



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



In the matter of: )  
)  
) ISCR Case No. 18-00149  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2019

---

**Decision**

---

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 23, 2016. On February 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on March 5, 2018, admitting all of the SOR allegations with explanations under Guideline B, foreign influence. Applicant also requested a hearing before an administrative judge. The case was assigned to me on October 19, 2018. The Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for January 24, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 - 2 were admitted into evidence without objection. At the hearing, Applicant testified, and he submitted Applicant's Exhibits (AE) A – G, which were admitted without objection. I left the record open until February 8, 2019, for Applicant to submit supplemental documentation. Applicant timely submitted post-hearing documentation including an e-mail dated February 7, 2019, and 15 pages of documentation showing the conveyances of two properties in Turkey that were owned by Applicant and his wife. These were collectively marked as AE H and admitted without objection. DOHA received the transcript (Tr.) on February 5, 2019.

### **Request for Administrative Notice - Turkey**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Turkey. The request listed supporting documents to show detail and context for those facts. A risk assessment in this case necessitates administrative notice of facts concerning Turkey.

Applicant did not object, and I have taken administrative notice of the facts contained in the HE 1 source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision. However, of particular note, are the following salient facts from HE 1:

Notwithstanding the long strategic U.S. – Turkey relationship, current country conditions are problematic. The U.S. State Department urges citizens to avoid travel to Turkey due to terrorism and arbitrary detentions. Terrorist groups explicitly target Western tourists and expatriates for kidnapping and assassination. The potential for terrorist attacks in Turkey, including against U.S. citizens and interests, remains high. The U.S. Government does not allow family members to accompany personnel assigned to the U.S. Consulate in Adana, unless they are working in the Consulate. Turkey is a transit country for foreign terrorist fighters wishing to join the Islamic State of Iraq and Syria (ISIS) and other terrorist groups fighting in Syria and Iraq. Since a July 2016 coup attempt, the Turkish Government has operated under a state of emergency, with far reaching effects on the country's society and institutions, restricting the exercise of many fundamental freedoms. Profound and significant human rights abuses persist.

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

Applicant is 48 years old and married. He reports no children. He was born in Bulgaria and moved to Turkey at age seven. He came to the United States (U.S.) in 1996 to further his education because Turkey plummeted into chaos. He became a naturalized U.S. citizen in 2011. He earned a bachelor's degree and a master's degree

---

<sup>1</sup> Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated August 23, 2016 (GE 1) and the summary of personal subject interview conducted on September 25, 2017. (GE 2)

before emigrating from Turkey. He obtained his Ph.D. in the U.S. in 2000. (GE 1, Tr. 12) He has been employed as a senior engineer by a U.S. corporation since 2000 and he has recently applied for another position with a federal contractor, which approval is contingent on Applicant obtaining a security clearance. (Tr. 60) Applicant provided documents listing his professional accomplishments, including numerous certificates and awards, and 12 U.S. patents in his field of micro-electrical mechanical systems. He also listed his academic accomplishments. (AE A, B, C)

Applicant testified that he or his wife, a naturalized U.S. citizen, owned three real estate parcels in Turkey before he became a U.S. citizen. (Tr. 15, 47) His wife purchased an apartment in Turkey in 2006 before they were married. She is the sole owner. (AE H) He purchased a second property in Turkey in 2008. (Tr. 49) Applicant's wife purchased a third apartment for her totally disabled mother to live close to her relatives in 2012, the year of their marriage. (AE D, Tr. 50) The three real-estate holdings alleged in SOR ¶ 1.d have lost 50–60% in value compared to when they were purchased, due to the tumultuous conditions in Turkey. (Tr. 15-16) Applicant provided a graph that visually depicts the details of their purchases of real estate in Turkey. (AE D) Applicant testified credibly that the exchange rate for Turkish currency (lira) was relatively flat for a long time, but then it lost half of its value on world markets in a five-year span from 2012 to 2017. (Tr. 48)

Applicant testified that the property, which he purchased in Turkey in 2008, actually was not completely built until 2013, due to chaos in that country. (Tr. 74) Therefore, it could not be sold previously. Applicant's wife became a U.S. citizen in June 2017. She was a market researcher in Turkey previously and she had no affiliation with the Turkish government. Her mother also has a green card as a permanent resident in the U.S. since 2017. (Tr. 76) Applicant testified credibly that it was extremely difficult to sell the real estate in Turkey due to instability, its loss in value, and a saturated market from overdevelopment around Istanbul. (Tr. 50-51, AE D) He provided supplemental post-hearing documents including a deed showing that the real estate he purchased in 2008 has now been donated or conveyed to his sister under Turkish law. Applicant's wife provided a power of attorney (POA) dated January 28, 2019, to effectuate the sale of property purchased for his mother-in-law. (AE H) Applicant's former Turkish real estate interests had a total value of \$337,000. (Tr. 58)

Applicant has telephonic contact with his parents once or twice a week. (Tr. 63) Applicant contacts his sister living in Turkey only in crisis. (Tr. 66) He had a falling out with his sister because she is angry that Applicant lives so far away, and the care of their infirm parents falls to her. (Tr. 67-69) Applicant's 80-year-old father had brain surgery in 2016 and he has not recovered well. (Tr. 30) Applicant testified that the last crisis was when his father fell down and lacerated his scalp and Applicant flew to Turkey in September 2018 to assist. (Tr. 69) His father is prone to falling and often injures himself. Applicant has visited Turkey about once a year for the last ten years. (Tr. 69-70) Applicant's 76-year-old mother had a heart attack and subsequent bypass surgery, also in 2012. (Tr. 32) His parents never had any affiliation or employment with the Turkish government of intelligence agencies. (Tr. 42) Applicant never sent them financial aid.

Applicant owns real estate and other assets in the U.S. as well. He purchased a home in September 2014, for \$533,000. His mortgage on that property is down from \$276,000 to \$248,000. (Tr. 56, AE D) Applicant has more than 50% equity in that property. He also has a \$287,000 retirement account; \$262,000 savings account in U.S. banks; and approximately \$100,000 in publicly traded stocks and bonds. Applicant's U.S. assets, excluding real estate, total over \$650,000. (Tr. 61) He has no intent to return to Turkey, unless it is to visit and help care for his parents in crisis. (Tr. 76, 93) Applicant communicates via telephone only with his parents in Turkey, and nobody else. (Tr. 81) Applicant testified credibly that the plan is for his parents to leave everything to his sister, when they pass, as she has primarily cared for them. (Tr. 88)

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

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**

### **Guideline B, Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 6:

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 that is 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, such considerations as whether the foreign country is known to target United States citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant’s parents are living in Turkey, but they are in desperately poor health. He regularly communicates with them by phone as a dutiful son. His sister is a citizen

and resident of Turkey. He has extremely limited contact with her. He regularly communicates with no one else in Turkey. He provides occasional care and comfort to his parents during crises. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) are implicated by the evidence. Applicant divested himself of his real estate in Turkey. AG ¶ 7(f) is no longer a security concern.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has demonstrated a long-standing preference for working and living in the U.S. since 1996. He earned a doctorate degree from a U.S. institution and he has been a valuable member of the corporate workforce since 2000. He needs a security clearance to enable him to work for a federal contractor in direct support of DOD efforts globally. The value of his U.S. assets eclipses the value of his former real estate holdings in Turkey, which he has now transferred to his sister. Although he is presumed to have strong bonds of affection with his parents and sibling in Turkey, these bonds are not sufficient to offset or overcome his demonstrated, long-term commitment to the U.S. Applicant has effectively rebutted the presumption under all of the circumstances.

I considered the totality of Applicant's foreign contacts and interests. Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or

country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.<sup>2</sup>

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing whether an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the U.S., or the foreign country is associated with a risk of terrorism.

Applicant's parents and sister are Turkish citizens residing in Turkey, which is an unstable regime. His contact with them is limited, as needed, by telephone, and annual visits. There is no indication that they were ever affiliated with the Turkish government or intelligence services. Applicant's foreign family members do not pose an unacceptable security risk. There is sufficient evidence to conclude that Applicant would report contacts with his relatives by foreign intelligence agents, and that he has a long-term commitment and exclusive loyalty to the U.S. All of the mitigating conditions in AG ¶ 8 are applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

---

<sup>2</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. Applicant is 48 years old. He is married to a U.S. citizen, educated in the U.S., and owns property here. Virtually all of his adult work life was spent in supporting U.S. interests. He is committed to his profession and life in the U.S. His foreign contacts are minimal and he no longer has foreign real estate. He has no conflict of interest.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence security concerns.

### **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, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Robert J. Kilmartin  
Administrative Judge