



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



In the matter of:)
)
) ISCR Case No. 17-00536
)
Applicant for Security Clearance)

Appearances

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

11/22/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Foreign preference security concerns are not established, and foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On April 14, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant responded to the SOR on May 5, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on June 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 21, 2017, scheduling the hearing for July 19, 2017. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on July 26, 2017.

Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Israel. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that, while a close ally and trading partner of the United States, Israel has a significant documented history of illegally importing U.S. classified information and controlled technologies. The threat of terrorist attacks in Israel is an ongoing concern. A U.S. State Department travel warning is in effect for Israel, the West Bank, and Gaza. Gaza is under the control of Hamas, a U.S. Government-designated foreign-terrorist organization. The government of Israel considers U.S. citizens who also hold Israeli citizenship to be Israeli citizens for immigration and other legal purposes.

Findings of Fact

Applicant is a 45-year-old engineer for a defense contractor. He was born in Israel. He has bachelor's and master's degrees, which were awarded in Israel. He also has a doctorate from a U.S. university. He is married with two minor children.¹

Applicant's grandparents were Holocaust survivors. His mother was born in Bulgaria. She moved with her parents to Israel when she was young. She is a dual citizen of Bulgaria and Israel. Applicant's father is deceased. Applicant came to the United States with his parents as a child and spent about five years here. He returned to Israel, spent the rest of his childhood there, and performed his mandatory military service. He came to the United States in 2002 to attend graduate school. He remained as a permanent resident and became a U.S. citizen in 2014, while retaining his Israeli citizenship.²

Applicant's wife was born in Israel. She is a naturalized U.S. citizen and an Israeli citizen. Their two children were born in the United States. They do not have Israeli citizenships.³

¹ Tr. at 42-43, 51; Applicant's response to SOR; GE 1, 2.

² Tr. at 42, 46-47, 51, 54; Applicant's response to SOR; GE 1, 2.

³ Tr. at 43-44; Applicant's response to SOR; GE 1, 2.

Applicant's mother, brother, and half-sister are residents of Israel. His mother went to college in the United States and is a retired teacher. His brother, like his mother, is a dual Israeli-Bulgarian citizen. He is involved in medical research. His half-sister was born in the United States. She is a dual U.S.-Israeli citizen. She is a student.⁴

Applicant's mother-in-law and father-in-law are Israeli citizens. His mother-in-law is retired and lives in Israel. His father-in-law is an engineer in the private sector living in a European country.⁵

Applicant's uncle is a dual Israeli-Bulgarian citizen and a resident of Israel. Applicant owns a number of investment properties in the United States. He and his uncle jointly invested in one property. That property has been sold, and Applicant does not currently have a business relationship with his uncle. None of Applicant's family members have any direct connection to the Israeli government.⁶

Applicant has about \$10,000 in a retirement account in Israel from before he moved to the United States. He has not liquidated the account because, like U.S. retirement accounts, there is a penalty for early withdrawal. He owns land in Israel valued at about \$40,000. He had a non-combat injury when he was serving in the Israeli military. He receives a disability payment of about \$100 per month. Applicant's and his wife's gross income was \$737,802 in 2016. Their net worth is more than \$2.4 million.⁷

Applicant has a U.S. passport, which he uses to travel. He also has an Israeli passport, which he used to enter Israel. Applicant has no plan to move back to Israel. He filed a request to renounce his Israeli citizenship. He expressed his undivided loyalty to the United States, which he considers his home. He stated simply, "I'm an American."⁸

Applicant reported his Israeli passport, foreign family members, and foreign assets on his Questionnaire for National Security Positions (SF 86), which he submitted in October 2015. His disability payments are not dependent upon his Israeli citizenship.⁹

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his trustworthiness, honesty, high morals, family values, work ethic, and integrity.¹⁰

⁴ Tr. at 33-35; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 36-37; Applicant's response to SOR; GE 1, 2.

⁶ Tr. 33-40, 44, 47-50; Applicant's response to SOR; GE 1-3; AE B.

⁷ Tr. at 23-27, 37-38, 50; Applicant's response to SOR; GE 1, 2; AE A.

⁸ Tr. at 18-23, 44-45, 50; Applicant's response to SOR; GE 1, 2; AE C, D.

⁹ Tr. at 23; GE 1.

¹⁰ AE G-K.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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 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 EO 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* EO 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;
- (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; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant has family members, including in-laws, who are citizens and residents of Israel. He has about \$10,000 in a retirement account in Israel, and he receives about \$100 per month in disability payments based on his non-combat injury while serving in the Israeli military. Israel is a close ally of the United States, but it also has a significant documented history of illegally importing U.S. classified information and controlled technologies. The potential for terrorist violence exists in Israel.

Applicant's foreign contacts and financial interests create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) have been raised by the evidence.

Applicant's business relationship with his uncle ended when they sold the U.S. property that they bought together. SOR ¶ 1.i is concluded for Applicant.

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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's ties to 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.¹¹

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. His wife and two children live in the United States, but he still has family in Israel, including his mother, brother, half-sister, and mother-in-law. He expressed his undivided loyalty to the United States, stating simply, "I'm an American."

I find that Applicant's ties to Israel are outweighed by his deep and longstanding relationships and loyalties in the United States. His closest family, life, home, majority of assets, and professional career are in the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of Israel. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Applicant's assets in Israeli, including his disability payments, are small in comparison with his U.S. assets, and could not be used effectively to influence, manipulate, or pressure him. AG ¶ 8(f) is applicable.

Guideline C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

When 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;

(c) failure to use a U.S. passport when entering or exiting the U.S.; and

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

Applicant reported his Israeli passport, foreign family members, and foreign assets on his SF 86. His disability payments are not dependent upon his Israeli citizenship or in violation of U.S. law.

The concern under AG ¶ 9 is that “[f]oreign involvement raises concerns about an individual’s judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it.” There is no evidence that Applicant’s foreign involvement is “in conflict with U.S. national interests” or that he acted to conceal it. I find there are no applicable disqualifying conditions under AG ¶ 10 and no general concerns under AG ¶ 9. Foreign preference security concerns are not 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. I also considered Applicant’s credible testimony and strong character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. I conclude foreign preference security concerns are not established, and foreign influence security concerns are 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
Subparagraphs 1.a-1.i:	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.

Edward W. Loughran
Administrative Judge