DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-08309
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/28/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

The Government withdrew the foreign preference security concern and Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 14, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). The action was taken under Executive Order (Exec. Or.) 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).[1]

[1] I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on July 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 14, 2017, scheduling the hearing for July 17, 2017.

I convened the hearing as scheduled. The Government's discovery letter, administrative notice request, and exhibit list were appended to the record as Hearing Exhibits (HE) 1 through 3. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Department Counsel requested that I take administrative notice of certain facts about Israel. The facts administratively noticed are summarized in the Findings of Fact, below. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on July 25, 2017.[2]

Findings of Fact

Applicant admitted the foreign influence SOR allegations. Applicant is a 43-year-old physicist employed by a defense contractor since December 2009. He previously worked as a federal government employee from July 2005 to July 2007. He was granted a DOD security clearance in 2010.[3]

Applicant was born in Israel. He obtained a high-school diploma in the United States in 1992, a bachelor's degree from an Israeli university in 1998, and a doctorate degree from a U.S. university in 2003. He immigrated to the United States in 1999, at the age of 25. He was naturalized as a U.S. citizen and obtained a U.S. passport in 2004. He is married and has two minor children. His spouse and children are dual, native-born U.S. and Israeli citizens. He and his wife have owned their home in the United States since 2009.[4]

Applicant's father, an Israeli citizen, and his mother, a dual citizen of Germany and Israel, reside in Israel. They were both born in Israel to Israeli parents. Applicant's father is 67 years old. He retired in the 1990s as an officer in the Israeli military, in which he worked in intelligence. He then worked for the Israeli government until 2010, the nature of which was classified. Since 2010, he has worked as an independent tour guide, but as of the hearing, he continued to volunteer occasionally for the Israeli government. Applicant's mother is 66 years old. She is a retired college librarian. She has no affiliations with the Israeli government or military. Applicant's parents support themselves through retirement benefits his father receives from the Israeli military and government. Applicant does not provide them with financial support. He visits them in Israel and they visit him and his family in the United States approximately once every

[2] Tr. at 16-28.

[3] Applicant's response to the SOR; Tr. at 6-11, 34-38; GE 1; AE B.

[4] Applicant's response to the SOR; Tr. at 6-8, 28-98; GEs 1-2; AEs A-B.

two years. He speaks with his parents weekly to biweekly. They do not discuss work-related matters, but they are aware Applicant holds a security clearance.[5]

Applicant's sister is a dual Israeli and German citizen residing in Israel. She is 40 years old. She is not married and has one child. She was born in Israel. She acquired German citizenship through a law in effect in Israel in the 1990s that allowed the children and grandchildren of Holocaust survivors to apply for it.[6] Between the ages of 18 and 20, she performed compulsory service with the Israeli military. Since then, she has not been affiliated with the Israeli government or military. As of the hearing, she worked for a travel agency. Applicant does not provide her with financial support. He sees her when he travels to Israel once every two years, and he has monthly electronic communication with her. She visited him in the United States twice, after the birth of his children. She is unaware he holds a security clearance.[7]

Applicant's maternal grandmother, extended family members, and friends are citizens and residents of Israel. Applicant's maternal grandmother is 86 years old. She was born in what is now the Czech Republic and is a German citizen residing in Israel. She is a retired secretary. She supports herself through money that her deceased husband, who was an engineer for a private company, invested for her. She has no affiliations with the Israeli government or military. Applicant sees her when he travels to Israel once every two years, and he has weekly electronic communication with her.[8]

Applicant also sees his extended family members and friends in Israel once every two to four years, though he has not seen some of these individuals in over 10 years. He communicates with them electronically on occasion. Most of these individuals performed compulsory service with the Israeli military. A few elected to continue serving in the Israeli military at the end of the compulsory period. The majority of these individuals are not affiliated with the Israeli government or military. Applicant stated that he is not close to his extended family members or friends in Israel.[9]

Applicant's spouse and children are dual, native-born U.S. and Israeli citizens residing with him in the United States. Applicant met and started dating his wife in 1995, when she did a one-year study abroad program in Israel through a U.S. university. She was the roommate of one of his friend's girlfriends. At the end of the program, she returned to the United States to complete her studies. Applicant accompanied her on a student visa and took classes as an extension student at the same university.[10]

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[5] Applicant's response to the SOR; Tr. at 28-98; GEs 1-2; AE B.

[6] Applicant acquired German citizenship in the same manner, but he renounced his German citizenship and returned his German passport when he became a U.S. citizen. Tr. at 28-98; GEs 1-2; AE B.

[7] Tr. at 28-98; GE 1; AE B.

[8] Tr. at 28-98; GE 1; AE B.

[9] Tr. at 28-98; GE 1.

[10] Applicant's response to the SOR; Tr. at 28-98; GEs 1-2; AE B.

Upon her graduation, they both returned to and lived in Israel from 1996 to 1999 while Applicant completed his studies and applied for admission to a graduate school in the United States. During this period, his undergraduate schooling was mostly subsidized by the Israeli government, he received a nominal stipend from the university, and he and his wife received some assistance from the Israeli government. They were engaged in 1996 and married in 1997. His spouse acquired Israeli citizenship, obtained an Israeli passport, and worked in Israel. She is required to use her Israeli passport when she travels to Israel with Applicant. She otherwise has no ties to Israel.[11]

As both of Applicant's children were born in the United States prior to Applicant becoming a U.S. citizen, they obtained Israeli citizenship by virtue of being born to an Israeli parent. As such, Applicant was required to register his children with the Israeli embassy. They both have Israeli passports and they are required to use them when they travel to Israel with Applicant. Since they are Israeli citizens, Applicant's children are subject to compulsory Israeli military service when they reach service age. Applicant has no intentions for them to perform this service.[12]

Applicant's brother is a dual Israeli and German citizen residing in Germany. He is 33 years old. He is not married and he does not have any children. He was also born in Israel and acquired German citizenship in the same manner as Applicant and his sister, as discussed previously. He has never been affiliated with the Israeli government or military, and he was not required to perform compulsory Israeli military service. As of the hearing, he ran a bookstore and is an aspiring author and editor. Applicant does not provide him with financial support. Applicant sees him when their trips to Israel coincide. Applicant visited him in Germany in 2012 and 2016. He visited Applicant in the United States once between 2006 and 2008. They also communicate electronically on occasion. He is aware of Applicant's field of study and Applicant's employer, but he is unaware Applicant holds a security clearance.[13]

Applicant stated that he is loyal to the United States and his foreign contacts have no bearing on his loyalty. He has disclosed his foreign contacts since his first security clearance application in 2009. He has abided by his employer's rules pertaining to foreign citizenship and foreign contacts. In addition to his home, Applicant has $150,000 in retirement assets in the United States. Neither he nor his wife have any financial interests in Israel.[14]

Since they moved to the United States from Israel in 1999, they have not received and are not entitled to receive any other benefits from the Israeli government or military. Applicant closed his one bank account in Israel in 1999. He has not voted in an Israeli election since 1999. He never worked in Israel and was never required to

[11] Applicant's response to the SOR; Tr. at 28-98; GEs 1-2; AE B.

[12] Applicant's response to the SOR; Tr. at 28-98; GEs 1-2; AE B; HE 2.

[13] Tr. at 28-98; GEs 1-2; AE B.

[14] Tr. at 28-98; GEs 1-2; AEs A-B.

serve in the Israeli military due to a medical condition. Other than his father, Applicant does not have contact with anyone affiliated with the Israeli government or military. He does not discuss work-related matters with his father. His supervisor of eight years testified that Applicant is loyal, trustworthy, dependable, and transparent.[15]

Israel

Although the United States has provided regular military support to Israel, there is a significant documented history of classified information and controlled technologies being illegally imported to Israel. Illegal technology transfers, even to private Israeli entities, are a significant concern because foreign government entities have learned to capitalize on private-sector technology acquisitions.

A travel warning issued by the U.S. Department of State for Israel, the West Bank, and Gaza remains in effect, as the security environment remains complex due to heightened tensions and security risks. U.S. citizens are advised that all persons entering or departing Israel, the West Bank, or Gaza are subject to security screening, and may be denied entry or exit. Israeli security officials have on occasion requested access to travelers' personal email accounts or other social media accounts as a condition of entry. In such circumstances, travelers should have no expectation of privacy for any data stored on such devices or in their accounts.

Israeli citizens naturalized in the United States retain their Israeli citizenship. Israeli citizens, including dual nationals, are subject to Israeli laws requiring service in Israel's armed forces, and must enter and depart Israel on their Israeli passports. Dual U.S.-Israeli citizens of military service age who have not completed Israeli military service may be prohibited from leaving Israel until service is completed or other arrangements have been made.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

[15] Tr. at 28-98; GEs 1-2; AEs A-B.

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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." 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 the applicant may deliberately or inadvertently fail to safeguard 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 Exec. Or. 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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
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> (e) 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.

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).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant's brother resides in Germany and has no affiliations with the Israeli government or military. Applicant is not close to his extended family members and friends in Israel. He sees them once every two to four years, and he has not seen some of them in over 10 years. While a few of these individuals elected to continue serving in the Israeli military at the end of their compulsory service, the majority of them are not affiliated with the Israeli government or military. AG ¶¶ 7(a) and 7(b) are not established by these relationships.

Applicant's spouse and children reside with Applicant. While they are native-born U.S. citizens, they are also Israeli citizens with Israeli passports. Applicant registered, as required, his children with the Israeli government. His spouse and children use their Israeli passports, as required, when they travel to Israel with him. His children are

subject to compulsory Israeli military service when they reach service age. AG ¶ 7(e) is established.

Applicant's father, mother, sister, and maternal grandmother are citizens and residents of Israel. His father is a retired officer of the Israeli military and a retired employee of the Israeli government. He worked in intelligence in the Israeli military and on classified work with the Israeli government. As of the hearing, he continued to volunteer for the Israeli government after his retirement in 2010. AG ¶¶ 7(a) and 7(b) are established.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

> (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 United States;
>
> (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; and
>
> (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.

Applicant's father, mother, sister, and maternal grandmother are Israeli citizens residing in Israel. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). Applicant maintains regular contact with them. AG ¶ 8(c) is not established.

Applicant's spouse and children are native-born U.S. citizens residing in the United States. Applicant's spouse acquired her Israeli citizenship when she lived in Israel with Applicant, and his children acquired their Israeli citizenship by virtue of being born to an Israeli parent, since Applicant was not yet a U.S. citizen. Applicant has no intentions of them performing the compulsory Israeli military service, and his spouse and children do not have any other ties to Israel.

Applicant has lived in the United States since 1999. He became a naturalized U.S. citizen in 2004. He received his doctorate degree in the United States, he worked for the federal government from 2005 to 2007, and he has worked for the same company for many years. All of his financial interests are in the United States, and he has none in Israel. He has not voted in Israel since moving to the United States in 1999.

Applicant has met his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 have incorporated my comments under Guideline B in my whole-person analysis and considered the factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his 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
Subparagraph 1.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia
Administrative Judge