



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00204
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

October 12, 2021

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On September 11, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on September 17, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 16, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on July 1, 2021, and the hearing was convened as scheduled on August 27, 2021. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant’s Exhibits A

through G, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 8, 2021.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Turkey. Department Counsel provided a six page summary of the facts, supported by eleven Government documents pertaining to Turkey, identified as Hearing Exhibit (HE-1.) The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

The Applicant requested that I take administrative notice of certain facts relating to the country of Turkey, which were admitted into evidence without objection as Applicant's Exhibit B.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old and is married with three children. He has a Master's degree. He holds the position of Consulting Engineer in the field of Reliability Engineering with a defense contractor. A security clearance is required in connection with this employment.

Applicant admits to both of the allegations set forth in the SOR. Applicant's mother and father are citizens and residents of Turkey. His sister is also a citizen and resident of Turkey.

Applicant has been employed with his current employer since 1996. Since then, he has had only one nine-month departure from his position in 2000, and then returned in 2001. He held a security clearance since 1996, and has held Secret/Top Secret/SSBI level clearance at different periods, until his clearance was suspended in 2016/2017. Although a security clearance would be convenient for the Applicant, and for his company, for the past four years he has continued to work in his capacity without a clearance.

Applicant came to the United States in the summer of 1979 as a tourist. The following year, he came again, this time on a student visa, in September, to begin college. Applicant testified that it had always been his dream to come and live in the United States. He had extended relatives, including an uncle who studied in the U.S.

Applicant received his residency in the United States in 1990, and his citizenship in 1995. Applicant explained that he returned to Turkey in March 1991, and again in May 1993, because he was holding a green card at the time, and was required to complete a two-month military training obligation to be able to maintain his Turkish citizenship. Following this, he worked for the Turkish government at the Ministry of Defense as a project engineer, for a year and a half or two. At this point, Applicant wanted to return to the United States for his graduate studies. When he returned to the United States he completed his Master's degree. Since 1995, Applicant has only been back to Turkey on two occasions in 2004, and in 2005 when he took his wife and daughter for a three-week summer vacation.

Applicant's mother is 82 years old and is a citizen and resident of Turkey. She lives in Istanbul in the winter, and near the coast in the summer. She has always been a homemaker and has never worked outside of the home. Applicant maintains regular contact with his parents in Turkey. He speaks to his mother once every two weeks to a month, and normally discusses her health situation. Due to Covid, Applicant has been in contact more frequently, lately. Applicant normally contacts her through "WhatsApp," a telephone service. The last time he spoke to his mother in person was in 2011 when she visited the United States. (Tr. p. 33.)

Applicant's father is 85 years old and is also a citizen and resident of Turkey. After finishing his studies in Turkey, he married Applicant's mother. They were from the same town in Turkey. Applicant's father was employed as a mechanical engineer for many years, and then owned a small business. He did consulting work for the Turkish government. (Tr. p. 34.) He is now retired. Applicant states that his father's background is in the steel industry, but he worked as a consultant managing a leather processing factory, converting animal hides to leather with chemicals from the factory. (Tr. p. 35.) Applicant's father also served in the Turkish military. (Tr. p. 35.) Applicant's father is now hard-of-hearing. It is difficult for Applicant to speak to him over the telephone. Instead, Applicant talks to his mother, and she communicates what he says to his father. Applicant last saw his father in person in 2011 when they visited the United States.

Applicant's sister is also a citizen and resident of Turkey. She is 58 years old. She takes care of Applicant's parents. She is divorced and retired. She used to work for several banks. At one point, she worked for a private bank, which may later have become a government bank, Applicant is not sure. Her background is in chemistry. She also speaks French and English. The last position she held was that of a foreign correspondent. Applicant speaks with his sister less frequently than with his parents. He speaks to his sister once every two months or so to discuss their parent's health. Applicant last saw his sister in person when she visited the U.S. with his parents in 2011. (Tr. pp. 38 – 39 and 42.)

Applicant's father knows that Applicant works for a space company with satellites and space technology. His mother is not so aware. She is not an engineer, nor is she educated. She does not know what the Applicant does for a living. Applicant's sister

knows that Applicant is an engineer, and that he works for a space company. None of Applicant's family members know about his security clearance. Applicant provides no financial support to his family in Turkey. His parents and sister each receive retirement benefits from the government in Turkey and own their own homes. (Tr. pp. 44 - 45.)

Applicant is no longer a citizen of Turkey, and has no right to inherit anything from the Turkish government. His parents own an apartment in Istanbul, some land from Applicant's grandfather in the countryside, and some olive trees, but Applicant's sister will inherit those assets upon their death.

Applicant states that he continues to pay attention to political events in Turkey. He is very saddened by what is happening with the lack of democracy there. He is not afraid for his parents or sister's safety in Turkey because they are private citizens who live a decent common people's life. They keep to themselves, and are not involved in any activities that would expose them to problems.

Applicant has received a number of awards and commendations for his excellent performance on the job and outstanding work product within his group or team. (Applicant's Exhibit D-1, D-2 and D-3.)

Applicant's performance review for the period from January 1, 2020, through June 30, 2020, is favorable and reflects his work performance as excellent. (Applicant's Exhibit E.)

Letters of recommendation from upper management, professional colleagues and associates, all acknowledge Applicant's unique skills and talent that he provides the company. He has over 20 years of experience and has shown expressive career growth, in a variety of aerospace systems and platforms through all phases of development and deployment. Applicant has built a reputation as one of the top reliability engineers with dedication, hard work, loyalty to the U.S. Government and support across the enterprise. His level of expertise and contribution is recognized not only by this company, but also by colleagues in the industry. Applicant is considered an invaluable asset and highly recommended for a security clearance. (Applicant's Exhibits F and G.)

I have taken administrative notice of background information concerning the country of Turkey. Turkey is a constitutional republic with an executive presidential system and a 600-seat parliament. The U.S.-Turkey relationship dates back to 1831, when the United States established diplomatic relations with the Ottoman Empire. Over the years, the U.S. has been committed to emphasizing the importance of the Turkish government's adherence to policies and actions that build public trust in the country's democracy institutions and the rule of law, as well as upholding human rights commitments. In recent years, democracy in Turkey has continued to deteriorate. President Erdogan has ruled Turkey since 2003, and during that time has expanded his control over Turkey and its institutions. U.S. and European Union officials have expressed a number of concerns about authoritarian governance and erosion of rule of

law and civil liberties in Turkey. Turkey is a member of the UN, NATO, and the Global Coalition to Defeat ISIS. However, due to Turkey's regional ambitions and a distrust of the United States, the growing authoritarianism of Turkey's leaders are complicating the bilateral relationship and make Turkey more willing to challenge U.S. regional goals. Besides Covid restrictions, travelers are to exercise increased caution due to terrorism and arbitrary detentions. There are high-threat locations for terrorism in Turkey directed at affecting official U.S. Government interests, western tourists and expatriates. Turkey is a source of transit for foreign terrorist fighters seeking to join ISIS and other terrorist groups fighting in Syria and Iraq. ISIS and ISIS offshoot organizations have a significant presence in northern Syria, and along portions of the Turkish/Syrian border. The Kurdistan People's Congress (also Kongra Gel, KGK; and Kurdistan Worker's Party, PKK) has been the most active terrorist organization in Turkey, targeting Turkish government facilities and infrastructure. Human Rights and fundamental freedoms violations and a compromised rule of law has resulted in many arbitrary killings, torture, detention of tens of thousands of persons including former opposition members of parliament, lawyers, journalists, foreign citizens, elected officials, and employees of the U.S. Mission. There are severe restrictions on freedom of expression, threats and violence toward judicial independence, the press, unjustified arrests or criminal prosecutions for criticizing government policies or officials. (HE-1, and Applicant's Exhibit B.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information 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 access to classified information. 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 Executive Order (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 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 at AG ¶ 7 contains seven disqualifying conditions that could raise security concerns. Three disqualifying conditions may apply:

(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

(i) conduct, especially while traveling or residing outside the U.S. that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's foreign family members include his mother, father, and sister. They are citizens and residents of Turkey. Applicant and his father both served in the Turkish military and both have worked for the Turkish government. Despite the fact that Applicant has become an American citizen and has established his permanent home in the U. S., he Applicant maintains regular contact with his parents and sister in Turkey.

Applicant's foreign connection with Turkey raises some serious security concerns. Applicant is a target to be threatened or influenced or placed in a situation that may manipulate or induce him to help a foreign person or foreign government in a way that is inconsistent with the U.S. interests. Applicant has subjected himself to a heightened risk of foreign influence or exploitation or personal conflict of interest from his connections with his relatives in Turkey. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact poses a security risk to the U.S. government that is not necessary. The evidence is sufficient to raise these disqualifying conditions.

The guideline at AG ¶ 8 contains six conditions that could mitigate security concerns. None of them apply to Applicant:

(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, 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirement regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

After moving to the United States, Applicant continued to maintain and nurture his relationship with the country of Turkey, by serving in their military and by working for their government. He has also continued to maintain close contact with his family in Turkey. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established. Applicant's foreign relationships poses a heightened security risk.

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 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 those guidelines, but some warrant additional comment.

Applicant's strong familial ties in Turkey and foreign connections pose a significant risk to the U.S. government. Under the particular circumstances of this case, this regular ongoing contact with these foreign nationals creates an unnecessary security risk not worth the benefit to the U.S. government.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a: and 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge