



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



In the matter of:)	
)	
)	ISCR Case No. 16-02053
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

12/22/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a native of Turkey, mitigated the foreign influence concerns raised by his relationships with his father and sister who are citizens and residents of that county. A naturalized U.S. citizen for seven years, Applicant mitigated the personal conduct concerns raised by his former illegal status, as well as those raised by the multiple, but minor traffic infractions he received between 2005 and 2010. Clearance is granted.

Statement of the Case

On August 3, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct and foreign influence guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to deny his security clearance.

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing. On September 1, 2017, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.² At the hearing, convened on September 20, 2017, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through M, without objection. DOHA received the transcript (Tr.) on September 28, 2017.

Procedural Matters

Implementation of Revised Adjudicative Guidelines

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Motion to Withdraw SOR Allegation

At the hearing, Department Counsel moved to withdraw SOR ¶ 1.a. Applicant's counsel did not object and the motion was granted.³

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Turkey. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.⁴

Findings of Fact

Applicant, 35, has worked for a federal contractor since November 2014. He completed a security clearance application in December 2014, disclosing his parents and sibling, who are residents and citizens of Turkey. In addition to these relationships, the SOR also alleges that he lived in the United States illegally from 2001 to 2007; and, that he received at least 25 traffic tickets between 2002 and the issuance of the SOR. Applicant previously disclosed his foreign relatives, his illegal status, and his driving record in a December 2014 counterintelligence and security-screening questionnaire.⁵

² The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibits (HE) I and II, respectively.

³ Tr. 9.

⁴ The Government's administrative notice summary and attached documents are admitted to the record as HE III.

⁵ GE 1, 3.

Applicant is from the Republic of Turkey, a constitutional republic with a multiparty parliamentary system and a president. The U.S.-Turkey friendship dates to 1831. Turkey is an important U.S. security partner and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952. Turkey is a leader in the Alliance's Resolute Support Mission in Afghanistan and is also a vital member of the Counter-ISIL Coalition. Turkey continues to face a significant terrorist threat from both external and home-grown sources. The current U.S. State Department travel warning for Turkey reflects an increased risk from terrorist groups and the potential for violence against U.S. citizens due to an increase in anti-American rhetoric. The U.S. State Department has also reported a number of significant human rights problems in Turkey, including inconsistent access to due process following the July 15, 2016 coup attempt.⁶

Applicant entered the United States on a student visa to attend an English language school in January 2001. He was 18 years old. He was alone and did not speak English. Applicant believed that he would be living with his uncle. Instead, Applicant's uncle installed him in an apartment with two other young men, leaving Applicant to support himself. Applicant relied on his roommates to help him navigate his new environment. After learning from his roommate that he was eligible to attend public high school, Applicant decided to enroll in high school to take advantage of the school's English-as-a-second-language (ESL) program instead of attending the previously arranged language school at his own expense. In 2002, Applicant began working and obtained a driver's license. He admits that he received a number of tickets and was required to attend traffic school at least six times. According to his state's Department of Safety and Homeland security, Applicant's current driving record is clean. The traffic case history provided by the state shows Applicant received 12 infractions between 2005 and 2010 for minor violations, including speeding, not wearing a seat belt, failure to maintain proper documentation for his vehicle, and having tinted windows.⁷

In deciding to attend public school, Applicant violated the terms of his student visa and was unable to renew it. The visa expired in March 2001. Although he remained in the United States illegally, Applicant continued to work and attend school. Applicant graduated from high school in 2008. He performed well at work and eventually became the general manager of a fast food restaurant with responsibility for assisting with the operations of five other stores. Despite his illegal status, Applicant continued to timely file his federal and state income tax returns as required, using the social security number issued to him with his student visa. In April 2007, Applicant married a U.S. citizen, who sponsored him for permanent residency in the United States. Applicant obtained a work permit in the summer of 2007, resolving his illegal status. He obtained permanent residency status in 2009 and became a naturalized citizen in September 2010. Applicant and his wife divorced in November 2010. He formally renounced his Turkish citizenship in March 2015.⁸

⁶ HE III.

⁷ Tr. 21, 35, 42-44, 51, 56-58; AE D.

⁸ Tr. 34-42, 50, 62-63, 66; AE F, K.

Applicant obtained his first position as a linguist in 2014, and deployed to his native Turkey in December. For the first two years, Applicant worked in a location that allowed him to visit his parents twice per month. Applicant's father is a retired maintenance worker formerly employed by the local government in Applicant's hometown. Applicant's sister, who is married with a young child, also works for the local government. In 2016, Applicant's work location changed. His movement within the country became much more restricted, and he was no longer able to visit his parents regularly. However, he calls his father and sister twice a month. When Applicant's mother died in 2016, he was working and unable to attend her funeral. Generally, Applicant does not provide his family with financial support, but he paid for his mother's funeral expenses. Because of his current assignment, Applicant has not seen his father and sister since his mother's death.⁹

Applicant's family knows that he works as a linguist for a U.S. company, but they do not know the specifics of his job. He works as a linguist, embedded with a military unit. He serves as a liaison between his unit and the Turkish military. He also serves as a cultural guide when needed. Given the daily contact with the unit, Applicant has come to see the military members he supports as his family. He considers it a vital part of his job to help keep them all safe.¹⁰

Applicant is held in high esteem by his coworkers. The record contains 19 character letters from military members and civilian coworkers, covering Applicant's three-year tenure as a linguist in Turkey. Each letter touts Applicant's trustworthiness and reliability while working in a challenging and ever-changing environment. Each letter also discusses the invaluable nature of Applicant's translation skills and cultural knowledge, especially during the 2016 coup.¹¹

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 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(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

⁹ Tr. 23, 25-32, 47-49, 58-62.

¹⁰ Tr. 32, 45.

¹¹ Tr. 70-71; AE A, E, H, N.

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, 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

Personal Conduct

An individual’s personal conduct becomes a concern when he acts in a way that shows “questionable judgment, . . . or an unwillingness to comply with rules and regulations.” Such conduct “can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”¹² Applicant remained in the United States for six years after his student visa expired. He also accumulated at least 12 traffic citations between 2005 and 2010. This conduct is not sufficient for an adverse determination under the criminal conduct guideline. However, when considered together, the misconduct supports the government’s *prima facie* case that Applicant engaged in behavior that supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and

¹² AG ¶ 15.

regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.¹³

Applicant has produced sufficient evidence to mitigate the personal conduct concerns. Applicant's illegal status is mitigated by the passage of time. He corrected his status 10 years ago and has been a naturalized U.S. citizen for 7 years. Furthermore, the circumstances are unlikely to recur and do not reflect negatively on Applicant's current security worthiness. The concerns raised by Applicant's multiple traffic infractions are also mitigated. A review of the record shows a series of minor infractions, the most recent of which occurred seven years ago. Applicant's driving record is not indicative of an inability to protect or handle classified information.¹⁴

Foreign Influence

"[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest."¹⁵ Although Turkey has historically been an ally of the United States, the recent political instability in the country and region has become a potential threat to U.S. interests operating there. Accordingly, Applicant's relationships with his father and sister, who are residents and citizens of Turkey, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁶

While Applicant's interactions with his family members in Turkey may be infrequent, the relationships cannot be considered casual. However, given the position and activities of Applicant's father and sister in Turkey, it is unlikely that Applicant will be placed in a position of having to choose between the foreign interests and those of the United States.¹⁷ Furthermore, these relationships do not present a conflict of interest because the ties that Applicant has developed in his current position are so deeply intertwined with his own safety and self-interest, it is likely that Applicant will resolve any potential conflict of interest in favor of U.S. interests.¹⁸

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). For the past three years, Applicant has been embedded with a military unit. He has supported the U.S. mission at his own peril. He

¹³ AG ¶¶ 16 (c).

¹⁴ AG ¶ 17(c).

¹⁵ AG ¶ 6.

¹⁶ AG ¶ 7(a).

¹⁷ AG ¶ 8(a).

¹⁸ AG ¶ (b).

has demonstrated that he takes his responsibilities very seriously, as echoed by the many character letters he received in support of his application for access to classified information. Applicant's work and conduct in his position as a linguist for the past three years is direct evidence of his ability to operate in a sensitive environment with direct national security implications.

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, Personal Conduct:	FOR APPLICANT
Subparagraph 1.a	Withdrawn
Subparagraphs 1.b – 1.c:	For Applicant
Paragraph 2, Foreign Influence:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge