



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 20-03445
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
 For Applicant: *Pro se*
 09/06/2022

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Eligibility for access to sensitive information is denied.

Statement of the Case

On March 28, 2014, Applicant submitted an electronic questionnaire for investigations processing (Form SF86) to obtain a public trust position (2014 SF86). For reasons not indicated in the record, he submitted another SF86 for the same position on July 25, 2016 (2016 SF86). The record also contains an SF86, dated July 17, 2012, which was submitted for reasons also not indicated in the record (2012 SF86). On March 12, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging trustworthiness concerns under Guidelines B and C. The CAF acted under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On July 15, 2021, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On January 27, 2022, the

Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including proposed evidentiary documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on March 14, 2022, but did not respond to the FORM or object to the Government's documents contained therein. The case was assigned to me on May 25, 2022.

Evidentiary Matters

Items 1 and 2 are the pleadings in the case. I marked and admitted Items 3 through 5 and 7 into evidence as Government Exhibits (GE) 1 through 4, respectively. Item 6 is the Government's request for administrative notice (discussed below), which I marked and appended to the record as Administrative Exhibit (AX I). Although GE 4 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to GE 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of GE 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to GE 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that GE 4 could be considered as evidence in his case.

Administrative Notice

The Government requested that I take administrative notice of certain facts about Turkey. Those facts were extracted from official U.S. Government publications, which were proffered by the Government as source documents. Without objection, I have taken administrative notice of the facts contained in the request. Two of the source documents proffered by the Government have been recently updated. To ensure that I consider the most current political conditions in Turkey, I *sua sponte* appended the updated source documents to the record and have taken administrative notice of the facts contained therein. For the record, the updated documents are:

- VII. U.S. Department of State, *Turkey 2021 Human Rights Report*, updated April 12, 2022
https://www.state.gov/wp-content/uploads/2022/03/313615_TURKEY-2021-HUMAN-RIGHTS-REPORT.pdf
- VIII. U.S. Department of State, *Turkey Travel Advisory*, updated April 19, 2022.
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/turkey-travel-advisory.html>

The facts administratively noticed about Turkey will not be repeated verbatim in this decision, but will instead be referenced or summarized in the below Findings of Facts, as appropriate. The updated documents I referenced for Turkey did not contain facts that affected the relative positions of either party or my decision.

Findings of Fact

The SOR alleged, under Guideline B, that Applicant, a U.S. citizen by birth, is maintaining dual U.S - Turkish citizenship and residing in Turkey with his wife and children (SOR ¶ 1.a); voted in a local Turkish election (SOR ¶ 1.b); has ties to resident citizens of Turkey (SOR ¶¶ 1.c through 1.f); and has assets in Turkey (SOR ¶¶ 1.g. and 1.h). Under Guideline C, the SOR cross-alleged the same facts alleged in SOR ¶ 1.a (SOR ¶ 2.a) and also alleged that Applicant used his Turkish citizenship to: purchase a home in Turkey with funds borrowed from a Turkish financial institution (SOR ¶ 2.b); obtain employment with a Turkish company in Turkey (SOR ¶ 2.c); qualify his children to attend a special school in Turkey (SOR ¶ 2.d); and access the Turkish healthcare system (SOR ¶ 2.e). Under Guideline C, it also alleged that Applicant pays about 65% of his earned income in taxes to Turkey (SOR ¶ 2.c).

In his Answer, Applicant admitted each Guideline B allegation. However, I construed his response to SOR ¶ 1.g as a denial (as discussed below). With respect to Guideline C, he denied the general concern and admitted all but one of the allegations (SOR ¶ 2.e). However, I also construed his response to SOR ¶ 2.b as a denial (as discussed below).

Applicant, age 43, is a U.S. citizen by birth. He obtained his Turkish citizenship in September 2013, which he continues to maintain as a dual U.S - Turkish citizen. His wife is a Turkish citizen by birth and a lawful permanent resident of the United States. Her application for that status was sponsored by Applicant in 2003. Applicant and his wife were married in Turkey in December 2001. Their three children, ages 9, 17, and 19, are dual U.S - Turkish citizens. The 17-year-old was born in the United States (in May 2005), and the other two children in Turkey. His wife's and children's resident and citizenship statuses were alleged in SOR ¶ 1.c. In his Answer, he admitted the allegation and asserted that all three of his children plan to attend college in the United States. (GE 1, 2, 4)

Applicant enlisted in the U.S. Air Force upon his graduation from high school in December 1997. He served on active duty until he medically retired in April 2005, due to service-related injuries. While on active duty, he was stationed in Turkey from 2000 through 2005 (he was in England from 1997 through 2000). Applicant earned his bachelor's degree in 2011 from an online U.S. university he attended from May 2009 through May 2011. His current U.S. defense contractor employer is sponsoring his pending application for a trustworthiness determination. (GE 1, 2, 4)

Applicant has lived and worked in Turkey since 2000, except for the period from March 2005 until May 2008, when he lived and worked in the United States. He has resided with his wife and children in Turkey since May 2008. Besides referencing the birth of their child in the United States in May 2005, the record did not address whether his wife and children resided with him in the United States between March 2005 and May 2008, or whether he resided with his wife and children in Turkey prior to March 2005. SOR ¶ 1.a and ¶ 2.a alleged: "You applied for citizenship in Turkey and became a dual citizen of Turkey and the United States in about September 2013. You have resided in

Turkey with your spouse and three children since about 2008.” In his Answer, he admitted SOR ¶ 1.a and asserted: “My mother-in-law is very ill and my wife takes care of her, as a[n] at home care giver.” He admitted SOR ¶ 2.a and asserted that he has returned “home” to the United States “on leave” every year, except in 2020 due to COVID-19 restrictions and health issues that have put him at higher risk for COVID-19 complications. (GE 1, 2, 4)

Applicant returned to the United States in March 2005 and expended his terminal leave before processing out of the Air Force. He volunteered for five months beginning in April 2005 for a U.S. healthcare company and then worked as its director of sales and marketing until May 2007, when he left to find a job closer to his residence. He then worked as a quality control dispatcher for a U.S. delivery carrier from May 2007 through May 2008, when he left to pursue a job opening at his former duty station in Turkey. Upon his return to Turkey in May 2008, he was unemployed until January 2009 while waiting for his contract to begin with the Turkish contractor for whom he worked as an assistant bulk storage superintendent until January 2014, when his contract ended. The record indicated that, although the contractor for whom he worked was a Turkish entity, his contract supported the U.S. Air Force base. He was unemployed again from January 2014 until March 2014 while waiting for his contract, also in support of the U.S. Air Force base, to begin with his current U.S. defense contractor employer. During those two periods of unemployment, he was financially supported by his U.S. Department of Veterans Affairs (VA) disability income. (GE 1, 2, 4)

When asked on his 2014 and 2016 SF86s how he acquired his Turkish citizenship, Applicant answered:

My wife is Turkish and I have lived and worked in Turkey for approx. 10 years. During my last DOD contract I was told [by a person or entity not indicated in the record] to get a Turkish citizenship because it would be easier than always applying for a work permit.

He also stated that he planned to renounce his Turkish citizenship when he returned to the United States after completing “all [of his] work overseas.” He further explained: “With children in Turkish school and getting credit for buying house/car I need to have a Turkish ID number.” (GE 1, 2)

Applicant was interviewed twice (in May and June 2019) in connection with the background investigation apparently prompted by his 2016 SF86. During his May 2019 interview, he stated that he obtained his Turkish citizenship so that he could get a job in Turkey to supplement his VA disability income, which was insufficient to meet his expenses; and to allow him to work in Turkey without having to obtain work permits. He maintained that he had only one obligation associated with his Turkish citizenship: to pay 65% of his earned income in Turkish taxes. With respect to the rights and privileges of his Turkish citizenship, he stated that it afforded him access to the Turkish healthcare system and the ability to own land in Turkey; and that, without it, his children would not be able to attend the special Turkish school in which they were enrolled. He asserted that, while his loyalty is to the United States, he was unwilling to renounce his Turkish

citizenship because doing so would preclude him from being able to work as a disabled veteran in Turkey. He also stated that he would not renounce his citizenship because he would not be able to own any land there. He explained that he had a house that he had been paying for that was in his brother-in-law's name, but would soon be in Applicant's name. (GE 4 at 5)

Later during Applicant's May 2019 interview, he acknowledged that he owned his home in Turkey, which he bought from his brother-in-law for US \$85,000 in late 2018. He explained that he was waiting for his brother-in-law, who then resided outside of Turkey, to return to Turkey to switch the house over to Applicant's name. During his June 2019 interview, he stated that even though he paid for it, his house is not in Applicant's name. He explained that in Turkey, because you build on top of other houses, he built his house on top of his brother-in-law's house. He also stated that even though, technically, his brother-in-law owns the land, his brother-in-law would not be able to sell Applicant's home without Applicant's signature. SOR ¶ 1.g alleged: "You purchased a home in Turkey for about \$85,000 USD in about 2018. You used money borrowed from a Turkish financial institution to purchase your home." Although he admitted that allegation, he also asserted in the accompanying explanation that: "I did not purchase/buy my house I built and added to the upstairs of my brother-in-law's house. The house belongs to my brother-in-law." Thus, as previously indicated, I construed his answer to SOR ¶ 1.g as a denial. (GE 4 at 5, 9)

SOR ¶ 2.b alleged: "You used your Turkish citizenship to purchase a home in Turkey in about 2018. You used your Turkish citizenship to borrow money from a Turkish financial institution to enable you to purchase your home." Although he admitted that allegation, the accompanying explanation concerned solely the facts alleged in SOR ¶ 2.c and was not responsive to the facts in SOR ¶ 2.b. Thus, as previously indicated, I construed his answer to SOR ¶ 2.b as a denial, particularly in light of the explanation accompanying his response to SOR ¶ 1.g.

On Applicant's 2014 and 2016 SF86s, he reported that he has been eligible to receive medical benefits in Turkey since January 2009. He explained "I worked for a Turkish contractor and I paid into the SSK system, my family and I are eligible to use the Turkish government hospitals . . . I still receive it and I will receive it in my next job." SOR ¶ 2.e alleged: "You used your Turkish citizenship to obtain access to the Turkish healthcare system for you and your family." In his Answer, he denied the allegation and asserted:

[Y]es I do have Turkish socialized health care [*sic*] that comes with paying taxes in Turkey. I would not have socialized healthcare if I did not have a job and pay taxes. I do not use this healthcare as I have TRICARE and my family I are seen at a Network Facility in . . . Turkey. If I were to go to a Turkish Government Hospital, then yes I would have insurance because I pay taxes. (GE 1 at 38-39; GE 2 at 37-38)

SOR ¶ 2.c alleged: "You used your Turkish citizenship to obtain employment with a Turkish company in Turkey. You pay the government of Turkey about 64% of your

earned income for your Turkish employment income taxes.” In his Answer, Applicant explained that his current employer pays his salary, but does so by paying a Turkish company who direct deposits his paycheck into a Turkish bank. He also stated that his employer pays a Turkish company “for [him] to pay a progressive tax that ends up being 65% at the end of the year.” He stated that he maintains a U.S. bank account, but the record did not indicate its balance. He was not sure why his employer did not direct deposit his paycheck into his U.S. bank account, but suspected that it may relate to his obligation to pay taxes in order to live and work in Turkey. (GE 4 at 6)

During Applicant’s May 2019 interview, he disclosed that he maintains a loan, bank account, and credit cards in Turkey because he lives there. During his June 2019 interview, he stated that he had maintained only one bank account in Turkey since about 2014, with a balance of approximately US \$15,000. SOR ¶ 1.h alleged: “You maintain a bank account in Turkey valued at about \$15,000 USD. You have credit card accounts issued by a Turkish bank.” In his Answer, he admitted the allegation and explained: “I do have a bank account and it is where I receive my check for the job I need this [trustworthiness determination] for.” (GE 4 at 5, 9)

On Applicant’s 2016 SF86, he reported that he had owned a car in Turkey since January 2014 with an estimated value of US \$20,179. He indicated that he was still in possession of that car during his May 2019 interview. Because this car was not alleged in the SOR, I will consider it only to evaluate mitigation and the whole person. During his June 2019 interview, he indicated that he no longer owns a car in the United States as he gave it to his grandparents before he returned to Turkey in 2008. His U.S. car was eventually repossessed after his grandparents failed to make the payments, as promised, on the loan for the car. (GE 1 at 37-38; GE 4 at 5, 8)

On Applicant’s 2014 and 2016 SF86s, he reported that his U.S. income tax return was audited by the IRS in 2013. He stated that he learned from the IRS that he was not entitled to the earned income tax credit because he works overseas. He also stated that he set up a payment plan with the IRS and his U.S. state tax authority to repay the earned income credit through his “future taxes.” He estimated the amount owed as US \$5,000. He explained that the reason he applied the earned income credit on his tax return was because he was “told” to do so (by a person or entity not indicated in the record). During his May 2019 interview, in reference to the 2013 IRS audit, he stated that his employer wrote a letter on his behalf to the IRS and his U.S. state tax authority stating that he has Turkish taxes taken from his paycheck. He stated that he had not heard any more about the issue since his employer sent the letter. Then he asserted that he does not pay U.S. taxes because he pays taxes to Turkey. The SOR did not allege facts with respect to his U.S. tax obligations; therefore, they will be considered only to evaluate mitigation and the whole person. (GE 1 at 44-45; GE 2 at 46-48; GE 4 at 6)

During Applicant’s May 2019 interview, he stated that he voted in a mayoral election in Turkey in March 2019 and did so because he has the right to vote. He maintained that he had no plans to vote in any future elections. SOR ¶ 1.b alleged: “You exercised your right to vote as a Turkish citizen by voting in a local Turkish mayoral election in about March 2019.” In his Answer, he admitted the allegation and explained:

“I was asked [by a person or entity not indicated in the record] to vote in the local mayoral election.” (GE 4 at 5-6)

SOR ¶ 2.d alleged: “You used your Turkish citizenship as a basis for qualifying your children to attend special school in Turkey.” In Applicant’s Answer, he admitted the allegation and explained: “My wife and I are not teachers so we would not be able to homeschool our children.”

Applicant’s parents, stepfather, and two siblings are citizens of the United States by birth. His stepmother is a Brazilian citizen by birth and a naturalized U.S. citizen. They all reside in the United States. His father-in-law is deceased. As alleged in SOR ¶ 1.d, which Applicant admitted, Applicant’s mother-in-law is a resident citizen of Turkey. She is 78 years old and a citizen of Turkey by birth. She lives in Turkey next door to Applicant. He has daily contact with her. Since 2008, he has provided her with financial support of about US \$400 per month by paying all of her bills. Because she is unable to pay her own bills, he intends to continue providing this support. Applicant reported no employer for his mother-in-law on his 2014 and 2016 SF86s and stated that she was not “affiliated with a foreign government, military, security, defense industry, foreign movement, or intelligence service.” (GE 1 at 34-35; GE 2 at 35-36; GE 4 at 5)

SOR ¶ 1.e, which Applicant admitted, alleged that his brother-in-law is a resident citizen of Turkey. The record otherwise contains scant details about his brother-in-law, including to whom he is married, his employment, and any affiliation with a foreign government, military, security, defense industry, foreign movement, or intelligence service. Despite having indicated that his brother-in-law lived outside of Turkey for at least some period of time, he admitted the allegation without explanation in his Answer.

On Applicant’s 2014 and 2016 SF86s, he reported that neither he nor his wife had, within the prior seven years, close or continuing contacts with any other foreign nationals. However, on his 2014 SF86, he listed a friend (A), who resided in Turkey, as one of his four references. He also referred to this friend as a neighbor. A was not otherwise discussed in the record so his citizenship status, employment, and possible connection to a foreign government are unknown. During his May 2019 interview, Applicant reported two foreign contacts that he described as coworkers who were resident citizens of Turkey. He had known one coworker (B), who is also the godfather to one of his children, since 2015. He had known the other coworker (C) since 2018. He reported daily contact with B and C, and that both were employed by the U.S. Air Force with no foreign government affiliations. Another name (D) was mentioned during a follow up call with the investigator after his May 2019 interview. However, the record was not clear as to whether the referenced name was an inadvertent misspelling of one of the aforementioned persons or another foreign contact. SOR ¶ 1.f alleged: “Your two friends are citizens and residents of Turkey. One friend is Godfather to one of your children.” In his Answer, Applicant admitted the allegation and reiterated that both work for the U.S. Air Force. (GE 1 at 19-20, 36; GE 2 at 20, 37; GE 4 at 4, 7)

In Applicant’s Answer, he expressed the following with respect to the Guideline B and Guideline C concerns:

I would never or have never indicated a preference to a foreign country over the United States. I live here for my job and my wife is here for her mother. My children live here because they are our children and I believe that children should grow up with their parents not guardians or wards of the state because I work overseas . . . I am a very proud American, I served in the United States Air Force from which I am medically retired due to injuries that I obtained during my service. I love working with the [U.S. Air Force base in Turkey] population . . . I would never nor have ever put another country above America, nor has my family. I would like for it to be on record that I am deeply offended that my love and loyalty to the country I served is in question, but I also understand that you are just doing your job and protecting American from people that do not have the best interests of America at heart.

Turkey

Turkey is a constitutional republic with an executive presidential system and a unicameral 600 seat parliament (the Grand National Assembly). In presidential and parliamentary elections in 2018, Organization for Security and Cooperation in Europe observers expressed concern regarding restrictions on media reporting and the campaign environment, including the jailing of a presidential candidate that restricted the ability of opposition candidates to compete on an equal basis and campaign freely.

The friendship between the United States and Turkey dates back to 1831, when the United States established diplomatic relations with the Ottoman Empire. The United States condemned the July 15, 2016 coup attempt in Turkey, and continues to emphasize 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. Turkey is an important U.S. security partner, and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952.

On December 14, 2020, the United States imposed sanctions on the Republic of Turkey's Presidency of Defense Industries (SSB) pursuant to Section 231 of the Countering America's Adversaries Through Sanctions Act (CAATSA) for knowingly engaging in a significant transaction with Russia's main arms export entity by procuring the S-400 surface-to-air missile system. The United States made clear to Turkey at the highest levels and on numerous occasions that its purchase of the S-400 system would endanger the security of U.S. military technology and personnel and provide substantial funds to Russia's defense sector, as well as Russian access to the Turkish armed forces and defense industry. Turkey nevertheless decided to move ahead with the procurement and testing of the S-400, despite the availability of alternative, NATO-interoperable systems to meet its defense requirements. This decision resulted in Turkey's suspension and pending removal from the global F-35 Joint Strike Fighter partnership.

Turkey continues its efforts to defeat terrorist organizations both inside and outside its borders, including the Kurdistan Workers' Party (PKK), the Revolutionary People's Liberation Party/Front, and ISIS. Turkey is an active contributor in international

counterterrorism fora, including the GCTF and the Defeat-ISIS Coalition. However, Turkey is a source and transit country for foreign terrorist fighters (FTFs) seeking to join ISIS and other terrorist groups fighting in Syria and Iraq, as well as for FTFs who seek to depart Syria and Iraq. Moreover, the PKK continues to conduct terrorist attacks in Turkey and against Turkish interests outside of Turkey including by taking hostages. In 2020, the PKK and its affiliates claimed responsibility for a rocket attack on a the Gurbulak customs gate with Iran that killed two Turkish Customs officials, a suicide bomber that struck a natural gas pipeline near the Turkish-Iranian border, taking the pipeline offline for months, and a bombing in Mardin province that temporarily disabled an oil pipeline running from Iraq to Turkey. Turkey has a broad definition of terrorism that includes so-called crimes against constitutional order and internal and external security of the state, which the government regularly used to criminalize the exercise of freedom of expression and peaceful assembly.

Significant human rights issues exist in Turkey including credible reports of: arbitrary killings; suspicious deaths of persons in custody; forced disappearances; torture; arbitrary arrest and continued detention of tens of thousands of persons, including opposition politicians and former members of parliament, lawyers, journalists, human rights activists, and employees of the U.S. Mission, for purported ties to “terrorist” groups or peaceful legitimate speech; political prisoners, including elected officials; politically motivated reprisal against individuals located outside the country, including kidnappings and transfers without due process of alleged members of the Gulen movement; significant problems with judicial independence; support for Syrian opposition groups that perpetrated serious abuses in conflict, including the recruitment and use of child soldiers; severe restrictions on freedom of expression, the press, and the internet, including violence and threats of violence against journalists, closure of media outlets, and arrests or criminal prosecution of journalists and others for criticizing government policies or officials, censorship, site blocking, and criminal libel laws; severe restriction of freedoms of assembly, association, and movement, including overly restrictive laws regarding government oversight of nongovernmental organizations and civil society organizations; some cases of refoulement of refugees; serious government harassment of domestic human rights organizations; gender-based violence; crimes involving violence targeting members of national/racial/ethnic minority groups; and crimes involving violence against lesbian, gay, bisexual, transgender, queer, and intersex persons.

The Turkish government took limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; and impunity remained a problem. The government took limited steps to investigate allegations of high-level corruption. Clashes between security forces and the Kurdistan Workers’ Party terrorist organization and its affiliates continued and resulted in the injury or death of security forces, terrorists, and civilians. The government did not release information on efforts to investigate or prosecute personnel for wrongful or inadvertent deaths of civilians linked to counterterrorism operations.

The U.S. State Department warns U.S. citizens to exercise increased caution when traveling to Turkey due to terrorism and arbitrary detentions. Terrorist groups continue plotting possible attacks in Turkey. Terrorists may attack with little or no warning, targeting

tourist locations, transportation hubs, markets/shopping malls, local government facilities, hotels, clubs, restaurants, places of worship, parks, major sporting and cultural events, educational institutions, airports, and other public areas. Security forces have detained tens of thousands of individuals, including U.S. citizens, for alleged affiliations with terrorist organizations based on scant or secret evidence and grounds that appear to be politically motivated. U.S. citizens have also been subject to travel bans that prevent them from departing Turkey.

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. (Directive, § 3.2)

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish his or her eligibility for a public trust position. (Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15). The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to national security eligibility will be resolved in favor of the national security." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline B: Foreign Influence

The general concern under this AG is set out in ¶ 6, as follows:

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.

Having considered all of the disqualifying conditions under AG ¶ 7, I find the following potentially relevant:

- (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;
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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.

Although a longtime friend to the United States with shared interests in counterterrorism, there is a heightened risk associated with Turkey given its human rights violations and the terrorist activity that occurs within its borders. There is also additional heightened risk established in this case given the nature and extent of Applicant's contacts and connections to Turkey. His contact with close family and friends who are resident citizens of Turkey is sufficient on its own to establish disqualification under this

guideline. The fact that Applicant is a citizen of Turkey, resides in Turkey with his wife and children, maintains assets in Turkey, and voted as a Turkish citizen in a Turkish election, serves to further exacerbate the concern. The general concern set forth in AG ¶ 6 and the specific disqualifying conditions set forth in AG ¶ 7 (a), (b), (e), and (f) are established.

SOR ¶ 1.d alleged that Applicant's "mother-in-law and father-in-law are citizens and residents of Turkey." However, Applicant reported his father-in-law as deceased on his 2014 and 2016 SF86s, which he also affirmed in his Answer. Accordingly, I find that portion of SOR ¶ 1.d referencing Applicant's father-in-law in Applicant's favor.

The facts and circumstances surrounding Applicant's home in Turkey are confounded by inconsistencies in the record. The record established that Applicant built the home in which he resides with his family in Turkey. As alleged in the first sentence of SOR ¶ 1.g, the record also established that, in about 2018, Applicant purchased that home from his brother-in-law for US \$85,000. Although Applicant indicated in his 2014 and 2016 SF86s that being able to access credit for buying a house was a benefit of his Turkish citizenship, the record did not establish that he used money borrowed from a Turkish financial institution to purchase the home as alleged in the second sentence of SOR ¶ 1.g. While Applicant disclosed that he maintained a loan in Turkey during his May 2019 interview, he did not indicate for what purpose the loan was taken, nor did he mention any loan associated with the purchase of his home from his brother-in-law. Accordingly, I find the second sentence of SOR ¶ 1.g in Applicant's favor.

Having considered all of the factors that could mitigate the concern under AG ¶ 8 in light of the record evidence, I find the following potentially relevant:

- (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;
- (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; 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.

Application of the AG is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Family relationships can involve matters of influence or obligation. (ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003). As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. (ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002). Moreover, Applicant's marital relationship provides a conduit for susceptibility to foreign influence because of the vulnerabilities associated with his in-laws that may pass to him through his wife. (ISCR Case No. 03-24144 at 3-4 (App. Bd. Dec. 6, 2005).

The fact that Applicant built a life for himself and his family in Turkey, after serving the U.S. military there, is not alone a security concern. The Guideline B concern arises from the nature of the country involved. Due to the human rights and terrorism issues discussed above, Turkey invokes a heavy burden of persuasion to prove mitigation. Applicant has not met his burden given the extent of his family ties and personal connections to Turkey.

Although his parents, stepparents, and siblings reside in the United States, Applicant is susceptible to foreign influence due to his ties to family and friends who are citizen residents of Turkey. These ties alone are sufficient to preclude mitigation under Guideline B. However, there are additional vulnerabilities triggered by the extent of his personal connections to Turkey, including that: 1) he and his immediate family have resided consistently in Turkey since 2008; 2) he maintains all but one of his assets in Turkey, including his home; 3) he maintains only one asset (a bank account of unknown value) in the United States; 4) he exclusively pays Turkish taxes, and not U.S. taxes.

Applicant's Turkish citizenship alone does not serve as a disqualifying factor under this guideline. However, the fact that his children attend a special school dependent upon his Turkish citizenship; and that he obliged a request to vote in a local Turkish election as a Turkish citizen create potential conflicts of interest that undermine mitigation.

I considered Applicant's future plans to return to the United States and then renounce his Turkish citizenship; and for his children to return to the United States for college. However, these are prospective in nature and do not suffice to mitigate his current situation. I have considered the personal sacrifice and loyalty associated with Applicant's service to the U.S. Air Force, on active duty and as a contractor. However, given the extent of his current family ties and personal connections to Turkey, I find that it cannot be reasonably expected that Applicant would resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8 (a) through (c) and (f) are not established. AG ¶ 8 (d) is not established because he is no longer in Turkey on active duty with the U.S. military.

Guideline C: Foreign Preference

For the reasons discussed in connection with SOR ¶ 1.g above, I find SOR ¶ 2.b in Applicant's favor. Moreover, the record did not establish that his Turkish citizenship was required for the purchase of his home from his brother-in-law. Nevertheless, I have considered his home in Turkey in the context of evaluating mitigation and the whole person.

As alleged in the second sentence of SOR ¶ 2.c, the record established that Applicant pays the government of Turkey about 65% of his earned income. However, the record did not similarly establish that he used his Turkish citizenship to obtain employment with a Turkish company in Turkey, as alleged in the first sentence of SOR ¶ 2.c. Applicant was a U.S. citizen at the time he obtained employment with his Turkish employer. Moreover, the record did not establish that he was required to hold Turkish citizenship in order to obtain employment in Turkey. Accordingly, I find the first sentence of SOR ¶ 2.c in Applicant's favor.

Having considered all of the disqualifying conditions under AG ¶ 10 in connection with the facts alleged under Guideline C that were established by the record, only one is potentially relevant: (a) applying for and/or acquiring citizenship in any other country. In order to determine whether AG 10(a) is established, further analysis is required as set out in AG ¶ 9 (the general concern), as follows:

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.

The record reveals various ways Applicant has indicated a preference for Turkey over the United States, including by choosing to obtain a Turkish citizenship as a U.S. citizen by birth; and by using that citizenship to enable his children to attend a special school and to vote in a Turkish election. He maintains all but one asset (of unknown value) in Turkey. He exclusively pays Turkish taxes, and not U.S. taxes. He has consistently resided in Turkey for most of his adult life. His wife and children reside in Turkey. He and his family have access to the Turkish healthcare system. These facts create a conflict with the U.S. national interests due to the nature of the country involved.

Having considered all of the factors that could mitigate the concern under AG ¶ 11 in light of the record evidence, I find the following potentially relevant:

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

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern; and

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

Due to the nature of the country involved, neither AG ¶ 11(a) nor 11(f) are established. Although Turkey is an ally, its human rights violations and the terrorist activity that occurs within its borders create a level of risk that cannot be considered “low.”

AG ¶ 11(e) is established in reference to Applicant and his family’s access to Turkish healthcare. The fact that Applicant maintains health insurance primarily through TRICARE alleviates the concern with the access he also maintains to the Turkish healthcare system. Thus, I find SOR ¶ 2.e in Applicant’s favor.

Applicant articulated a plan to renounce his Turkish citizenship upon the completion of his work in Turkey and return to the United States. However, he also expressly stated an unwillingness to renounce his Turkish citizenship until then. He has not indicated any imminent plans to return to the United States or to terminate his employment in Turkey. Thus, AG ¶ 11(c) is not established.

The record established that Applicant exercised the rights and benefits of his Turkish citizenship only with respect to his children’s school and by voting in a Turkish election. Of the facts alleged under Guideline C that have not been found in Applicant’s favor, there remain the following: his dual U.S - Turkish citizenship; the fact that he, his wife, and three children have resided in Turkey since 2008; the fact that he pays 65% of his earned income to Turkey; and the fact his children attend a special school dependent upon his Turkish citizenship.

The Government did not allege Applicant’s voting in a Turkish election under Guideline C. Moreover, voting in a foreign election was an expressly articulated disqualifying factor in the previous version of the AG promulgated in 2006 (2006 AG ¶ 10(a)(7)), but not in the current version of the AG (2017 AG). However, I find that the facts and circumstances surrounding Applicant’s voting in a Turkish election undermine mitigation.

Applicant’s dual citizenship is not, by itself, a disqualifying condition. However, Applicant chose to obtain Turkish citizenship when it was not required for his employment or otherwise; reside in Turkey with his wife and children for the last 14 years; purchase a home in Turkey; use his citizenship status to afford his children the opportunity to attend a Turkish school and to oblige a request to vote in a Turkish election; and pay taxes to

Turkey and not the United States. By taking these actions, in light of the country involved, he has created a potential conflict with U.S. national security interests. There remains a risk that Applicant will make decisions to protect his interests in Turkey that are harmful to the interests of the United States. Accordingly, Applicant has not met his burden mitigate the foreign preference concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines B and C in my whole-person analysis and I have considered the factors in AG ¶ 2(d). I have weighed the disqualifying and mitigating conditions under Guidelines B and C, and evaluated all the evidence in the context of the whole person and the nature of the country involved. I conclude that Applicant has not mitigated the trustworthiness concerns raised by his family ties and personal connections to Turkey, or his actions indicating a preference for Turkey over the United States. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for a public trust position.

Formal Findings

Formal findings on the allegations set forth in the amended SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d (mother-in-law):	Against Applicant
Subparagraph 1.d (father-in-law):	For Applicant

Subparagraphs 1.e – 1.f:	Against Applicant
Subparagraph 1.g (first sentence):	Against Applicant
Subparagraph 1.g (second sentence):	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline C (Foreign Preference):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c (first sentence):	For Applicant
Subparagraph 2.c (second sentence):	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gina L. Marine
Administrative Judge