



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



In the matter of:)
)
) ISCR Case No. 19-00486
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Christopher A. Ott, Esq.

04/16/2020

Decision

WHITE, David M., Administrative Judge:

Applicant fully mitigated the Foreign Influence and Foreign Preference concerns created by her contacts and connections with Turkey. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

On September 11, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 2, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The action was taken 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 for national security eligibility effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on May 8, 2019 (Answer). She admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 2.a, and 2.b, with some explanations. She denied the allegations in SOR ¶¶ 1.c and 1.f, because those circumstances had changed. She also requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 29, 2019. DOHA issued a Notice of Hearing on August 9, 2019, setting the hearing for September 12, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant called three witnesses, testified on her own behalf, and offered Applicant Exhibit (AE) A into evidence. All exhibits were admitted without objection. I took administrative notice of relevant facts concerning the Republic of Turkey, which were set forth in the Government's Request for Administrative Notice. I left the record open until October 12, 2019, to permit additional submissions. Applicant timely submitted additional written evidence, which was marked AE B and admitted without objection. DOHA received the hearing transcript (Tr.) on September 23, 2019.

Findings of Fact

Applicant is 41 years old. She was born and lived in Turkey until age 26, when she moved to the United States for three and a half years to work, on an L-1 visa, for a Turkish aerospace company in collaboration with a major U.S. defense contractor on a NATO foreign military sales contract. She met her husband, who is a native-born U.S. citizen, through their work during that period. He moved to Turkey for work in 2007, and they began dating after she moved back to Turkey in 2008. They married in Turkey in 2010, and have no children. They moved back to the United States in 2012, and she became a naturalized U.S. citizen in November 2012. (GE 1; GE 2; AE B.)

Applicant earned a bachelor's degree in aeronautical engineering at a Turkish university in 2001. She has never been employed in military or civil service for any government. She worked, supporting NATO contracts, for two different Turkish aerospace companies from 2003 to 2012, and was granted Turkish and NATO security clearances in connection with that work. After she and her husband returned to the United States, she was unemployed until resolving her legal employment status, for immigration purposes, and then resumed employment in her area of expertise. (GE 1; GE 2; Tr. 39, 79-80, 96, 101-103.)

Applicant's father is 87 years old. He is a lifelong citizen and resident of Turkey, and now lives alone in the family's condominium flat. He retired in 1996 from his position as a personnel manager at the Turkish Ministry of Health. Applicant's mother passed away in 2014, at which point she, as her parent's only child, automatically inherited 75% ownership in the family flat. After recent exchange-rate fluctuations and an assessment of the local real estate market, the flat is estimated to be worth between \$36,000 and \$54,000. Applicant will eventually inherit her father's 25% interest in the flat, and she intends to sell it at that point. She has no intention of returning to Turkey, other than her annual visits to see her father and check on his welfare. (Answer; GE 1; GE 2; GE 3; Tr. 43-46, 53, 80-84, 99.)

Several years ago, Applicant set up cable and cell phone services for her father's use. She arranged to make automatic payments from her account in a Turkish bank, because he did not know how to do that. During her last visit to see her father in Turkey, she arranged for the payments to be made from his account, and closed hers, to avoid generating perceived security clearance concerns. The former payments were modest, and he does not depend on her for financial support in his retirement. She also closed, or withdrew all funds, from her other bank accounts in Turkey. All of her financial assets are now held in the United States. (Answer; Tr. 46-47, 85-88.)

Applicant listed four longtime friends from Turkey on her e-QIP. They are former coworkers she and her husband met and socialized with during their time working in Turkey. They have only occasional and casual contact now, primarily discussing family events or sharing a meal when she is in Turkey to visit her father. They do not discuss each other's work, and Applicant feels no obligation toward any of them beyond extending common courtesies. (Answer; GE 1; GE 2; Tr. 38-39, 47-51, 84-85.)

In 2017, Applicant traveled to the closest Turkish consulate, which is located in a Canadian city across the border, with some friends for a getaway weekend and to vote in the Turkish election held that year. She traveled using her U.S. passport, but used her Turkish identity card to document her eligibility to vote in the election. She did this because she read a number of U.S. Government statements indicating the importance of the election results for U.S.-Turkish relations, and wanted to vote in favor of the outcome preferred by the United States. She has no intention to vote in any future Turkish elections, and has voted in every U.S. election since she gained citizenship and eligibility to vote. (Answer; GE 2; Tr. 40-42, 57-58, 88-91.)

From about 2003 to 2011, while Applicant worked for a Turkish aerospace company involved in aircraft procurement programs in support of NATO, she held both Turkish and NATO security clearances. These clearances were required for her NATO-related employment, and lapsed after she left that employment for a better job, then moved to the United States with her husband. (Answer; GE 1; GE 2; Tr. 39, 102-103.)

Applicant's husband and two of her current coworkers testified concerning her excellent character, integrity, and dedicated loyalty to the United States as her adopted country. She is an assiduous rule follower and complies with all measures and procedures involving protected, sensitive, and classified information. She has immersed herself in workplace, community, and national cultural events, customs, and practices. Five other friends and coworkers wrote letters expressing similar observations. Applicant's testimony was direct, open, and impressive. (AE A; Tr. 37-103.)

I have taken administrative notice of facts contained in U.S. Government publications concerning the Republic of Turkey, as outlined on pages 2 through 5 of HE II, including the following: Turkey is a constitutional republic. It is a member of NATO and the counter-ISIL coalition. On February 5, 2019, the United States and Turkey issued a joint statement reaffirming the strategic importance of their relationship, and committed to addressing shared concerns as allies. There are some conditions in Turkey that are

problematic, including ongoing activities by terrorist organizations, expanded state police powers implemented to address them, and reports of some significant human rights issues. (HE II.)

Policies

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

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. According to AG ¶¶ 2(b) and 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 any doubt concerning personnel being considered for national security eligibility 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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 eligibility for access to classified information or assignment in sensitive duties.

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 information.

Section 7 of EO 10865 provides, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Three of them are potentially applicable:

(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 has commendable connections and feelings of familial obligation with her 87-year-old father, who is a lifelong resident and citizen of Turkey. She also has normal, and freely disclosed, casual relationships with former coworkers in Turkey and

their families. She used to have modest bank accounts in Turkey, which have all been emptied and closed. She retains the inherited 75% ownership interest in the family condominium flat, where her father continues to live and holds the remaining 25% interest as a matter of Turkish law. The full value of this flat is probably less than \$50,000, and she intends to sell it when her father no longer lives there. The evidence is sufficient to raise potential concerns under these disqualifying conditions, shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (a) the nature of the relationship 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;
- (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 a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant fully established that it is unlikely that she could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of her commendable relationship with her father, or with her casual friends in Turkey. Those connections create no significant potential for conflict of interest or risk of coercion, exploitation, manipulation, or pressure. She has withdrawn all of her financial assets from her former Turkish accounts, and she only retains her modest inherited ownership interest in her parents' family flat so her father can continue to live there in retirement. Accordingly, Applicant fully established mitigation of all foreign influence concerns under AG ¶¶ 8(a), (b), (c), and (f).

Guideline C – Foreign Preference

The security concern for this Guideline is found in AG ¶ 9:

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. (Emphasis in original.)

A comprehensive review of the facts in this case yielded no evidence that would raise any of the disqualifying conditions that are set forth in AG ¶ 10. Applicant's exercise of her right to vote in a Turkish election is expressly excluded by the above-quoted language, and was only done to advance what she perceived to be the U.S. interest in the outcome. Her possession of Turkish and NATO security clearances from 2003 to 2011, while working in support of a NATO program and before her marriage to a U.S. citizen and naturalization, raises no concerns. There is no need to list the foreign preference mitigating conditions, but any concerns under this guideline would be fully mitigated under those listed in AG ¶¶ 11 (a) through (f).

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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The security concerns alleged in the SOR do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of her commendable relationships with her father and former coworkers, responsible financial management, and impressive professional accomplishments. Applicant is a mature person, and a proud naturalized U.S. citizen. There is no evidence or allegation that she has ever taken any action that could cause potential harm to the United States. She fully alleviated any formerly significant potential for pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant fully met her burden to mitigate the foreign influence, and any foreign preference, security concerns raised by the facts of this case. Overall, the record evidence leaves me with no doubt 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 B: FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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 eligibility for access to classified information. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge