



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



In the matter of:)
)
) ISCR Case No. 17-00697
)
Applicant for Security Clearance)

Appearances

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

01/11/2018

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 April 7, 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 (AG).¹

¹ 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 April 25, 2017, and requested a hearing before an administrative judge. On June 1, 2017, the case was assigned to me. On July 14, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 15, 2017. I convened the hearing as scheduled. Government exhibits (GE) 1-3 were admitted in evidence without objection. The Government's exhibit list, discovery letter, and request for administrative notice were marked as hearing exhibits (HE) I-III. Applicant testified, called three witnesses, and offered exhibits (AE) A-G, which were admitted without objection. DOHA received the transcript (Tr.) on August 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.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 answer to the SOR, he admitted all the allegations, with explanations.⁵ 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 32 years old. He is a native-born U.S. citizen. He has a bachelor's degree. He has held a security clearance since 2007 without incident. He has been employed by his current federal contractor since February 2012. He is married with one child.⁶

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

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).

⁵ Applicant's answer included an 18 page narrative and attachments that he identified as Exhibits A-R.

⁶ Tr. at 6, 49; GE 1.

The SOR alleged that Applicant's brother is a dual citizen of the United States and Israel, who lives in Israel, and serves in the Israeli Defense Forces (IDF); that Applicant's father is a dual United States-Israeli citizen who previously served in the IDF; and that his father and mother are in the process of relocating to 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 child was born here as well. Applicant owns a home in the United States valued at approximately \$500,000. He has retirement accounts valued at approximately \$235,000. He and his wife's combined annual income is approximately \$250,000. He estimated his net worth at approximately \$1 million. He owns no property or other assets in Israel. He has no intention of living in Israel. He loves his parents and brother, but they are less significant to him than his wife and child, and his life in the United States.⁷

Applicant has worked in the defense industry and held a security clearance for approximately 10 years. He has never had a security incident. His work involved interfacing with "warfighters" on a regular basis. He is highly thought of by his company's hierarchy. A company vice-president who served in the military for 27 years, testified that Applicant has an excellent reputation at work and has "unquestioned reliability and trustworthiness." He is aware of the SOR allegations and has no concerns about Applicant and his relationship with his parents and brother. He endorses Applicant for a security clearance. He also provided a sworn statement in support of Applicant.⁸

Applicant's facility security officer (FSO) also testified for Applicant. He has been the FSO at the company since 2015. He is fully aware of the SOR allegations in Applicant's case. He is a former military officer and has 15 years' experience with security-related issues. He explained that Applicant had self-reported his brother's action regarding moving to Israel and he also kept the FSO office aware of his parent's intention of moving to Israel. Applicant strictly adheres to security procedures, is trustworthy, and exercises good judgment in all work-related matters. He supports Applicant retaining his security clearance. He also provided a sworn statement in support of Applicant.⁹

Applicant's former supervisor also testified and provided a sworn written statement in support of Applicant retaining his security clearance. Additionally, 11 other co-workers provided sworn statements supporting Applicant's retention of his security clearance. Applicant is characterized by these statements as loyal, honest, hard-working, dedicated to the warfighter, trustworthy, respected by his military customers,

⁷ Tr. at 40, 48-52, 60; Answer; AE E.

⁸ Tr. at 74, 76, 79, 82-83; Answer, Exhibit B.

⁹ Tr. at 64, 66-69, 71-72; Answer, Exhibit A.

and a proud patriot of this country. All universally recommend that Applicant retain his security clearance. None of the listed supporters believe Applicant's connection to his parents or brother would cause Applicant to further his relatives' interests over those of the United States. Applicant's work performance appraisals for 2014 through 2016 rate him as either a highly effective performer or an exceptional performer.¹⁰

Applicant's only brother (B) is younger than Applicant. He decided to move to Israel after taking a "discovery" trip there when he finished college. He moved there about three years ago and became a dual U.S.-Israeli citizen. B was required to serve in the Israeli Defense Force (IDF), completed his service, and received a discharge, which Applicant has documented. B currently works security for a hotel in Israel and is taking classes in pursuit of a master's degree. Applicant testified that he is not particularly close to B and he has only intermittent telephone contact with him. Applicant has no intention of moving to Israel because his brother is there. Although Applicant has given B a gift of \$200 and \$400 to assist with his student loans, he does not provide any regular financial support to B.¹¹

Applicant's father was born in Poland and moved to Israel as a child. He grew up in Israel and served in the IDF in 1967 and later in 1973. He has not had an IDF obligation in over 40 years. He moved to the United States in the late 1970s. He became a naturalized U.S. citizen in 1983. Applicant's father holds dual U.S.-Israeli citizenship, although he only has a current U.S. passport. Applicant's father is a CPA who ultimately started his own business. Applicant's mother is a native-born U.S. citizen. Applicant's parents currently reside in the United States, but are contemplating a permanent move to Israel. They would move for two reasons. First, to be closer to their youngest son and second, to secure cheaper healthcare for Applicant's mother who has been diagnosed with terminal cancer. Applicant's mother is facing cancellation of her U.S. healthcare insurance policy and her chemotherapy prescription costs approximately \$14,000 per month. Applicant does not provide any financial support to his parents.¹²

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

¹⁰ Tr. at 85-87, 90-92; Answer, Exhibits C-O.

¹¹ Tr. at 33-34, 41, 49-50, 53-56; Answer; AE A-C.

¹² Tr. at 34-39, 58; AE D.

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 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; and

(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.

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."¹³ 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 brother living in Israel, it is not possible to rule out such a possibility in the future.

AG ¶¶ 7(a) and 7(b) do not apply to Applicant's mother because she is currently a citizen and resident of the United States. Because Applicant's father is a dual U.S.-Israeli citizen and his brother is a dual U.S.-Israel citizen currently residing in Israel, AG ¶¶ 7(a) and 7(b) apply to Applicant's relationship to them.

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.

¹³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant credibly testified that his wife, child and U.S. lifestyle are the priorities in his life. 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 family living in Israel and 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 has lived here all his life. He owns a home and is raising his family here. His U.S.-based net worth is approximately \$1 million. He has worked for a U.S.-based organization for over 10 years, all while holding a security clearance. His supervisors and coworkers attest to his loyalty, dedication to the warfighters, 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 FSO, the company vice president, and his coworkers who all resoundingly recommend that Applicant retain his security clearance. I considered Applicant’s self-reporting of his family’s activities as an indicator of putting the interests of the United States before those of his family. 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 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 B:	FOR APPLICANT
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Subparagraphs 1.a: - 1.c:	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.

Robert E. Coacher
Administrative Judge