



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-04071  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

06/20/2018  
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**Decision**  
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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 August 11, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 implemented on June 8, 2017 (AG).

Applicant answered the SOR on September 5, 2017, and requested a hearing before an administrative judge. On November 2, 2017, the case was assigned to me. On March 1, 2018, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for March 19, 2018. I convened the hearing as scheduled. Government exhibits (GE) 1 and 2 were admitted in evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A-D, which were admitted without objection. I attached Applicant's written opening statement and closing argument as HE III and IV. DOHA received the transcript (Tr.) on March 26, 2018.

## **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>1</sup>

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>2</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.<sup>3</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 47 years old. He is a native-born U.S. citizen. He has a bachelor's degree. He has sailed as a merchant mariner since 1993. He has been employed by his current federal contractor since February 2000. He is married with two children.<sup>4</sup>

The SOR alleged that Applicant's mother-in-law is a dual citizen of the United States and Israel and resides in Israel; that Applicant's nephew is a dual United States-Israeli citizen, residing in Israel, who is serving in the Israel Defense Force (IDF) in the intelligence field; that Applicant's niece is a dual United States-Israeli citizen, residing in Israel, who previously served in the IDF; that Applicant's brother-in-law is a dual United

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<sup>1</sup> The Government's request and the supporting background documents were marked as hearing exhibit (HE) III.

<sup>2</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>3</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>4</sup> Tr. at 5, 28, 31; GE 1.

States-Israeli citizen, residing in Israel, who previously served in the Israel IDF; and that he has three other nephews who are dual United States-Israeli citizens, residing in Israel.

Applicant has no affiliations with Israel. He only holds U.S. citizenship and has never been a dual citizen with Israel. He was born, went to school, and has always worked in the United States. His wife is a native-born U.S. citizen and their two children were born here as well. All the relatives listed in the SOR are blood relatives of Applicant's wife. Applicant owns a home in the United States valued at approximately \$768,000. He has retirement and investment accounts in this country valued at approximately \$400,000. His 2016 income was approximately \$230,000. He estimated his net worth at approximately \$700,000. He owns no property or other assets in Israel. He has no intention of living in Israel. He only has contact with his wife's Israeli relatives when he visits Israel. His last visit to Israel was in 2017. His other visits to Israel were in 2009, 2006, and 1999.<sup>5</sup>

Applicant has worked in the defense industry and held a security clearance since 2005. He has never had a security incident. His work involved supporting the Navy on a regular basis. He is highly thought of by his company's hierarchy. His coworkers and supervisors describe him as honest, having high integrity, and good judgment. They wholeheartedly support his request for a continued clearance. He is also well respected within his community.<sup>6</sup>

The current status of Applicant's Israeli in-laws is as follows:

1. Applicant's mother-in-law is a dual U.S.-Israeli citizen, residing in Israel. She is a retired college professor. She worked her entire career in the United States and moved to Israel after she retired in approximately 1999. She is in her late 70s. Applicant does not have a close relationship with her and only speaks with her infrequently. He and his wife provide no financial support to her. His wife has monthly contact with her. Applicant's mother-in-law provided a statement supporting the limited contact Applicant has had with her over the years.<sup>7</sup>

2. Applicant's four nephews-in-law and niece-in-law are all dual U.S.-Israeli citizens, residing in Israel. Two of the nephews are currently serving their mandatory service in the IDF, although one is no longer in the intelligence field. His niece completed her mandatory IDF service, but may still have an IDF reserve commitment. He only has contact with these nephews and niece when he is in Israel. His wife has

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<sup>5</sup> Tr. at 28, 31, 33, 35-36; Answer; AE B-D.

<sup>6</sup> Tr. at 31-32; Answer, AE A.

<sup>7</sup> Tr. at 37-40 AE A.

very limited contact, such as on birthdays. He provides no financial support for any of them.<sup>8</sup>

3. Applicant's brother-in-law is a dual U.S.-Israeli citizen, residing in Israel. He moved to Israel from the United States when he was 17 years old to go to school. He served his commitment to the IDF and is no longer a member of the IDF reserve force. He is now in his 50s. All the nephews and the niece listed in the SOR are his children. He is a scholar with a Ph.D. He has no government affiliation. Applicant's brother-in-law provided a statement supporting the limited contact he has with Applicant.<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 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

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<sup>8</sup> Tr. at 42-46, 48-50.

<sup>9</sup> Tr. at 46-47; AE A.

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 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

(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 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 relatives 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 relatives living in Israel who might be coerced by governmental entities, or pressured to assist Israel.

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.

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

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. AG ¶¶ 7(a), 7(b), and 7(e) apply based upon Applicant's wife's relatives with ties to Israel.

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.;

(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 credibly testified that he has very limited contact with his wife's relatives. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his in-laws living in Israel and those of the United States. AG ¶ 8(a) applies and AG 8(c) partially 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 has lived here all his life. He owns a home and is raising his family here. His U.S.-based net worth is approximately \$700,000. He has worked for a U.S.-based company since 2000, while holding a security clearance since 2005. His supervisors and coworkers attest to his loyalty, dedication, and overall trustworthiness. 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 the recommendations of his coworkers and supervisors, who all resoundingly recommend that Applicant retain his security clearance. I also considered his strong ties to this country, thereby demonstrating 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 that the security concerns arising under Guideline B, foreign influence concerns were 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 B:	FOR APPLICANT
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Subparagraphs 1.a: - 1.g:	For Applicant
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## **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