



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



In the matter of: )  
 )  
 [REDACTED] ) ADP Case No. 17-02121  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2018

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to sensitive information is granted.

**Statement of the Case**

Applicant submitted a Electronics Questionnaire for Investigations Processing (e-QIP) on November 10, 2015. On September 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on October 12, 2017, and requested a decision on the record without a hearing. On November 27, 2017, Department Counsel submitted the Government's written case and, on November 28, 2017, sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 4. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 18, 2017, and did not respond. Item 1 contains a copy the pleadings in the case. Items 2 and 3 are admitted into evidence. Item 4 is the Government's

Administrative Notice request, which I have addressed below. The case was assigned to me on March 27, 2018.

### **Findings of Fact<sup>1</sup>**

Applicant is 67 years old. He has been married to his wife for 36 years. They have two adult children. In 1977, he received a certification from a computer institute in Israel. Applicant worked as a senior quality assurance technician for a medical company from 1988 through 2013, when he was laid off due to a merger with his current employer, a DOD contractor. He regained employment in October 2015 as a senior quality assurance lead for a technology company. His transition from that technology company to his current employer is not specified in the record.

Applicant was a Moroccan citizen by birth. He renounced his Moroccan citizenship when he became a citizen of Israel in 1962. He lived in Israel from 1962 until 1981, when he immigrated to the United States. He became a dual citizen of the United States and Israel in 1987. His wife was a Moroccan citizen by birth and maintains dual citizenship with the United States and Israel. Both of his children are U.S. citizens by birth.

Applicant's mother (age 91), two sisters (Sister 1, age 69; Sister 2, age 58), and two brothers (Brother 1, age 65; Brother 2, age 59) are citizens and residents of Israel. His father, mother-in-law, and father-in-law are deceased. His mother has never worked outside of the home. His father retired as a self-employed barber. Sister 1 works in social services. Sister 2 is unemployed. Brother 1 is employed by a trucking company as a truck driver; and Brother 2, by a kibbutz. Applicant has weekly contact with his siblings, and daily contact with his mother since she lives alone. He travelled to Israel annually between 2008 and 2013 to visit his mother and siblings. None of these relatives are affiliated with any foreign government or military.

Applicant owns the home in which he has resided since 1997. Neither Applicant nor his wife or children maintain any foreign financial interests.

### **Administrative Notice (Israel)**

I have taken administrative notice of the U.S. Government's pronouncements concerning Israel, as outlined in Item 4 and the documents appended thereto, including the following:

- 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 by private Israeli entities. Illegal technology transfers, even to private Israeli entities, are a significant concern because foreign government

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<sup>1</sup> I extracted these facts from Applicant's SOR answer (Item 1), his e-QIP (Item 2), and the summary of his 2016 investigations interview (Item 3).

entities, including intelligence organizations and security services, have learned to capitalize on private-sector technology acquisitions.

- 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 dual citizens of the United States and Israel to be Israeli citizens for immigration and other legal purposes.

## **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.<sup>2</sup>

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG.<sup>3</sup> These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position.<sup>4</sup> 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 national security eligibility will be resolved in favor of the national security." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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

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<sup>2</sup> Directive, § 3.2.

<sup>3</sup> Directive, Enclosure 2.

<sup>4</sup> Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline B (Foreign Influence)**

The trustworthiness concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, 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.

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 7(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

AG ¶ 7(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.

Applicant's familial ties to his parents and siblings establish AG ¶¶ 7(a) and 7(b). There are no facts in the record to establish that Applicant's travel to Israel has any security significance beyond underscoring the closeness of those ties. A heightened risk is associated with Israel because its government has a significant documented history of illegally importing U.S. classified information and controlled technologies, and

because there is a potential for terrorist violence there. Applicant bears the burden of persuasion to mitigate these concerns.<sup>5</sup>

The following mitigating condition under this guideline is established:

AG ¶ 8(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.

Applicant maintains strong familial ties with his mother and siblings. While it has not been established that any of his family have specific affiliations with any foreign government, there remains a heightened risk associated with Israel regardless of any such affiliations. Applicant chose to build a life in the United States 36 years ago. His wife became a naturalized U.S. citizen and his children are U.S. citizens by birth. He has been employed by U.S. companies for at least 20 years, has owned his home for at least 18 years, and maintains all of his assets in the United States. Despite his close familial ties in Israel, his much stronger ties are in the United States. Therefore, I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

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<sup>5</sup> ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000) (When an applicant's ties in a foreign country raise a *prima facie* security concern, the applicant is required to present evidence of rebuttal, extenuation, or mitigation sufficient to carry his burden of persuasion that it is "clearly consistent with the national interest" to grant or continue a security clearance on his behalf).

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person and the heightened risk associated with Israel, I conclude that Applicant has mitigated the concerns raised by his familial ties to citizens and residents of Israel. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for a public trust position.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

Gina L. Marine  
Administrative Judge