

Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on February 7, 2007.

The case was received by the undersigned on March 22, 2007. A notice of hearing was issued on March 27, 2007, and the case was heard on April 25, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence, and called five witnesses to testify on his behalf. The transcript (TR) was received on May 4, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 51 years of age, has a Master's degree from an American university, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

The Applicant came to the U.S. from Israel in 1980, over 26 years ago, to attend an American university (TR at page 80 lines 16~24). He obtained "both a Bachelor's and a Master's [degree] there" (*Id*). He became a U.S. citizen in 1991, and has held a security clearance since 1995 (TR at page 77 lines 14~23, and at page 80 line 25 to page 82 line 20). The Applicant's wife, and two children are also American citizens (Government Exhibit (GX) 1 at pages 4 and 5). His financial interests are also all in the U.S. (TR at page 74 lines 10~18, and at page 85 lines 3~25).

1.a.~1.f. The Applicant has initiated the renunciation of his Israeli citizenship, and has surrendered his Israeli passport (TR at page 78 lines 1~10, and Applicant's Exhibit (AppX) L). The Applicant had used that passport to travel to Israel in 1998, 1999, 2001, 2003, 2005 and 2006 (TR at page 94 lines 8~18). As he held a security clearance, he was briefed appropriately as to his reporting requirements prior to each trip (TR at page 75 line 16 to page 76 line 2, and at page 94 line 19 to page 95 line 21). The Applicant reported the birth of his two native born American children to the Israeli Consulate in 1988 and again in 1991 (TR at page 76 lines 6~21, and GX 1 at page 5). He owns no property in Israel (TR at page 74 lines 10~18, and at page 85 lines 3~25).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's parents, two sisters, and mother-in-laws are citizens of and reside in Israel (GX 1 at pages 4~5). The Applicant's elderly parents and two sisters all work in the

insurance business (TR at page 78 lines 14~21, at page 87 line 25 to page 88 line 4, at page 88 line 16 to page 90 line 1). The Applicant's 80 year old mother-in-law is a retired typist (TR at page 76 line 22 to page 77 line 8, and at page 90 lines 2~4). None of the Applicant's foreign relatives have any connection with a foreign government (TR at page 96 line 17 to page 97 line 3). Furthermore, the Applicant is not subject to coercion vis-a-vis any of these Israeli relatives (TR at page 74 lines 3~9, and at page 75 line 15).

As the Applicant has Israeli relatives, I must also consider the country of Israel. Israel is a parliamentary democracy who's prime minister heads the government and exercises executive power. Israel has a diversified, technologically advanced economy that is growing at about 5.2% per year, and the U.S. is Israel's largest trading partner. Almost half of Israel's exports are high tech and its major industrial sectors include high-technology electrical and biomedical equipment. The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the active collectors of proprietary information. The most recent Report, released in 2006, states that the major collectors remain active. Israeli military officers have been implicated in this type of technology collection in the U.S. (*See* the Government's Request for Administrative Notice at pages 1 and 5).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant, until recently, was a dual national with Israel, and maintained an Israeli passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen This includes but is not limited to: (1) possession of a current foreign passport; . . ." This is countered, however, by the second and fifth mitigating conditions. "[T]he individual has expressed a willingness to renounce dual citizenship," and "the passport has been . . . otherwise invalidated." Here, the Applicant has not only initiated the renunciation of his Israeli citizenship, but has also surrendered his Israeli passport.

The Applicant's parents, two sisters and his mother-in-law are citizens of and reside in Israel. The first and second disqualifying conditions are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with his Israeli relatives is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S." Also, the Applicant "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."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Those who work with and/or supervise the Applicant testified most favorably as to his trustworthiness (TR at page 24 line 20 to page 30 line 8, at page 32 line 5 to page 38 line 14, at page 40 line 12 to page 50 line 5, at page 52 line 5 to page 56 line 11, and at page 59 line 6 to page 69 line 8). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Preference FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge