



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



In the matter of: )  
)  
) ISCR Case No. 18-02084  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Donna Price, Esq.

07/16/2019

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from her personal and family connections to Turkey. National security eligibility for access to classified information is granted.

**History of Case**

On November 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, and Guideline E, Personal Conduct. The action was taken under Executive Order 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 effective within the DOD after June 8, 2017.

Applicant answered the SOR in writing on December 6, 2018 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 5, 2019. DOHA issued a Notice of

Hearing on April 26, 2019, setting the hearing for May 31, 2019. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified, and offered Exhibits (AE) A through H into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until June 7, 2019, to permit submission of additional evidence. Applicant timely filed an updated Exhibit List, attachments to AE D, and a footnote to AE H. Department Counsel had no objections and those additional documents are admitted. DOHA received the hearing transcript (Tr.) on June 10, 2019. On June 12, 2019, Applicant submitted four corrections to the transcript. Department Counsel filed no objections.

### **Procedural Rulings**

#### Withdrawal of Paragraph 1 of the SOR

At the commencement of the hearing, Department Counsel withdrew Paragraph 1 of the SOR, alleging security concerns under the personal conduct guideline. (Tr. 10)

#### Administrative Notice

Department Counsel submitted Hearing Exhibit (HE) I, a written request that I take administrative notice of certain facts about Turkey. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. (Tr. 17) The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant was born in Turkey in 1970 and moved to Germany with her family in 1976, when she was five years old. In 1988, she met a man in Germany, who was born in Turkey. They married in Turkey and were divorced in Turkey in 1991. During their marriage, they lived in Germany. She has one child from that marriage, who was born in Germany in 1992. After filing a letter with the Turkish consulate, renouncing her Turkish citizenship, Applicant applied for and received German citizenship in 1993. In 1996, she met her second husband, a U.S. citizen, while he was stationed with the military in Germany. They married some months later during a trip to Denmark. They moved to the United States in 1996. She has one child from that marriage, who was born in the United States. In 1997, she received permanent U.S. residency. In 2008, she became a naturalized U.S. citizen. She and her second husband divorced in 2012. Applicant has dual citizenship with Germany. She attended U.S. community colleges, and has earned some credits. Both of her children reside in the United States. (Tr. 26 GE 1, GE 2)

Applicant has worked for federal contractors since 2006, providing various services, sometimes overseas, including the Middle East. She has held security clearances some of that time, beginning in 2011. In January 2017, she applied for a

position with a federal contractor that requires a security clearance. Since then, she has worked for federal contractors on short-term contracts. (Tr. 31-35, 91; GE 1)

Applicant's elderly mother is a citizen and resident of Turkey. Her father died in 2012. Prior to moving back to Turkey, Applicant's mother resided in Germany with other family members. She worked in a factory in Germany, and is now retired. She receives a monthly pension of about \$1,000 from Germany. She also receives about \$500 a month from a pension she earned in Turkey while working and living there. (Tr. 36-39, 73-75, 79) Applicant does not provide her mother financial support; however, her mother sent Applicant's daughter about \$7,000 or \$8,000 to help with college expenses several years ago. (Tr. 80) Applicant maintains contact with her mother. (Answer)

While Applicant's parents were married, they purchased properties, including apartment buildings. (Tr. 40, 45) Upon Applicant's father's death in 2012, her mother inherited 40% of his estate. The remaining 60% was divided among Applicant, her sister, and four half-siblings. Applicant inherited two small apartments. She subsequently sold one for \$27,000, and transferred the proceeds of the sale into her U.S. bank account. Her mother has rented out the other apartment. Applicant does not receive any rental monies because they are used for repairs and maintenance. (Tr. 46-48) She thinks her mother's assets now total \$700,000 to \$800,000. (Tr. 86) She and her sister will inherit her mother's estate. (Tr. 80) Applicant owns two homes in the United States. She resides in one and rents the other. (Tr. 95)

In 2014, Applicant visited the Turkish Consulate in the United States, in order to obtain proof that she was related to her deceased father and entitled to receive an inheritance. Her married name had caused confusion with her Turkish documents. While at the consulate, she discussed her situation with a woman employee, who helped her resolve the problem. Before leaving the consulate, Applicant heard the woman employee speak German. Applicant then began talking to the woman in German. After a few minutes, the woman gave Applicant her business card. Applicant subsequently "friended" the woman on Facebook, and sent a Facebook message thanking her for her help in resolving the name issue. Several weeks later, Applicant "unfriended" the woman because she was concerned that she should not converse with a Turkish official. Applicant has not had contact with the woman since July 2014. (Tr. 48-55, 83-85; GE 2; AE A (1) and (2))

Applicant's younger sister is a citizen of Germany and resident of Turkey. Her sister takes care of their mother, and lives in one of their mother's apartments. She is divorced and has children. (Tr.42- 44) Applicant's sister receives financial support from her mother and her father's estate. (Tr. 80-82) Applicant maintains contact with her sister. (Tr. 83; Answer)

Applicant has two half-brothers through her father, who was married to another woman before he married Applicant's mother. They are citizens and residents of Turkey. Applicant had infrequent contact with those half-brothers before her father died. She has had no contact with them since his death. (Tr. 40-41) Applicant had contact with one of

her half-sisters, who is a citizen and resident of Turkey, while they were teens. Applicant has not had contact with her since her father's death in 2012. Her other half-sister is deceased. (Tr. 43-45)

During an investigative interview in March 2011, Applicant said that she has visited Turkey almost yearly since 2010: once in 2010; once in 2011; twice in 2012; once in 2013; once in 2015; and once in 2016. She noted that she traveled there for tourism or pleasure. (GE 2)

Applicant submitted letters of recommendation. An active reservist, whom Applicant has known since 2011, stated that he and Applicant are good friends. He believes she is an honest and trustworthy person. (AE B.2) A retired Army sergeant, who knows Applicant as a friend and colleague, supports her request for a security clearance. They worked together in the Middle East. He said she is hardworking and reliable. (AE B.3)

## **Turkey**

Turkey is a constitutional republic with a multiparty parliamentary system. The president's powers are not precisely defined and his influence depends on his personality and political weight. Its citizens and foreigners have been targeted by domestic and transnational terrorist groups for many years. There have been terrorist bombings in the past five years resulting in deaths. The targets have been religious, government, political, tourist, and business locations throughout the country. In addition, leftist and Islamic terrorist groups have targeted U.S. and Western interests. The potential for future terrorist attacks remains high. Its judiciary is declared to be independent, but is in need of reform. There are significant human rights abuses with respect to detainees and personal freedoms. The U.S. State Department warns citizens to reconsider travel to Turkey due to the presence of terrorism. (HE 1)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern relating to the guideline 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 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, considerations such as whether it is

known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. Two 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; and

(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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contact with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Although Turkey is a constitutional republic with a multiparty parliamentary system, it engages in human rights violations and there is a risk of injury to citizens and visitors due to the activities of terrorists. U.S. citizens are warned about traveling to Turkey. Applicant's mother is a citizen and resident of Turkey. Her sister is a citizen of Germany and resident of Turkey. These facts place a significant burden of persuasion on Applicant to demonstrate that her ongoing connections and relationships with family members, who are residents or citizens of Turkey, do not create a heightened risk of foreign influence or pose a security risk. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a) and 7(b).

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts of this case:

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

(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.

There is no evidence that intelligence, operatives, criminals, or terrorists from or in Turkey seek or have sought classified or economic information from or through Applicant or her family residing in Turkey since she has been working for federal contractors. Nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Turkey has a problem with terrorism and human rights abuses. Applicant's family in Turkey "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon [her]." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)). The evidence establishes limited mitigation under AG ¶ 8(a).

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has established strong U.S. connections. She married a U.S. citizen in 1996 and has lived here since then. She received permanent U.S. residency in 1997 and became a U.S. citizen in 2008. She has attended community colleges in the United States. Since 2006, she has worked for federal contractors, sometime overseas. She has established good friends here, one of whom is a soldier and worked with her in the Middle East. She renounced her Turkish citizenship in 1996. One of her children is a citizen of the United States and both of her children are residents of the United States. Her financial accounts are in the United States. She owns two homes in the United States. Based on these connections to the United States, there is a strong indication that Applicant could be expected to resolve any conflict of interest in favor of the U.S. interests. Strong mitigation under AG ¶ 8(b) was established.

AG ¶ 8(c) does not fully apply to the security concerns raised regarding Applicant's mother, who is a citizen and resident of Turkey, or her sister, who is a citizen of Germany and resident of Turkey. Applicant has ongoing communication with both of them, and makes periodic visits to see them. This mitigating condition fully applies to Applicant's relationships with her two half-brothers, one half-sister, and an employee of the Turkish Consulate in the United States. Applicant has not been in contact with her half-siblings since the death of her father in 2012 or the Turkish employee since 2014.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

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

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant met her burden to mitigate the foreign influence security concerns raised by the facts of this case. Her familial circumstances create no significant potential for pressure, coercion, exploitation, or duress. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	Withdrawn
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 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 interests of national security to grant Applicant access to classified information. National security eligibility is granted.

Shari Dam  
Administrative Judge