

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 47-year-old industrial engineer employed by a defense contractor. He holds dual citizenship with the United States and Turkey, and he possesses and uses passports from both countries. His father, brother, two stepbrothers and four sisters are residents and citizens of Turkey. He has visited his relatives in Turkey annually during 1982-1986, 2000, and 2001. He has sent his family a total of about \$10,000.00. Although he told an investigator that he was willing to surrender his foreign passport and renounce his foreign citizenship if they became "an issue," there is no evidence that he has done so. Clearance is denied.

CASENO: 02-10426.h1

DATE: 08/13/2004

DATE: August 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10426

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 47-year-old industrial engineer employed by a defense contractor. He holds dual citizenship with the United States and Turkey, and he possesses and uses passports from both countries. His father, brother, two stepbrothers and four sisters are residents and citizens of Turkey. He has visited his relatives in Turkey annually during 1982-1986, 2000, and 2001. He has sent his family a total of about \$10,000.00. Although he told an investigator that he was willing to surrender his foreign passport and renounce his foreign citizenship if they became "an issue," there is no evidence that he has done so. Clearance is denied.

### STATEMENT OF THE CASE

On July 14, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference) of the Directive. Under Guideline B, it alleges that Applicant's father, stepmother, and siblings are citizens and residents of Turkey (SOR, para. 1.a), and Applicant has family members and friends who are citizens and residents of Turkey (SOR, para. 1.b). Under Guideline C, the SOR alleges that Applicant claims dual citizenship with the United States and Turkey (para. 2.a); possessed a valid Turkish passport as of February 19, 2002 (para. 2.b); used his Turkish passport to travel to Turkey (para. 2.c); and paid money to the Turkish government to fulfill his Turkish military service requirement (para. 2.d).

Applicant answered the SOR in writing on July 24, 2003, admitting all the allegations. He elected to have the case decided on the written record without a hearing.

Department Counsel (DC) submitted the Government's written case on December 30, 2003. A complete copy of the file

of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 21, 2004. He filed no objections and submitted no material.

The case was assigned to another administrative judge on March 8, 2004. It was reassigned to me on July 27, 2004, based on caseload considerations.

### **FINDINGS OF FACT**

Applicant's admissions of the facts alleged in the SOR, subparagraphs 1.a, 1.b, and 2.a - 2.d, are incorporated into my findings of fact. I also make the following findings:

Applicant is a 47-year-old industrial engineer employed by a defense contractor. He was born in Adana, Turkey. He came to the United States in 1982 after marrying an American service woman. They were divorced on January 5, 1996. (FORM, Item 4, pp. 1-2; Item 5, p. 1)

Applicant became a naturalized citizen of the United States on August 15, 1986. He is a dual citizen of the United States and Turkey and holds passports from both countries. (FORM, Item 4, p. 1; Item 5, p. 1)

Between 1982 and 1986, Applicant traveled to Turkey about once a year to visit relatives, using his Turkish passport. (FORM, Item 5, p. 1)

Turkey requires tourists without a Turkish passport to purchase a 90-day visa. Tourists planning to stay in Turkey for more than three months must apply for a residence/work permit or Turkish identification card within the first month of arrival in Turkey. (FORM, Item 7, p. 1)

Male U.S. citizens over the age of 18 who are also Turkish citizens are subject to conscription and compulsory military service upon arrival in Turkey. (FORM, Item 7, pp. 1-2) Applicant stopped traveling to Turkey in 1989 to avoid his obligation to serve in the Turkish military. In 1998 and 1999, he took advantage of a change in Turkish law which

allowed him to buy his way out of military service. He paid approximately \$11,500 to avoid military service. (FORM, Item 5, p. 2)

Applicant made two-week visits to his relatives in Turkey in November 2000 and November 2001. Both times he used his Turkish passport. (FORM, Item 5, p. 3)

Applicant uses his Turkish passport for travel to Turkey because it allows him to avoid restrictions on the length of his visit, and he fears discrimination because of his United States citizenship. (FORM, Item 5, p. 3)

Applicant has entertained thoughts of returning to Turkey after he retires. (FORM, Item 5, p. 3)

On February 19, 2000, Applicant told a Defense Security Service (DSS) investigator that he would take steps to relinquish his Turkish passport and citizenship "if this became an issue and would preclude me from doing my job or obtaining my clearance." (FORM, Item 5, p. 3) There is no evidence in the record that Applicant relinquished his Turkish passport or renounced his Turkish citizenship.

Applicant's mother is deceased. His father is more than 90 years old. His father, brother, two stepbrothers, and four sisters are residents and citizens of Turkey. (FORM, Item 4, pp. 3, 9-13; Item 5, pp. 2-3.)

While living in the United States, Applicant has sent approximately \$10,000.00 to his brother to help the family. (FORM, Item 5, p. 3)

Applicant inherited a small plot of land in Turkey when he was a child. In October or November 2001, his brother sold the property for about \$1,500. Applicant gave the \$1,500 to his brother. (FORM, Item 4, p. 4; Item 5, p. 3)

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

### **Guideline B (Foreign Influence)**

Under Guideline B, "A security risk may exist when [members of] an individual's immediate family . . . are not citizens of the United States or may be subject to duress." A disqualifying condition (DC 1) may be raised when members of an Applicant's immediate family are citizens or residents of a foreign country. Directive ¶ E2.A2.1.2.1. Applicant's father, brother, two stepbrothers, and four sisters are residents and citizens of Turkey. In his answer to the SOR, Applicant admitted that the allegations in paras 1.a and 1.b are true. I conclude that DC 1 is established.

Two mitigating conditions (MC) under Guideline B are relevant in this case. MC 1 applies if there is a determination that the immediate family members "are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2.A2.1.3.1. MC 3 applies when "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government has produced substantial evidence to establish DC 1, the burden has shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Applicant states that his brother owns a small grocery business and his other relatives are farmers. (FORM, Item 5, p. 3) This evidence suggests that Applicant's relatives are not members of the government or the military, and it supports the first prong of MC 1.

Regarding the second prong of MC 1, it is common knowledge that Turkey is a democracy, a friend and ally of the United States, and a member of the North Atlantic Treaty Organization. Its political, economic, and security ties are with the West. However, neither Applicant nor the government have presented any evidence on the question whether Turkey, although a friendly country, conducts espionage operations against the United States in the economic, scientific, or technical fields. Neither party has presented any evidence on the question whether Applicant's family is vulnerable to

duress by the Turkish intelligence service or persons from Turkey who are engaged in industrial espionage, terrorism, or other criminal activity. The burden is on Applicant to establish mitigating conditions. Directive ¶ E3.1.15. Based on the absence of evidence regarding the second prong of MC 1, I conclude that Applicant has not carried his burden of proving this mitigating condition.

With respect to MC 3, "evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature." ISCR Case No. 00-0484, 2002 WL 31341761 at \*4 (App. Bd. Feb. 1, 2002). Applicant's statement to the Defense Security Service (DSS) investigator regarding his security clearance application supports the conclusion that Appellant's contacts with his relatives were not casual. He visited several times for substantial periods. He has sent approximately \$10,000.00 to his brother to help his family. He sold a plot of land which he had inherited and gave the \$1,500.00 he received for the land to his brother. (FORM, Item 5, pp. 1-3) I conclude that MC 3 is not established. I further conclude that no other mitigating conditions have been established.

### **Guideline C (Foreign Preference)**

Under Guideline C, "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 be prone to provide information or make decisions that are harmful to the interests of the United States." Disqualifying conditions (DC) include the exercise of dual citizenship (DC 1), the possession and/or use of a foreign passport (DC 2), and military service or willingness to bear arms for a foreign country (DC 3). Directive, ¶¶ E2.A3.1.2.1 - E2.A3.1.2.3).

Applicant admitted DC 1 and DC 2 in his answer to the SOR. In his statement to the DSS investigator, Applicant stated that he retained his Turkish citizenship and passport to make it easier to visit his relatives in Turkey. He also stated that he entertained the thought of returning to Turkey after he retires. (FORM, Item 5, p. 3) Based on Applicant's admissions and his statement to the DSS investigator, I conclude that DC 1 and DC 2 are established.

SOR para. 2.d alleges that Applicant paid money to Turkey "to fulfill [his] military service requirement." Applicant admits this allegation. I construe Applicant's answer as admitting the facts that he paid money to the Turkish government and that the payment relieved him of his military obligation. I do not consider Applicant's legal conclusion that the payment "fulfilled" his military service requirement to be dispositive.

The evidence shows that Applicant did not pay money to "fulfill" his military service requirement; he paid money to avoid it. He did not serve in the Turkish military and unequivocally expressed unwillingness to do so. He stopped visiting Turkey in 1989 to avoid conscription. He did not resume his visits until Turkish law was changed to allow him to avoid military service. When questioned by a DSS investigator, he said, "I did not want to serve in the Turkish military." (FORM, Item 5, p. 2) I conclude that DC 3 is not established.

A disqualifying condition under DC 1 may be mitigated by evidence that an applicant has expressed willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4. In his statement to the DSS investigator on February 19, 2002, Applicant stated, "I have not taken any steps in relinquishing my citizenship or passport to Turkey but I would do so if this became an issue and would preclude me from doing my job or obtaining my clearance." (FORM, Item 5, p. 3) Applicant's offer was conditioned on his foreign citizenship and passport becoming an issue and precluding him from obtaining a clearance. "[A] conditional willingness to renounce foreign citizenship is entitled to less weight than an unconditional willingness to do so." ISCR Case No. 99-0295, 2000 WL 1805218 at \*7 (App. Bd. Oct. 20, 2000). The SOR, dated July 14, 2003, put him on notice that his foreign citizenship and passport were "an issue" and that they could preclude him from obtaining a security clearance. (FORM, Items 1 and 3) However, Applicant did not repeat his offer to surrender his foreign passport or renounce his foreign citizenship in his answer to the SOR. He did not respond to the FORM. He has produced no evidence that he has surrendered his passport or renounced his Turkish citizenship. I conclude that MC 1 is not established. I further conclude that no other mitigating conditions have been established.

When DC 2 applies, the clarifying guidance issued by the Assistant Secretary of Defense, Arthur L. Money, dated August 16, 2000 (Money Memorandum), requires that a clearance be denied or revoked "unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." The Money Memorandum also makes it clear that Guideline C recognizes "no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country." (FORM, Item 6) Applicant has submitted no evidence of compliance with the Money Memorandum.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2, Guideline C: AGAINST APPLICANT



Subparagraphs 2.a-2.c: Against Applicant

Subparagraph 2.d: For Applicant

**DECISION**

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 or continue a security clearance for Applicant. Clearance is denied.

LeRoy F. Foreman

Administrative Judge