



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



In the matter of:)
)
) ISCR Case No. 21-00223
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his family members and friends who are citizens and residents of Turkey. Clearance is granted.

Statement of the Case

On March 12, 2021 the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B, foreign influence. explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On April 5, 2021, Applicant answered the SOR, admitting all of the allegations, and requesting a decision based on the written record without a hearing. On December 2, 2021, Applicant

decided that he wanted a hearing, whereupon the case was assigned to me on May 18, 2022. On June 3, 2022, Applicant e-mailed six documents to me and Department Counsel that he intended to move for admission into the evidence. On June 6, 2022, DOHA issued a notice of videoteleconference hearing, scheduling the hearing for June 8, 2022. Applicant waived his right to 15 days notice of hearing.

The hearing was conducted as scheduled. I received one Government exhibit, marked and identified as Government Exhibit (GE) 1, and I considered the testimony of Applicant and two character witnesses. At the government's request, I took administrative notice of the information set forth in four documents regarding the Republic of Turkey, identifying them as Hearing Exhibits (HE) I through HE IV. The transcript (Tr.) was received on June 21, 2022.

Upon reviewing the file after the hearing, I realized that I inadvertently neglected to incorporate six documents that Applicant e-mailed me on June 3, 2022. I admitted two of them, identifying them as follows: Applicant's Exhibit (AE) A – *Additional Explanation to SOR*; and AE B – *Pension from Turkey and Annual Income Ratio*. I did not admit the remaining four documents because they were duplicates of documents that were already on file.

Findings of Fact

Applicant is a 57-year-old, married man with an adult child. For the past seven years, he has worked for a defense contractor as the director of international business development. (Tr. 16)

Applicant was born and raised in Turkey. After graduating from college in 1988, he entered the Turkish military where he served until retiring in 2012. (Tr. 25) While serving in the Turkish military, Applicant was stationed in the United States for seven years. (Tr. 17) While here, he enrolled in graduate school at a U.S. military university and earned a master's degree. (Tr. 17) Also, during that time, the U.S. branch of the military which he supported awarded him a Meritorious Service Medal. (Supplemental Answer at 2)

Applicant retired from the Turkish military in 2012, as a colonel. (Tr. 25) After retiring, Applicant worked for a Turkish consulting company for about six months before immigrating with his family to the United States in 2013. (Tr. 25) They became naturalized U.S. citizens in 2019. (Tr. 28)

Applicant's father is a citizen and resident of Turkey. Applicant's mother is deceased. Applicant's father has severe dementia and is non-communicative. (Tr. 18) Consequently, Applicant has not had a conversation with him for several years. Applicant contacts him once per month through an app with the help of Applicant's brother, to see him. (Tr. 18-19)

Applicant's brother is a retired cook. (Tr. 15) He talks to him approximately once per month. Applicant's sister is also a retired cook. (Tr. 18) He talks with her once every two to three months. (Tr. 19) Neither Applicant's sister, nor his brother have ever visited him in the United States. (Tr. 19)

Applicant's mother-in-law is a citizen and resident of Turkey. (Tr. 19) He talks with her a few times per year. (Tr. 19) She has never visited him in the United States. Applicant pays her bills and sends her \$30 per month. (Tr. 22)

Applicant has two friends remaining in Turkey who are veterans of the Turkish military. Both are retired. (Tr. 23) Applicant's communications with them are limited to sharing an occasional online joke. (Tr. 23)

Applicant has two other friends who were colleagues from his Turkish military career. They are both United States citizens now. (Tr. 23) Applicant owns a home in Turkey that he inherited when his mother died. It is worth approximately \$50,000. (Tr. 21) Although Applicant's name is on the deed, he has never lived there.

Applicant receives a pension from his career in the Turkish military. (Tr. 21) It pays him approximately \$1,350 per month. This totals less than three percent of his annual income. (Tr. 22) Applicant has a 401(k) plan through his current employer. Its balance is approximately \$300,000. (Tr. 24) He owns his home. It is worth approximately \$700,000, (Tr. 25)

When Applicant first retired, he received approximately \$200 to \$300 per month through a Turkish supplemental pension analogous to a 401(k) plan. (Tr. 24) Approximately two years ago, he withdrew all of his money from this pension because he no longer wished to have any contact with the Turkish government. (Tr. 24)

Applicant has not traveled to Turkey since 2016. Per a coworker, Applicant has thoroughly immersed himself in U.S. culture and values since immigrating here. (Tr. 32) Applicant feels closer to the United States than he does to Turkey. (AE A at 3)

Turkey is a constitutional republic with an executive presidential system and a unicameral parliament. (HE I at 1) Turkey is a key ally of the United States, a critical regional partner, and an active participant in fighting terrorism. It has actively cooperated with the United States in providing airspace access for operations in Iraq and Syria, and it has actively tracked down and deported people attempting to join terrorist organizations, and deported them to their home countries. Conversely, Turkey has used anti-terrorism as a pretext for repressing its citizens and muzzling political expression.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 ¶ 1(d) 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline B: Foreign Influence

Under this concern, “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.” (AG ¶ 6) Moreover, foreign interests and security concerns “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 of government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.” (*Id.*)

Turkey is a staunch U.S. ally that is actively involved in fighting terrorism and in promoting U.S. regional interests, Conversely, Turkey has a poor human rights record, and its government has become increasingly authoritarian over the past few years. These facts, combined with Applicant’s significant rank in the Turkish military before retiring could attract undue attention to his family members and generate a vulnerability to coercion, influence or duress. Under these circumstances, AG ¶ 7(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 county if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” applies.

In addition to AG ¶ 7(a) security concerns, Applicant’s friends who are former members of the Turkish military generate concerns under AG ¶ 7(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 remaining financial interests in Turkey are nominal in comparison to his financial interests in the United States. Consequently, AG ¶ 7(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,” does not apply.

Applicant’s contact with his old friends from the Turkish military are limited to the exchange of online jokes. As such, these contacts are mitigated by AG ¶ 8(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 of exploitation.” Although Applicant’s contact with his brother and sister are also infrequent, there is a presumption that one has ties of affection or obligation to one’s immediate family members and parents-in-law. (ISCR Case No. 01-03120 at 4 (Feb. 20, 2002) Consequently, AG ¶ 8(c) does not apply to Applicant’s relationship with his siblings.

Although Applicant's communication with his father is limited because of his father's dementia, he has genuine affection for him because he still makes efforts to see him through a social media app even though his father can no longer talk to him. Moreover, although Applicant's communication with his mother-in-law is infrequent, he provides financial support for her. Consequently, AG ¶ 8(c) does not apply to Applicant's relationship with his father and his mother-in-law.

Applicant spent the last seven years of his Turkish military career stationed in the United States, working with his U.S. counterparts and attending graduate school. During this period, he performed admirably in support of U.S. interests, earning a Meritorious Service Award from the U.S. branch of the military that he was serving. Moreover, nearly all of his financial interests are in the United States, and he has been working for his U.S. employer for seven years. Under these circumstances, the security concerns generated by Applicant's family members in Turkey are mitigated by 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, 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 resolve any conflict of interests in favor of the U.S. interest." I conclude Applicant mitigated the foreign interest security concern.

Whole-Person Concept

I considered the whole-person factors in my analysis of the disqualifying and mitigating conditions, particularly with respect to my analysis of Applicant's meritorious service in support of the U.S. military while in the Turkish military, and his integration into U.S. society since immigrating to the United States and becoming a naturalized U.S. citizen.

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, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge