in Israel when it became an issue for Applicant’s security clearance. Applicant has shown a closer relationship to his parents and siblings in the United States. He “talks pretty much only to his family in the U.S.” and, according to this roommate, Applicant has “tight connections to friends all over the U.S.” Some of this roommate’s closest friends have gone through the process of obtaining a security



clearance, and he considers Applicant to be “the most dependable, honest, and trustworthy” among them. (AE J pp. 13-14.)

An operations analyst for an apparel company, who became close friends with Applicant during their time in the seminary program in Israel from 2009 to 2010, is aware of the Israeli residency of Applicant’s sister, great-uncle, and some cousins. He also knows that Applicant’s sister works as a teacher in Israel, but that Applicant speaks with her “infrequently.” This friend spent Thanksgiving with Applicant and his immediate family for the past few years and heard Applicant’s paternal grandfather, a World War II refugee, express his gratitude for his family and their safety in the United States. This friend does not believe Applicant is susceptible to foreign influence. He has close-knit ties to his family in the United States and intends to remain in the United States. (AE J pp. 15-16.)

### **Administrative Notice**

Administrative notice is not taken of the source documents in their entirety, but of specific facts properly noticed and relevant and material to the issues. Concerning the facts submitted for administrative notice, Department Counsel requested that I notice cases involving espionage by some U.S. government employees and illegal export cases implicating Israeli officials and companies. While that information is relevant to the issue of whether Israel actively pursues collection of U.S. intelligence and economic and proprietary information, none of the cases involved Applicant personally or involved espionage through any family relationships. 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. Additionally, some of the information relied on is more than ten years old and must be evaluated in light of its age. Some of the reports have been updated. With these caveats, I take administrative notice of the facts requested by the parties as supplemented by the following facts:

Israel is a vibrant parliamentary democracy with a modern economy. Despite the instability and armed conflict that have marked Israel’s relations within the region since it came into existence, Israel has developed a robust, diversified, and technologically advanced market economy. 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. Successive U.S. Administrations and Congress have demonstrated a commitment to Israel’s security and to maintaining close bilateral ties. Israel is considered a critical ally and friend of the United States. The United States is Israel’s largest single trading partner. Israel is a leading recipient of U.S. foreign aid and is a frequent purchaser of major U.S. weapons systems.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel’s security and well-being, predicated on Israel maintaining a “qualitative military edge” over other countries in its region. Strong

U.S. congressional support for Israel resulted in the country being designated as a “major non-NATO ally” in 1989 and receiving preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. Significant cooperation exists in military aid, arms sales, joint exercises, and information sharing. Bilateral aid to Israel is in the form of foreign military financing, currently at \$3.1 billion a year until fiscal year 2018. On September 14, 2016, the United States and Israel signed a new 10-year Memorandum of Understanding to increase the U.S.’ foreign military financing to \$3.3 billion annually starting in 2019.

Yet, the interests of the two countries are not always aligned. The sales of U.S. defense articles or services to Israel and other foreign countries is subject to the provisions of the Arms Export Control Act, which predicates eligibility for purchase on agreements not to use purchased items or training for purposes other than those permitted by the act or to transfer them to third-party countries (except under certain conditions) without the prior consent of the U.S. President. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. Israeli-U.S. relations were strained during Israeli Prime Minister Netanyahu’s second administration and the Obama administration, particularly over Israeli settlements in the West Bank and the Iran Nuclear Deal. The United States is the principal international proponent of the Arab-Israeli peace process and views the growth of Israeli settlements as an impediment to the success of peace negotiations. Negotiations to end the Israeli-Palestinian conflict are presently at an impasse. Israel perceives threats from Iran; Iranian-sponsored non-state actors, such as the Lebanese Shiite group Hezbollah; and violent jihadist terrorist groups in the region, such as the Islamic State. Israel’s concerns about a nuclear-weapons-capable Iran as an imminent threat to its security have led Israel to criticize the international agreement that lifted the sanctions on Iran.

The United States has also expressed concern about Israel’s sales of sensitive security equipment and technology, especially to China; Israel’s inadequate protection of U.S. intellectual property; Israel’s suspected use of U.S.-made cluster bombs against civilian populated areas in Lebanon; and espionage-related cases implicating Israeli officials. Israeli military officials have been implicated in economic espionage activity in the United States. In the past 30 years, there have been at least three cases in which U.S. government employees were convicted of disclosing classified information to Israel or of conspiracy to act as an Israeli agent (e.g., Jonathan Pollard in 1985, who Israel has acknowledged acted as its agent). U.S. government contractors have also been implicated in providing classified and sensitive information to Israel.

The security situation remains complex in Israel and the West Bank. Gaza remains under the control of HAMAS, a U.S.-designated foreign terrorist organization. The U.S. State Department advises U.S. citizens to take due precautions when traveling to Israel and the West Bank, and strongly warns against travel to the Gaza Strip. While there is no indication that U.S. citizens, including tourists, students, residents, and U.S. government personnel, have been specifically targeted based on their nationality, a rise in political tension beginning in October 2015 led to an increase in violence in which

U.S. citizens were killed and wounded. The frequency of attacks has abated since April 2016, but the possibility of random violence continues. As of February 2017, the U.S. State Department was still advising U.S. citizens that all persons seeking to enter or depart Israel, the West Bank, or Gaza are subject to immigration and security screening, including prolonged questioning and physical searches, and may be denied entry or exit. Additionally, carrying audio-visual or data storage/processing equipment may lead to additional security delays. Some travelers have had their laptop computers and other electronic equipment searched at Ben Gurion Airport and some equipment has been confiscated and damaged or not returned. On occasion, Israeli security officials have requested access to travelers' personal email accounts or other social media accounts as a condition of entry.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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 overall 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 applicant or proven by Department Counsel. . . .” The applicant 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 that the applicant may deliberately or inadvertently fail to 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 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 about foreign influence is articulated 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.

Applicant and his four siblings are from a close-knit U.S. family with religious and familial ties to Israel. Applicant’s sister, a U.S. resident citizen from birth, went to Israel on a student visa for college in 2012. In July 2014, she voluntarily acquired Israeli-U.S. dual citizenship to become eligible for work and health benefits in Israel. As of August 2016, she was living in Israel with her spouse, who was pursuing legal studies at an Israeli university, and she was teaching English at a secondary school. Concerning Applicant’s extended family members in Israel, his great-aunt’s spouse served in Israel’s Knesset from 2013 to 2015 (SOR ¶ 1.b). This maternal great-uncle by marriage is currently a professor and director of a center at an Israeli university. Applicant’s great-uncle’s son-in-law (Israeli relative X) is currently in the Israeli reserves after completing his compulsory military service for Israel, although his primary employment is as an engineer for a commercial company. The SOR alleges that he serves at the rank of commander (SOR ¶ 1.b), which is what Applicant was told by his sister when he completed his SF 86 with her assistance. Recent declarations from his sister and from Israeli relative X raise reasonable doubt as to whether he ever held a high-ranking position in the Israeli military. Applicant’s sister indicated that Israeli relative X attended commander training and served as a commander for a short period of time. Israeli relative X confirmed that he is a member of the Israeli reserves, but he indicated that he never held a high-ranking position within the Israeli defense forces. He did not elaborate about his current rank or his duties for the Israeli reserves.

Applicant is in contact with his sister approximately every other week. His contact with his extended family members in Israel is limited to in-person yearly or every other year when he is in Israel with his immediate family for large family gatherings, such as weddings or bar mitzvahs. He does not speak with them outside of these settings and does not otherwise correspond with them.

AG ¶ 7(a) is implicated if foreign contacts create a heightened risk of foreign influence:

(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.

The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Israel and the United States have long had a close friendship. The United States is committed to Israel’s security, to the extent of ensuring that Israel maintains a “qualitative military edge” in its region. Israel receives preferential treatment in bidding for U.S. contracts and substantial military aid from the United States. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, “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.” See ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). There is no recent report showing direct involvement by the Israeli government targeting the United States. However, U.S. government employees and U.S. government contractors have been implicated in economic espionage activity in the United States to benefit Israel. The United States remains concerned about Israeli settlements and Israel’s military sales to other countries such as China.

There is no evidence that Applicant’s sister, his great-uncle, or his great-uncle’s son-in-law in Israel have been targeted or pressured. Considering the nature of the Israeli government and society, it is unlikely that the Israeli government would attempt

coercive means to obtain sensitive information. There is no evidence that Israel has used coercive methods. However, it does not eliminate the *possibility* that Israel would employ some non-coercive measures in an attempt to exploit a relative. Israel faces threats by jihadist groups, other terrorist organizations, and states in the region that are avowedly anti-Israel. Within Israel, many of those attacks are directed at, not only Jewish or Israeli interests, but American interests as well. However, a distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Israel does not condone the indiscriminate acts of violence against its citizens or tourists in Israel and strictly enforces security measures designed to combat and minimize the risk presented by terrorism. Also, there is no evidence that terrorists have approached or threatened Applicant or his immediate family when they are in Israel or his sister and extended family members who are resident citizens of Israel.

Applicant's relationship is understandably closer with his parents and siblings in the United States than with his married sister in Israel. Even so, Applicant and his sister share sufficiently close ties to inquire about each other's well-being on a regular basis. Applicant's contacts with his extended family members are on the order of once every one or two years when he is in Israel at large family gatherings. Applicant testified credibly that he does not have a relationship with his extended family in Israel apart from his parents. He does not call either his great-uncle or Israeli relative X. Distance and the generational divide, as well as the language barrier with Israeli relative X, have not given Applicant much of an opportunity to develop other than a distant but cordial relationship with his extended family in Israel. Applicant's great uncle apparently did not have any involvement in defense or intelligence matters when he was in the Knesset, but his previous political position and his current status as a professor at an Israeli university are of sufficient prominence to possibly bring his activities to the attention of Israeli authorities. Israeli relative X's reserve duty status for Israel does not significantly heighten Applicant's risk of undue foreign influence without knowing more about his reserve rank or his duty obligations. Applicant credibly explained that his relationship with Israeli relative X is even more distant than that to his great-uncle. Primarily because of his contacts and connections to his sister and to a lesser extent his connection through his family to his great-uncle, AG ¶¶ 7(a) and 7(b) apply. AG ¶ 7(b) provides:

(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.

Concerning potential factors in mitigation, AG ¶ 8(a) provides as follows:

(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(a) is difficult to satisfy because of the closeness of the sibling tie and Israel's history of economic espionage directed at the United States. Applicant was not asked about any future travel plans to Israel, but he has historically traveled to Israel every few years for family events, including in October 2014 and April 2016. Future travel to Israel by Applicant to see his sister and for family events cannot be ruled out.

Applicant's contacts with his extended family members in Israel are reasonably characterized as casual. His conversations with his great-uncle and Israeli relative X largely involve greetings or family matters at family weddings, bar mitzvahs, or other large family gatherings. However 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," cannot reasonably apply to his regular contacts with his sister.

Applicant has not shared much about his sister in Israel with his apartment mates, who have known him since college. There is no financial obligation between Applicant and his sister. Yet, unlike with his extended family members in Israel, Applicant's loyalty or obligation to his sister in Israel has not been shown to be "so minimal" to present no conflict of interest under AG ¶ 8(b), which states:

(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.

Applicant has significant ties to the United States of the type contemplated within the second component of AG ¶ 8(b), however. As a lifelong resident citizen of the United States, Applicant was raised to respect U.S. institutions and freedoms, including the privilege to vote. Although he attended private schools as a youth, he developed interests in sports and video games typical of his generation. He was active in local political campaigns and in various charitable causes. His gap year spent in Israel does not undermine his ties to the United States, given his intent was always to return to the United States for college. Despite a challenging academic schedule in college, he proved to be as devoted to his studies and his extracurricular commitments. After he graduated from college, he continued to travel to Israel with his parents and siblings to see his sister and for family events. Future travel to Israel by Applicant appears likely, at least as long as his sister resides there. Even so, the risk of undue foreign influence cannot fairly be assessed without regard to Applicant's personal character and circumstances. He has been very trustworthy and conscientious at work about ensuring he is not exposed to classified material. He has no intent and demonstrates no inclination to act in the interests of Israel or to move to Israel. His professional career

and all his financial assets are in the United States. AG ¶ 8(b) applies in his favor with regard to minimizing the risk of undue foreign influence.

### **Guideline C—Foreign Preference**

The security concern about foreign preference is articulated in AG ¶ 9, which states that “[w]hen 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 SOR as amended alleges that Applicant exercised foreign preference by attending school in Israel from August 2009 to June 2010 (SOR ¶ 2.a). Applicant admits that he spent his gap year after high school in a religious seminary program in Israel. Available information from Applicant and character references with familiarity about such programs indicate that the program was affiliated with a U.S.-based university, religion-focused, and designed for students who seek a strong moral and religious base before they are in the secular college environment. Applicant had no intention and took no action to establish ties of residency or citizenship with Israel. He has shown no affinity or political preference for the nation-state of Israel over the United States. The evidence does not indicate that he attended the program at Israel’s expense. Under the circumstances, his gap-year program does not establish AG ¶ 10(a)(3), which provides:

(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.

None of the disqualifying conditions under AG ¶ 10 apply. Applicant has not acted to indicate a preference for Israel over the United States.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>3</sup> Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

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<sup>3</sup> The factors under AG ¶ 2(a) are as follows:

(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.



Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.

See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

There is a risk that Applicant could be placed in the untenable position of having to choose between his family members in Israel and his security responsibilities. As noted by the Appeal Board in ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009), "people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." However, there is no *per se* rule disqualifying persons with foreign ties from security clearance eligibility. Applicant's sister and at least 18 other individuals who know Applicant in various capacities, *i.e.*, as a co-worker, friend, roommate, political campaign volunteer and constituent, nephew, family friend, community volunteer, and participant in religious activities, do not believe Applicant could be pressured or influenced to act contrary to U.S. interests.

Applicant had no control over his sister's decision to attend college in Israel or to obtain her Israeli citizenship so that she could work to pay for school and receive health care benefits. What he can control is his response to any attempt at manipulation or any inducement to help his sister or extended family member in a way that is not in U.S. interests. Applicant demonstrated good character and personal integrity by disclosing his foreign ties to the DOD. He has been very trustworthy and conscientious at work about ensuring he is not exposed to any classified material and about protecting sensitive, unclassified information. Applicant's close bonds of affection to his parents, youngest siblings, and his girlfriend of four years, who are all U.S. resident citizens, make him more rather than less likely to report any undue foreign influence or pressure. Applicant's intention is to pursue graduate studies locally in the United States in the future. Applicant is not seen as likely to jeopardize his future plans or the well-being of the persons dearest to him by succumbing to any undue foreign influence to aid a married sister, whom he sees infrequently. He is seen as even less vulnerable to aid extended family members with whom he has distant relations.

Consideration of the foreign country is necessary in foreign influence cases. See AG ¶ 6. Israel is a democracy and one of the closest allies of the United States. Israel and the United States have strong national security connections. There is no evidence that Israel has used citizens or residents of Israel to coerce U.S. citizens for sensitive or classified information. After assessing Applicant's credibility and after considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:           FOR APPLICANT

    Subparagraph 1.a:           For Applicant

    Subparagraph 1.b:           For Applicant

Paragraph 2, Guideline C:           FOR APPLICANT

    Subparagraph 2.a:           For Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge