



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



In the matter of: )  
)  
) ISCR Case No. 15-08422  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2017  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline L, outside activities, and Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On October 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline L, outside activities, and Guideline B, foreign influence. The DOD CAF acted 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).<sup>1</sup>

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<sup>1</sup> I decided this case using the AGs implemented by DOD on June 8, 2017. However, I also considered this case under the previous AGs implemented on September 1, 2006, and my conclusions are the same using either set of AGs.

Applicant answered the SOR on October 13, 2016, and requested a hearing before an administrative judge. On January 27, 2017, the case was assigned to me. On February 27, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 15, 2017. I convened the hearing as scheduled. Government exhibits (GE) 1 and 2 were admitted in evidence without objection. The Governments exhibit list, discovery letter, and request for administrative notice were marked as hearing exhibits (HE) I-III. Applicant testified, and offered exhibits (AE) A-D, which were admitted without objection. DOHA received the transcript (Tr.) on March 23, 2017.

## **Procedural Rulings**

### **Administrative Notice**

I took administrative notice of facts concerning Israel. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.<sup>2</sup>

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>3</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S Government reports.<sup>4</sup>

## **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations, with explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 57 years old. He is a native-born U.S. citizen. He has a Ph.D. in engineering. He formerly worked for another government agency as an engineer for 14 years. He has held a security clearance for over 30 years without incident. He currently is employed by a state university, and also works for a laboratory that is a federal contractor. He is married with three children.<sup>5</sup>

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<sup>2</sup> The Government's request and the supporting background documents were marked as hearing exhibit (HE) I.

<sup>3</sup> See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

<sup>4</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>5</sup> Tr. at 5, 25-26, 39; GE 1-2; AE B.

The SOR alleges that Applicant volunteered his services from 2011 to 2015 to an Israeli scientific organization (SIL); that from 2011 to 2012, while on sabbatical, he worked for a technology school in Israel; and that he has a friend who is a citizen and resident of Israel.

Applicant began working as a professor in his current job in approximately 2004. That position also allows him to perform engineering duties with a government contractor affiliated with the school. He began those duties in approximately 2008. Starting in approximately 2011, Applicant volunteered his time and expertise to a student-run science project involving lunar landing capabilities. This student group was sponsored by SIL. SIL is a small non-profit start-up company located in Israel. The technical resources used by the student group was "off-the-shelf" and any information gathered was from open sources. Applicant visited Israel twice in connection with this project, once in 2011 and once in 2013. He reported these trips to his security manager. The extent of his contact was more in the earlier years and less as the project progressed. At the most, Applicant was in contact by Skype once every two weeks. He was not paid for his services by SIL, although his expenses were reimbursed. His contacts with the group wound down over time and now he no longer consults with them. He has not had contact with SIL in over one year. He has no plans to consult with SIL in the future.<sup>6</sup>

From 2011 to 2012, Applicant took a sabbatical from his professorial duties. During this time, he traveled to and lived in Israel with his family. He also received a fellowship to conduct research for an Israeli technical school while he was there. He received 80 percent of his teaching salary while on sabbatical and the fellowship provided with him with the remaining 20 percent of his income. His work involved teaching classes and conducting academic research. None of his work, while on sabbatical, involved technologies related to U.S. national security. Examples of his research are provided at AE D. Once his sabbatical year was up, Applicant returned to his duties at his university. He has not had any contact with the Israeli technical school in over one year.<sup>7</sup>

While on sabbatical in Israel, Applicant became acquainted with Mr. X who was a student in Applicant's class. They became professional friends and conducted theoretical research together. None of the research involved military or sensitive technological applications. Examples of their research and correspondence is at AE 4. Mr X came to the United States in 2013 for three months and taught at Applicant's university as a visiting professor. He did not live with Applicant during his stay here. Applicant considers Mr. X a professional colleague, not a personal friend. His current contact with Mr. X is approximately three to four phone calls per year and an email

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<sup>6</sup> Tr. at 27-29, 31, 45; GE 2.

<sup>7</sup> Tr. at 32-33; AE D (attachments B-D); Answer.

every month or two. As far as Applicant knows, Mr. X does not have any ties to the Israeli government, except for his required reserve military service.<sup>8</sup>

Applicant was aware that Israel sought to obtain sensitive information for U.S. sources before he went there on sabbatical in 2011. Because of this awareness, he was on the lookout for any type of event or incident that seemed suspicious. He experienced no such event. Had he experienced anything, he would have immediately notified his security office. He has not returned to Israel in the last two years. He does not intend to retire in Israel. He owns a home here, and he and his families' ties are solely to the United States. Applicant presented a reference letter from the president of his university's research foundation. The author described Applicant as a man of honor, with high integrity, and a highly respected researcher and teacher.<sup>9</sup>

Israel is a parliamentary democracy with strong historic and cultural ties with the United States. Commitment to Israel's security has been a cornerstone of U.S. Middle East policy since Israel's inception. Both countries have a mutual interest in a peaceful, secure Middle East. On July 27, 2012, President Obama signed the United States-Israel Enhanced Security Cooperation Act. The goal of this legislation is to strengthen the military edge that Israel enjoys over its regional enemies.

Israel aggressively targets sensitive U.S. technology. There have been some cases of U.S. government employees who have been prosecuted and convicted of spying against the U.S. for Israel. In 1998, Israel acknowledged that one of these individual's had been its agent.

The threat of terrorist attacks is growing in ungoverned or minimally governed areas near Israel's borders with Syria, Lebanon, the Sinai Peninsula, and Libya. However, some unconventional security threats have been reduced because of factors such as heightened security measures *vis a vis* Palestinians, missile defense systems, and cyberwarfare capabilities.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

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<sup>8</sup> Tr. at 33-36, 42; AE D (attachments E-F); Answer.

<sup>9</sup> Tr. at 36, 47; AE A.

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 L, Outside Activities**

AG ¶ 36 explains the security concern about “outside activities” as follows:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified or sensitive information.

AG ¶ 37 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) any employment or service, whether compensated or volunteer, with:

(1) the government of a foreign country;

(2) any foreign national, organization, or other entity;

(3) a representative of any foreign interest; and

(4) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

Applicant's volunteer work with SIF from 2011 to 2015 and his teaching sabbatical at an Israeli technical school from 2011 to 2012 fall within this disqualifying condition. AG ¶ 37(a) applies.

AG ¶ 38 lists conditions that could mitigate foreign influence security concerns, including:

(b) the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Applicant terminated his relationship with SIL. He has had no further contact with the organization in over one year. Likewise, once his sabbatical concluded, Applicant returned to his U.S. teaching position and has not had any further dealings with the Israeli school. AG ¶ 38(b) applies.

## **Guideline B, Foreign Influence**

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

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) 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;

(b) 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; and

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Israel and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his friend 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 friend living in Israel who might be coerced by governmental entities, or pressured to assist SIL or the technical school in Israel at the behest of that government.

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."<sup>10</sup> Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Israel seek or have sought classified or economic information from or through Applicant, or his friend living in Israel, it is not possible to rule out such a possibility in the future.

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<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶¶ 7(a) and 7(b) do not apply to Mr. X because Applicant has had minimal contacts with Mr. X and the nature of their relationship is professionally-based as opposed to strictly personal. There is insufficient evidence to support that Applicant has ties of affection for or an obligation to Mr. X. Similarly, Applicant has severed his ties to SIL and the Israeli technical school. He has no further ties or obligations to either entity. AG ¶¶ 7(a) and 7(b) do not apply to these contacts either. Applicant last traveled to Israel two years ago. When he lived there in 2011 to 2012, he was on the lookout for suspicious activity towards him, but discovered none. There is no current conduct that makes Applicant vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country. AG ¶ 7(i) does not apply.

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

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

(b) 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.

Even though I find that Applicant's actions are not disqualifying under AG ¶ 7, out of an abundance of caution, I will also analyze whether mitigating conditions under AG ¶ 8 apply. Mr X is not affiliated with the Israeli government and Applicant's minimal professional contacts with him relate solely to theoretical research unrelated to U.S. military or sensitive technological applications or information. Applicant is no longer affiliated with either Israel-based organization that led to the SOR allegations. It is unlikely that Applicant would be placed in a position of having to choose between Mr. X's, SIL's, and the Israeli technical school's interests verses those of the United States. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He is a native-born U.S. citizen, and with the exception of his sabbatical year in Israel, has lived here all his life. He owns a home and has raised his family here. He has worked for U.S.-based organizations for over 30 years, all while holding a security clearance. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.



## 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered that he severed his relationship with the two outside activities, and the strong ties he has to this country, thereby demonstrate his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline L, outside activities and Guideline B, foreign influence concerns were either not established or mitigated.

## 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 L:	FOR APPLICANT
Subparagraphs 1.a: - 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a: - 2.b:	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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Robert E. Coacher  
Administrative Judge