



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



In the matter of: )  
)  
) ISCR Case No. 18-02121  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: Jason R. Perry, Esq.

03/20/2019

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**Decision**

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KILMARTIN, Robert J., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 7, 2016. On September 26, 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 C, foreign preference. 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 October 7, 2018, denying all of the SOR allegations under Guideline B, foreign influence, and Guideline C, foreign preference. Applicant also requested a hearing before an administrative judge. The case was assigned to me on January 25, 2019. The Defense Office of Hearings and Appeals

(DOHA) notified Applicant that the hearing was scheduled for February 26, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 - 3 were admitted into evidence without objection. At the hearing, Applicant testified, and he submitted Applicant's Exhibits (AE) A – N, which were admitted without objection. He had a character reference witness testify on his behalf. DOHA received the transcript (Tr.) on March 6, 2019.

### **Procedural Ruling**

Department Counsel requested that I take administrative notice of certain facts relating to Turkey. Applicant did not object and the request was approved. The request concerning Turkey and attached supporting documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Some of the facts administratively noticed are set out in the Findings of Fact below.

### **Request for Administrative Notice - 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. 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-time 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 40 years old. He was born to a Kurdish family in Turkey and came to the United States (U.S.) in 1998 to attend college. He was naturalized as a citizen in September 2001. (GE 1) He obtained a bachelor's degree in 2005, and a master's

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<sup>1</sup> Unless otherwise stated, the basis for these findings of fact is Applicant's Security Clearance Application (SCA) dated October 7, 2016 (GE 1) and Applicant's answers to interrogatories verifying the summary of a personal subject interview conducted on November 22, 2016. (GE 2)

degree in 2008. (Tr. 31-33) Applicant was married in August 2017 to a U.S. citizen who is a special needs teacher. (Tr. 67-69) They have a one year old daughter. (Tr. 34) He has applied for a job as a linguist for a federal contractor attached to armed forces of the U.S. overseas, and he needs a security clearance. Applicant's elderly parents still live in Turkey. He also has a sister and two brothers living in Turkey with their families. (Tr. 33) None of Applicant's family members were ever affiliated with, or worked for, the Turkish government and they are not political. (Tr. 77)

Applicant presented testimony from his supervisor who was also simultaneously serving as a military reservist. The witness testified that he was a master sergeant in the U.S. Army reserve with 17 years of active duty. He hired Applicant and directly supervised him on the job as a federal contractor. (Tr. 38-40) He testified that Kurds are commonly persecuted in Turkey, and they are in disfavor. He testified that Applicant is honest, reliable, and loyal to the U.S. He would have no hesitation recommending Applicant for a security clearance.

Applicant testified that his Turkish passport expired in 2014 and he affirmatively renounced his Turkish citizenship in 2018 through the Turkish Embassy in the U.S. (Tr. 34, 54, 61) He currently works for one federal contractor, but he is sponsored for a security clearance by another contractor to be a linguist. (Tr. 42) He testified credibly that Kurds are not allowed to keep their own names in Turkey and there is widespread prejudice against them. (Tr. 45-49) He has no real estate interests, bank accounts, or other financial interests in Turkey. (Tr. 50) He has no plan to live in Turkey again. (Tr. 79) He has never been approached by government – intelligence services during his visits to Turkey. (Tr. 53)

Applicant was married previously from 2002 to 2009, and he came to the U.S. on a student visa, sponsored by his first wife. She was a U.S. citizen. (Tr. 57) He has a U.S. passport, which is set to expire in April 2019. He has applied for renewal of that passport. (Tr. 58-60) He traveled to Turkey to visit his parents from May to June of 2012; May to June 2013; and his last trip to Turkey was in May 2015 for one month. (Tr. 59-61) He used the Turkish passport until it expired in 2014, but he always used the U.S. passport to enter the U.S. He speaks Kurdish, Turkish, Italian, and French. (Answer to SOR) He contacts his 73-year old mother by Skype about once a week, and his father occasionally. (Tr. 82) His two brothers are in the cleaning business. He contacts them, and his sister, about once every three months. (Tr. 85) He does not stand to inherit anything from his parents. (Tr. 85)

Applicant submitted a security clearance application (SCA) on October 7, 2016.<sup>2</sup> In section 19 (Foreign Contacts) of his SCA, he disclosed his foreign family members living in Turkey. In section 20B (Foreign Activities) he disclosed that he was involved as president of the People's Democratic Union ("HDP") political party from January 2016 to July 2016. He explained that it was the third largest political party in Turkey. He accepted the unpaid position to bolster his resume with volunteer experience.<sup>3</sup> He

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<sup>2</sup> GE 1.

<sup>3</sup> GE 1, p. 63.

majored in political science in college. He was contacted by a citizen of Denmark to operate this organization because that individual needed Applicant's social security number to set up the non-profit organization. (Tr. 99) His duties were primarily administrative. The stated goals of this non-profit organization were to promote human rights and it was generally opposed to the Turkish government. (Tr. 100) Applicant testified that its values are closely aligned with the U.S. Government's interests. (Tr.101) He accepted no money for the organization or on its behalf. (Tr. 128)

Applicant testified credibly that he voted one time in a Turkish election via the Turkish embassy in the U.S. in 2015 after he became a U.S. citizen. (Tr. 123) He still maintained his Turkish citizenship at that point. Essentially, he voted because he disagreed with the incumbent Turkish government's human-rights abuses and policies. He now votes in U.S. elections. His parents are retired professionals and were never involved with the Turkish Government or politics. His family members believe that Applicant is in the information technology industry, and he does not discuss his work with them. (Tr. 116)

He owns automobiles, but no real estate, in the U.S. where he has lived for 22 years. He maintains modest savings accounts and a 401(k) retirement plan in the U.S. (Tr. 69) Applicant attached seven favorable character-reference letters to his Answer. He also attached a letter to the Turkish embassy in the U.S. verifying that he renounced his citizenship and was no longer a Turkish citizen effective March 15, 2018. (AE N) He provided three additional character references at his hearing. (AE D,E,H) He also provided a letter from the dean of his university stating that Applicant was on the dean's list for one semester (AE I), plus copies of his college transcript and diplomas from his undergraduate and master's degrees. (AE K,L,M)

### **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.

## **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; 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.

Applicant's parents, sister, and two brothers, are citizens and residents of Turkey. He contacts his mother weekly as a dutiful son via Skype, and his siblings less frequently. 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. Accordingly, Applicant's relationship with his parents and siblings, who are citizens and residents of Turkey, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

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; and

(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.

Applicant has demonstrated a long-standing preference for working and living in the U.S. for the last 22 years. He is sponsored by a federal contractor for employment overseas as a linguist and he expressed a willingness to serve in dangerous conditions. He has the background, upbringing, and understanding of languages and culture that is invaluable to U.S. foreign interests. Although he is presumed to have strong bonds of affection with his parents and siblings in Turkey, these bonds are not sufficient to offset or overcome his demonstrated, long-term commitment to the U.S. and intention to continue in its service under dangerous conditions.<sup>4</sup>

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

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<sup>4</sup> The Appeal Board has held that "an Applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an Applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. March 20, 2007).

that person, organization, or country has interests inimical to those of the United States.<sup>5</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, 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 are Turkish citizens residing in Turkey, and his siblings are citizens and residents of Turkey, which is an unstable regime. His contact with them is infrequent by Skype. There is no indication that any of his family members are affiliated with the Turkish government or intelligence services. Applicant's foreign family members do not pose an unacceptable security risk. His wife and child are in the U.S., and his future lies here. He has no plan to return to Turkey. 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 to the U.S. All of the mitigating conditions in AG ¶ 8 are applicable to the contacts with family members, which are alleged in SOR ¶¶ 1.a–1.b.

### **Guideline C, Foreign Preference**

AG ¶ 9 explains the security concern about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 lists conditions that could raise a security concern and may be disqualifying including:

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

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
  - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
  - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

AG ¶ 10 lists some examples that raise foreign preference concerns. Applicant voted in a Turkish election one time, he was president of HDP for a six month period, and he previously possessed a Turkish passport. If his fleeting participation in HDP were determined to be participation in foreign activities, then ¶ 10(d) might be applicable to demonstrate foreign preference and raise a security concern.

AG ¶ 11 describes conditions that could mitigate security concerns including:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
- (c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;
- (d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;
- (e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;



(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk;

(g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law; and

(h) any potentially disqualifying activity took place after receiving the approval by the agency head or designee.

AG ¶¶ 11(b), (c) and (e) apply. Applicant was born to Turkish parents and came to the U.S. at age 19. He expressly renounced his Turkish citizenship and he has applied for a job as a linguist overseas serving the United States. He is patriotic towards the United States and is willing to sacrifice for the United States. He voted one time in a Turkish election with the hope that Turkey would adopt democratic values. That did not conflict with U.S. foreign policy or present a national security concern. He also had fleeting involvement with the HDP, but did not view that as contrary to U.S. foreign policy. I do not construe it as participation in foreign activities. He produced documentary evidence that he renounced his Turkish citizenship. His oath of allegiance contains a renouncement of foreign allegiance. If they ever existed, foreign preference security concerns are mitigated.

### **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.

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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. Applicant is 40 years old. He submitted character references from his supervisors attesting to his allegiance to the U.S. Virtually

all of his adult work life was spent supporting U.S. interests. He has stepped forward to serve as a linguist overseas. He is married with a child and committed to his life here.

Overall, the record evidence leaves me with no serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns and foreign preference 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.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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.

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Robert J. Kilmartin  
Administrative Judge