

STATEMENT OF THE CASE

On June 7, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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 or about June 26, 2007.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 9, 2007. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on September 25, 2007, and submitted nothing in reply. The case was received by the undersigned for resolution on December 13, 2007. The issues raised here are whether the Applicant's alleged 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, and the File of Relevant Material. The Applicant 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

1.a.~1.d. The Applicant is a dual national with Turkey (Item 4 at page 3). She became a U.S. citizen in July of 2005, but retains a current Turkish passport which does not expire until May of 2011 (*Id.*, and Item 5 at page 2). In August of 2005 and again in August of 2006, the Applicant used her "Turkish passport instead of . . . [her] United States passport to enter Turkey in order to avoid the visa charge and [for] ease of moment through customs" (Item 3 at page 1). The Applicant is not willing to destroy, surrender or invalidate her Turkish passport (*Id.*). She "must maintain [her] Turkish citizenship in order to inherit land currently owned by [her] mother" (Item 3 at page 20).

Guideline B - Foreign Influence

2.a. and 2.b. The Appellant traveled to Turkey in 1998, 2000, 2003, 2005 and 2006 to visit her parents (Item 3 at page 2, and Item 4 at pages 21~23). Her mother and step-father are both retired (Item 6 at page 3). Her step-father served in the Turkish Army during the Korean War (Item 3).

Turkey lies between the Black Sea and the Mediterranean Sea and strategically links Europe and the Middle East. The roots of the modern state of Turkey go back to the Islamic Turkish Ottoman Empire. Turkey has been officially secular since 1924, although 99% of the population is Muslim. In terms of human rights, the Turkish government continues to face major challenges of increasing the legal accountability of government security forces. The abuses of the security forces include killings, torture, and arbitrary arrests. In foreign relations, Turkey's political, economic, and security ties are with the West and it is negotiating to seek admission into the European Union. Turkey is also a member of the North Atlantic Treaty Organization. Turkey cooperates closely with the U.S. on a number of security issues (Items 7~11).

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 her 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 is a dual national with Turkey, and maintains and uses a current Turkish passport. She maintains her Turkish citizenship and passport, as the Applicant fully expects to inherit property in Turkey. 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; . . . (5) using foreign citizenship to protect financial . . . interests in another country . . .*" There are no countervailing mitigating conditions.

The Applicant's parents are citizens of and reside in Turkey. The first and second disqualifying conditions under Foreign Influence are therefore 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.*" The fifth disqualifying condition is also applicable, as there apparently is "*a substantial . . . financial or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation.*" Again, I can find no countervailing mitigating conditions here. The Applicant's parents will pass on a substantial financial and/or property interest to the Applicant, an interest she is relying on to the extent of maintaining her Turkish citizenship.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her perceived Foreign Preference and Foreign Influence. The Applicant has thus not met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, she has not met her 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 AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.

- c. Against the Applicant.
- d. Against the Applicant.

Paragraph 2: Foreign Influence **AGAINST THE APPLICANT**

- a. Against the Applicant.
- b. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge