



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



In the matter of:)
)
) ISCR Case No. 15-07303
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On June 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence and Guideline C, foreign preference. The DOD CAF acted under Executive Order 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), effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 12, 2016 and August 7, 2016, and requested a hearing before an administrative judge. On October 7, 2016, the case was

assigned to me. On January 17, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 23, 2017. I convened the hearing as scheduled. Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified, but did not offer documentary evidence. DOHA received the transcript (Tr.) on March 1, 2017.

Procedural Rulings

Motion to Withdraw and Amend Allegation

Department Counsel moved to withdraw the sole allegation under ¶ 2 of the SOR and amend the SOR to list that same allegation as SOR ¶ 1.c under Guideline B. Applicant did not object and the motion was granted.¹

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.²

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

Findings of Fact

In Applicant's second answer to the SOR, he denied the allegation in ¶ 1.c, but admitted the allegations in ¶¶ 1.a and 1.b. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is 31 years old. He was born in Uzbekistan in 1985. He lived there for 12 years, until he moved to Israel with his mother. Once he moved to Israel and lived with his mother, who is an Israeli citizen, he automatically attained Israeli citizenship. When he turned 16, he came to the United States to live with his father. In 2002, he

¹ Tr. at 10-14.

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

³ 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).

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

became a U.S resident alien and two years later in 2004, he became a U.S. citizen. He graduated from high school, college, and graduate school in the United States. He is single with no children. He has worked for his current defense contractor employer since 2010. He is an engineer.⁵

The SOR alleges that Applicant's mother and half-brother are citizens and residents of Israel. It also alleges Applicant is a dual citizen of the United States and Israel, and he maintains his Israeli citizenship because of fear of being arrested, jailed, or forced to serve in the Israeli military if he returned to Israel.

Applicant's mother, who is 50 years old, is a resident and citizen of Israel. His half-brother is 19 years old and is a resident and citizen of Israel. Neither have any ties to the Israeli government. His mother works in the private sector. His half-brother is autistic and not subject to military service in Israel. His mother and half-brother have never visited Applicant in the United States.⁶

Applicant stays in touch with his mother by electronic communications two to three times a month. He does not receive any financial assistance from his mother. He loaned her about \$10,000 to help her buy an apartment in Israel. He has no property or assets in Israel. He sees his mother and half-brother every three to four years. They meet in countries outside either the United States or Israel.⁷

Applicant has never returned to Israel since he left there when he was 16 to come to the United States. He only has a current U.S. Passport. His Israeli passport expired in 2004 and he has not renewed it. He only used it once to travel to the United States when he was 16. He has attempted to renounce his Israeli citizenship, but the Israeli government has not cooperated in his effort. He tried to renounce by going "on-line" and sending letters to the appropriate offices. In 2012, he went to an Israeli consulate office in an attempt to renounce his Israeli citizenship, but he was told he would have to go to Israel to do so. In approximately 2004, his mother received a letter from the Israeli government inquiring into Applicant's status as it related to Israeli compulsory military service. His mother hired an attorney to deal with the matter and no further inquiries were received. He has never been contacted directly by the Israeli government. He has never voted in an Israeli election. Applicant considers himself only a U.S. citizen.⁸

⁵ Tr. at 5-6, 20-22, 28; GE 1.

⁶ Tr. at 23-25, 29.

⁷ Tr. at 23, 38-39.

⁸ Tr. at 21-24, 26-31, 35.

Applicant's annual salary is approximately \$100,000. He has an investment account with about \$7,500 and a 401K account with about \$120,000. He currently rents his home.⁹

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 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.

⁹ Tr. at 41-42, 45.

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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

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

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.

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

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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; 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 mere possession of close family ties with a family member is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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 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 relatives living in Israel do 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 relatives living in Israel who might be coerced by governmental entities.

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."¹⁰ 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 relatives living in Israel, it is not possible to rule out such a possibility in the future. Department Counsel produced substantial evidence to raise the issue of potential foreign influence.

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

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his relatives who live in Israel. Applicant communicates with his Israeli relatives on a monthly basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has not attempted to rebut this presumption. Given the Israeli intelligence approach toward the United States, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." The allegation that Applicant maintains his Israeli citizenship in order to avoid being arrested, jailed, or forced to serve in the Israeli military was not supported by the evidence. 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, 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.

AG ¶ 8(a) partially applies. Applicant's mother and half-brother are not in government positions and do not have affiliations with the Israeli government. It is unlikely that Applicant would be placed in a position of having to choose between his Israeli relatives' interests and those of the United States.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He has resided in this country since 2002 and he became a citizen in 2004. He owns U.S.-based assets worth approximately \$195,000. He has never returned to Israel. 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(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all 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 at this time. I considered the ties he established in this country, thereby demonstrating his longstanding loyalty to this country. 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 B, foreign influence.

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: | FOR APPLICANT |
| Subparagraphs 1.a: - 1.c: | For Applicant |
| Paragraph 2, Guideline B: | WITHDRAWN |
| Subparagraph 2.a: | Withdrawn |

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.

Robert E. Coacher
Administrative Judge