



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



In the matter of:)
)
) ISCR Case No. 19-04075
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: Pro se

January 12, 2022

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On April 16, 2021, 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 Guidelines B and C. 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 April 23, 2021, and requested a hearing before an administrative judge. The case was assigned to me on October 12, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on October 25, 2021, and the hearing was convened as scheduled on November 17, 2021. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on November 23, 2021.

Motion to Amend

Department Counsel made a motion to amend the Statement of Reasons dated April 16, 2021, to include three additional allegations under Guideline B, specifically allegations 1.e., 1.f., and 1.g. The proposed amendments were as follows: Allegation 1.e., "Your husband is a citizen of Turkey." Allegation 1.f., "Your mother-in-law is a citizen of and resident of Turkey." Allegation 1.g., "You maintain contact with friends and former colleagues who are currently employed with Turkish Aerospace Industries in various roles working on projects for the Turkish military." Applicant had no objection to the above amendments. (Tr. p. 100.) Accordingly, the motion was granted and the amendments were made. (Tr. p. 101.)

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Turkey. Department Counsel provided a five page summary of the facts, supported by five Government documents pertaining to Turkey, identified as HE 1. The documents provide elaboration and context for the summary. Applicant had no objection. (Tr. p. 16.) 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.

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 40 years old and married. She has a Master's degree in Mechanical Engineering. She currently holds the position of Manufacturing Engineer. She is applying for a security clearance in connection with her employment with a defense contractor. Applicant began working for her current employer in July 2018.

Applicant was born in Turkey and grew up there. She entered the United States in 1997, with her family, on a green card, and became a permanent legal resident. Applicant attended one semester at a university in the United States and changed her major. She then applied to and attended another university more fitting for her new major. Applicant completed her Master's degree program in 2004. That same year, she became a naturalized U.S. citizen. After graduating from college, Applicant returned to Turkey. She explained that it was customary for her to return to Turkey for several months during the summer breaks while in college to visit her family and friends there. It is noted that Applicant was financially supported by her father in Turkey throughout her college education. Applicant stated that she did not get along with her mother, and wanted to stay away from her. (Tr. pp. 35-40.)

From 2004 to 2009, Applicant worked off and on in the United States, and did not find a job that fulfilled her. She was laid off from her last job in the United States after two and a half years of employment. Due to parental pressures, concern about her father's health, and lack of employment, she chose to relocate back to Turkey in August 2009. (Tr. pp. 40-45, and Applicant's Answer to SOR.)

Once in Turkey, Applicant established her roots there. In 2011, she married a Turkish man, who was a dentist. Applicant states that when she married him she wanted to relocate to the United States, but she never discussed the issue with him before they married. He had no interest in coming to the United States. They divorced in March 2017. (Tr. pp. 67-60.)

From November 2009 to July 2018, Applicant worked for the Turkish Aerospace Industries (TAI), manufacturing and providing various forms of military aircraft, drones, unmanned surveillance and other aerospace equipment exclusively for the Turkish Government. Over the nine years she worked there, she advanced from a tool design engineer to a manufacturing engineer, and program leader, a position she enjoyed. While in Turkey, working for TAI, Applicant developed many engineering contacts and met employees who worked for her current employer in the U.S. Some of them had long-term contracts working for Applicant's current employer and were assigned to Turkey. Applicant established communications with these individuals while they were working in Turkey. Over time they became good friends and Applicant ultimately learned about her current job position in the U.S. from one of these individuals. (Tr. p. 53.)

In 2018, Applicant, from Turkey, applied for the position with her current employer. She was interviewed over the telephone and hired. (Tr. p. 91.) Applicant moved to the United States in July 2018, and began working for her current employer. In 2019, she met her current husband, a Turkish national. They were married in November 2020. (Tr. p. 62.) He has an extension on his green card, and recently filed an application for a new green card based on his marriage to the Applicant. He is currently unemployed. (Tr. p. 64.)

Applicant maintains contact with friends and former colleagues who are currently employed by the TAI in various roles working on projects with and for the Turkish military. (Tr. p. 102.)

Applicant's has a number of family members who are citizens and residents of Turkey. These family members include Applicant's father, mother, husband, mother-in-law, and a cousin. Applicant's two brothers are dual-citizens of Turkey and the United States. Her older brother resides in the United States. He has a Ph.D in Mechanical Engineering, is a professor at a University here, and owns his own company. As a professor, he is involved in a rotational teaching program allowing him to travel to various universities within the United States to teach or conduct research. He has not traveled to Turkey for about eight or nine years. Applicant testified that she maintains regular contact with her older brother who resides in the United States. She speaks with him about twice a week. They discuss matters pertaining their parents health and well-being.

Applicant's younger brother was born in the United States, but returned to Turkey as an infant. In 2014, he moved from Turkey to the U.S. to attend college. He has recently moved to Texas, and working for a company there. Applicant has not had any contact with him for several years.

The evidence about her foreign connections was conflicting and mixed. Applicant stated that, "I hated living in Turkey, especially as a woman, so I was looking for ways out." (Tr. p. 50.) However, despite becoming a naturalized U.S. citizen, Applicant exercises Turkish residency. Applicant maintains a bank account in Turkey that has about \$200 U.S. dollars in it. She keeps this account open to help her mother if she needs money. She also does not want to ask her parents for money when she visits Turkey. Applicant voted in two elections in Turkey, including the most recent Presidential election that occurred in July 2018 because she did not like the President in Turkey. Applicant is also eligible to receive a pension from Turkey when she meets the age requirement. She believes it will amount to about \$300 a month when she is 50 years old. Applicant also has a valid Turkish passport and uses it in lieu of her U.S. passport to reenter Turkey for convenience purposes when she travels there. (Tr. p. 69.)

In assessing the heightened risk created as a result of Applicant holding a security clearance, the Applicant's ties to a hostile country are important. However, even countries friendly to the United States have attempted to gain unauthorized access to classified information. Under the particular facts of this case, I have taken administrative notice of the information provided concerning the Country of Turkey. Turkey is a constitutional republic with an executive presidential system and a unicameral 600 seat parliament (the Grand National Assembly). 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 democratic 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.)

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 notes several conditions that could raise security concerns under AG ¶ 7. Two 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 foreign contacts include her mother, father, two brothers, her husband, mother-in-law, and a cousin. She also has a number of professional colleagues and friends she has worked with whom she remains close to and are also citizens and residents of Turkey, or are dual citizens of both countries, like she is. Based upon the evidence presented, these close foreign contacts and unique relationships may pose a threat and negatively influence Applicant’s decision making, impacting the interests and security of the United States. Applicant’s contact with some

of these individuals is regular and frequent, while with others it is casual, minimal, and not out of the ordinary. Her family members in Turkey pose no undue security risk. However, most concerning is Applicant's contacts with the Turkish Aerospace employees. There was no evidence presented that showed similar relationships she has established in the United States. Under the particular circumstances here, the risk-benefit analysis is applicable, and these contacts do pose a significant security risk to the U.S. government. They may manipulate, induce, or influence the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

As discussed above, most concerning is Applicant's contacts with her foreign aerospace associates and long-time friends in Turkey. The nature of the contacts, the positions, skills, and activities of these individuals, and the protected information Applicant may access could create a risk for foreign influence. These contacts can result in a situation that may create a divided allegiance. Applicant has shown no deep and longstanding relationship with or loyalties to the United States. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Influence is set out 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 may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgement,

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(c) failure to use a U.S. passport when entering or exiting the U.S.

Applicant maintains her Turkish passport for convenience purposes and uses it when she travels to Turkey. Although she is a naturalized U.S. citizen she continues to use privileges afforded exclusively to Turkish citizens.

AG ¶ 11 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 11 including:

(a) the foreign citizenship is not in conflict with U.S. national security interests; and

(b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference.

Applicant's actions exhibit a strong foreign preference for the country of Turkey. She maintains a Turkish bank account, votes in their elections, is eligible for a pension in Turkey when she meets the age requirement, and maintains and uses her Turkish passport when she travels there, instead of using her U.S. passport. This is not an individual who shows loyalty to the U.S. or has made a commitment to break her ties from her permanent home of Turkey. In fact, she is quite immersed with what is going on in Turkey. Applicant has only been in the United States for a few years now, since 2018. She has no real assets here in the United States. She does not own a home, and there is no evidence of any other assets. The above mitigating condition is not applicable.

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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Under the particular facts of this case, Applicant's Turkish connections pose a significant risk to the U.S. government, and she shows a strong foreign preference for Turkey.

Overall, the record evidence leaves me with questions or 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 and Foreign Preference 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. through 1.c.	For Applicant
Subparagraphs 1.d. through 1.g	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a: through 2.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