



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02936  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: Marc Napolitana, Esq.  
01/25/2021

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from Turkey, mitigated the foreign influence concerns raised by his relationships with his father, a retired member of the Turkish Air Force, and stepmother, a retired French instructor, who are citizens and residents of that county. Clearance is granted.

**Statement of the Case**

On November 25, 2019, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be

submitted to an administrative judge for a determination whether to deny his security clearance. Applicant timely answered the SOR and requested a hearing.

The hearing was initially scheduled for March 19, 2020, but rescheduled because of safety concerns related to the Covid-19 pandemic. The parties agreed to reschedule the hearing for September 25, 2020. At the hearing, I appended to the record as Hearing Exhibits (HE) I and II, the case management order I issued in this case on August 28, 2020, and the Government's discovery letter, dated February 20, 2020. I admitted Government's Exhibit (GE) 1, without objection. The Applicant did not submit any additional documentation. DOHA received the transcript (Tr.) on October 7, 2020.

## **Procedural Matters**

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about the Republic of Turkey (Turkey). Without objection from Applicant, I approved the request. The administrative notice summary and the supporting documentation are appended to the record as HE III. The relevant facts are highlighted in the Findings of Fact section, below.

## **Findings of Fact**

Applicant, 40, applied for a security clearance in anticipation of employment with a federal contracting company. He completed a security clearance application, his first, in January 2019, disclosing close relatives who are citizens and residents of Turkey: his father and stepmother. Applicant also disclosed his mother, sister, and stepbrother, each of whom resides in the United States. The SOR only alleges Applicant's relationships with his father and stepmother as security concerns. (Tr. 17-18; GE 1)

Applicant is from the Turkey, a constitutional republic with a multiparty parliamentary system and a president. The U.S.-Turkey friendship dates to 1831. Turkey is an important U.S. security partner and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952. Turkey is a leader in the Alliance's Resolute Support Mission in Afghanistan and is also a vital member of the Counter-ISIL Coalition. Turkey continues to face a significant terrorist threat from both external and home-grown sources. The current U.S. State Department travel warning for Turkey reflects an increased risk from terrorist groups and the potential for violence against U.S. citizens due to an increase in anti-American rhetoric. In the aftermath of a July 2016 coup attempt; the U.S. State Department has also reported a number of significant human rights problems in Turkey, including arbitrary killings, suspicious deaths of persons in custody, forced disappearances, torture, as well as the arbitrary arrests and detention of tens of thousands of persons, including opposition members of parliament, lawyers, journalists, foreign citizens, and Turkish nationals with purported claims to "terrorist" groups or engaging in peaceful legitimate speech. (GE 1; HE III)

Applicant attended secondary school and completed his university education in Turkey. He completed his compulsory military service in 2004. Applicant initially came to the United States in 2004 with a J-1 visa to participate in an internship program. During the internship program, Applicant met his future wife – a U.S. citizen by birth. The couple married in 2005 and Applicant was able to obtain permanent resident status. He became a naturalized U.S. citizen in June 2009. (Tr. 21-22, 47, 52-83; GE 1)

Applicant's father and stepmother are citizens and residents of Turkey. They live in a large city on the western coast of the country. Applicant's father, 68, retired from the Turkish Air Force as a colonel in the late 1990s, when Applicant was in middle school. Applicant testified that although his father trained to be a pilot, he spent his military career managing retail establishments on Turkish military bases. In the 30 years since retiring, Applicant's father has owned and operated a series of small businesses. On his security clearance application, Applicant disclosed that he gave his father \$52,000, which Applicant believes his father used as capital for a business venture. Applicant provided the money from the savings he and his wife accumulated. He does not expect his father to repay the money and sees it as an offering of gratitude for the financial support his father provided him through college. Applicant's stepmother is a French teacher who is retired from a public university. Applicant's father and stepmother receive pensions from the Turkish government. They are financially self-sufficient and do not rely on him for ongoing financial support. (Tr. 29-31, 46, 48, 53-56, 58; GE 1)

Applicant communicates with his father and stepmother a few times per month through video chats, primarily to allow his parents to see their granddaughter. Applicant has not traveled to Turkey since 2007. His father and stepmother have a current tourist visas to enter the United States. They have visited on four occasions for vacations with Applicant and his family. (Tr. 28, 49-51, 88)

Aside from his father and stepmother, Applicant has no other ties to Turkey and he is not seeking to create any additional ties. Applicant considers himself firmly rooted to the United States by his family and the community in which he and his wife have chosen to live. He completed his master's degree at a U.S. university in 2013. Applicant and his wife have one child, age six who is a U.S. citizen by birth. They are expecting their second child in January 2021. Applicant and his wife have owned their current home, their third home together, since July 2016. The couple has over \$500,000 in U.S.-based assets. Neither Applicant nor his wife have any assets based outside of the United States. (Tr. 25-26, 31, 57, 83-85; GE 1)

### **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(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 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.

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**

"Foreign contacts and interests may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest." (AG ¶ 6) Historically, Turkey has been an ally of the United States; however, the recent political instability in the country and region has become a potential threat to U.S. interests operating there. Accordingly, Applicant's relationships with his father and stepmother are disqualifying under AG ¶ 7(a), "contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is citizen of or resident

in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

Applicant has presented sufficient information to mitigate the security concerns related to his relationships with his father and stepmother. Although Applicant’s father served in the Turkish military, he retired over 30 years ago. Aside from receiving his pension, there is no indication that he has ongoing ties to the Turkish government or military establishment. The record does not contain any evidence that the activities of Applicant’s father and stepmother would draw the attention of either the Turkish government or a non-government entity. Furthermore, while Applicant’s relationships with his father and stepmother are not casual, these relationships are unlikely to serve as a conflict of interest. The following foreign Influence mitigating conditions apply:

AG ¶8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position or activities of those persons in that country are such that 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

AG¶ 8(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, or country is also 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. interests.

Based on the record, I have no doubts about Applicant’s ability to protect and handle classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant’s familial and financial ties to the United States outweigh his ties to Turkey. He has not demonstrated divided loyalties between the two nations.

### **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, Foreign Influence:	For Applicant
Subparagraphs 1.a – 1.b:	For Applicant

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge