



DEPARTMENT OF DEFENSE
 Defense Office of Hearings and Appeals
 Defense Legal Services Agency
 Appeal Board
 Post Office Box 3656
 Arlington, VA 22203
 (703) 696-4759

Date: February 2, 2022

_____)
 In the matter of:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 20-00204

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 11, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 12, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process, whether the Judge’s decision contained factual errors, whether the Judge erred in concluding that Applicant’s circumstances raised security concerns, and whether the Judge’s analysis was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is employed by a Defense contractor. Married with three children, he holds a master's degree. Applicant was granted a security clearance in 1996, although his access was suspended in around 2017.

Applicant came to the U.S. from Turkey in the early 1980s on a student visa and acquired U.S. citizenship in the mid-1990s. A few years before becoming a U.S. citizen, he had returned to Turkey and completed a two-month military training obligation, followed by a one and a half year employment by a department of the Turkish government. Since the mid-1990s, Applicant has returned to Turkey on two occasions, both in the early 2000s.

Applicant's parents, both in their 80s, are citizens and residents of Turkey. He speaks with his mother every two to four weeks, generally about her health. Applicant's father is retired, though during his time of employment he performed consulting work for the Turkish government. Like Applicant, he served in the Turkish military. In addition to his parents, Applicant's sibling is also a citizen and resident of Turkey. He speaks with his sibling every two months. Applicant's father and sibling understand generally what kind of work Applicant does, though they are not aware of his security clearance. Applicant is no longer a Turkish citizen, and his sibling will inherit their parents' assets upon their deaths.

Applicant's work performance is excellent. He has extensive experience in the industry to which his employer belongs, and he enjoys an outstanding reputation for his dedication, work ethic, and loyalty to the U.S. He is considered invaluable to his employer and is highly recommended for a clearance.

The U.S. has had diplomatic relations with Turkey since 1831. That country is a member of the United Nations, NATO, and the Global Coalition to Defeat ISIS. However, in recent years democracy in Turkey has deteriorated. There are locations there in which terrorist organizations operate, threatening U.S. interests. Turkey is, in fact, a source of transit for persons seeking to join ISIS and other terrorist groups. In addition, the U.S. has cited to human rights violations and the compromise of the rule of law in Turkey.

The Judge's Analysis

Applicant's family members in Turkey, his and his father's former service in the Turkish government, and his regular contact with his Turkish relatives raise security concerns. "Applicant is a target to be threatened or influenced or placed in a situation that may manipulate or induce him to help a foreign person or foreign government in a way that is inconsistent with the U.S. interests. [He] has subjected himself to a heightened risk of foreign influence or exploitation or personal conflict of interest[.]" Decision at 7. Applicant's service in the Turkish government occurred after he had become a resident of the U.S. Applicant's connections within Turkey pose "an unnecessary security risk." Decision at 9.

Discussion

Applicant notes that his hearing was conducted by means of video teleconferencing. He states that the audio quality was poor and that the Judge had difficulty hearing and understanding what was being presented. We have examined the transcript and note several instances in which the Judge or parties stated that an echoing effect made it difficult to hear. This problem persisted despite the Judge instructing parties to mute their microphones. Tr. at 4, 10, and 51. However, the court reporter advised that she was able to understand the parties and that the transcript “will be okay.” Tr. at 24, 52. Applicant has not cited to any testimony that he believes was transcribed in error. We find nothing in the record to undermine the integrity of the transcript or to lead us to conclude that the Judge was not able to understand the hearing presentations.

Applicant cites to U.S. policy against discrimination based upon national origin. However, we find no reason to conclude that the Judge held as she did simply because Applicant was born in Turkey. Rather, her decision appears consistent with Directive, Encl., 2, App. A ¶ 6, which requires that in evaluating a Guideline B case, DoD officials “consider the country in which the foreign contact . . . is located” and whether that country “is associated with a risk of terrorism.” Given this policy and the record evidence, we find no reason to believe that the Judge’s decision was based upon matters beyond the scope of the Directive. After considering the record as a whole, we conclude that Applicant was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017). To the extent that Applicant’s arguments constitute an allegation that the Judge was biased against him due to his national origin, we conclude that he has not rebutted the presumption that the Judge was impartial. *See, e.g.*, ISCR Case No. 18-02867 at 3 (App. Bd. Jan. 15, 2020).

Applicant cites to a factual error concerning the date of his return to the U.S. in the early 1990s. To the extent that the Judge’s finding is in error, it did not likely exert an influence on the outcome of the case and, therefore, was harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020).

Applicant contends that his circumstances do not raise security concerns. Among other things, he argues that the Judge did not identify any actual behavior by him that could make him a target; that his contacts with his family in Turkey are not unusual in that they result from his concern over his parents’ wellbeing; and that his contacts with them had been adjudicated years ago without impairment of his access to classified information. We note first of all that Applicant admitted the allegations in the SOR. The Directive presumes a nexus between admitted or proved facts in an SOR and an applicant’s eligibility for access to classified information. *See, e.g.*, ISCR Case No. 18-02581 at 4. When these admissions are considered in light of the evidence adduced at the hearing and the administrative notice material included in the record, we find no reason to disturb the Judge’s conclusion that Applicant’s contacts in Turkey entail a “heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.” Directive, Encl. 2, App. A ¶ 7. The Government is not estopped from rendering an adverse clearance decision despite prior favorable adjudications. This is especially true when there are changed circumstances that arose after these earlier favorable determinations. *See, e.g.*, ISCR Case No. 18-02867 at 2. In 2019, the Director of National Intelligence noted, “Turkey’s regional ambitions, a distrust of the United

States, and the growing authoritarianism of Turkey’s leaders are complicating bilateral relations” Item VI of Hearing Exhibit 1. In the case before us, the Judge’s findings and administrative notice information about the deterioration of the rule of law in Turkey, that country’s relative political instability, and the presence of terrorist activity in Turkey support the Judge’s conclusions about Applicant’s security concerns. *See, e.g.*, ISCR Case No. 17-04208 at 4 (App. Bd. Aug. 7, 2019); ISCR Case No. 19-00831 at 4 (App. Bd. Jul. 29, 2020).

Applicant cites to comments by the Judge that he believes are unwarranted, for example that Applicant had in some way subjected himself to a risk of foreign influence. We do not evaluate a Judge’s decision based on isolated sentences but, rather, on the decision viewed as a whole. *See, e.g.*, ISCR Case No. 15-03778 at 3 (App. Bd. Aug. 4, 2017). We do not interpret the decision before us as holding that Applicant has actually engaged in risky behavior. Rather, the decision appears to rest on the nature and extent of Applicant’s contacts in a country in which terrorist activity occurs and which practices human rights violations. The Government need not wait until an applicant has actually compromised classified information before it can withhold access. *See, e.g.*, ISCR Case No.18-02581 at 4. Moreover, even persons of the highest character can find themselves in circumstances in which they could become susceptible to foreign pressure. *See, e.g.*, ISCR Case No. 17-04208 at 6.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made,’” both as to the Mitigating Conditions and the whole-person factors. *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board