

KEYWORD: Foreign Influence

DIGEST: Applicant is married to a dual citizen of the United States and Turkey who remains close to her mother and brother who remain resident citizens of Turkey. These family members do not pose an unacceptable risk of foreign influence as they are not agents of a foreign power nor likely to be exploited. Clearance is granted.

CASENO: 00-0616.h1

DATE: 02/25/2002

DATE: February 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0616

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Josiah Milton Black, Esq.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) on October 19, 2001, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign influence concerns (guideline B) related to ownership of a residential flat in a foreign country for which Applicant and his spouse paid \$70,000.00 US, the dual citizenship of Applicant's spouse, and the foreign citizenship and residency of Applicant's mother-in-law and brother-in-law.

On October 31, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on November 19, 2001, and pursuant to formal notice dated December 3, 2001, the hearing was scheduled for December 18, 2001.

At the hearing held on December 18, 2001, the Government submitted two documentary exhibits, which were entered into the record without objection. Five exhibits were admitted into evidence and testimony was taken from Applicant, a coworker, and Applicant's spouse on Applicant's behalf. With the receipt on January 4, 2002, of the transcript of the hearing, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 60-year-old electrical engineer who has worked for a defense contractor (company A) since June 1980. Granted a Secret security clearance for his defense-related duties shortly after his hire, Applicant seeks to retain that

level of access.

A United States citizen from birth, Applicant served in a branch of the United States military from February 1964 to May 1968. Initially granted a Secret clearance as an avionics officer, Applicant's access was upgraded to Top Secret in 1965 or 1966 for his duties, including as assistant security officer for the squadron.

While working as a service technician in 1972, Applicant became involved romantically with a foreign graduate student who was pursuing doctoral studies in chemistry at a university in the United States. A citizen of Turkey from birth, she had come to the United States in 1971 after earning her master's degree from a technical university in Turkey, leaving behind in Turkey her parents and younger brother. Her father served in Turkey's military until his retirement in 1960.

In June 1974, Applicant and this Turkish citizen married.⁽¹⁾ In September 1981, Applicant's spouse became a United States naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. Since she took no action to formally renounce her citizenship in Turkey, she retained her Turkish citizenship as well. In 1985, Applicant's spouse obtained a United States passport.

From the mid 1980s to 1990, Applicant's spouse worked for a defense contractor as a research scientist. She was granted a security clearance for her duties there involving a research project for a branch of the United States military.

About once every three to five years, Applicant and his spouse traveled to Turkey to see her parents, her brother and his family, as well as a few of her friends. On some of those trips, Applicant and his spouse also visited with cousins. In recent years, Applicant's spouse has traveled to Turkey twice per year to see her aging parents. Applicant accompanied her in August 1998, September 1999, as well as on a short trip (lasting less than one week) in July 2000 when her father died. In late September 2001, Applicant traveled to Turkey with his spouse to take in tourist sites as well as to bring her mother to the United States for a six-week stay. On this visit, Applicant and his spouse also saw a cousin. When in Turkey, Applicant and his spouse stayed with her parents, and after her father's passing, with her mother. All foreign travel undertaken by Applicant's spouse since she obtained her United States passport, including trips to Turkey, has been on that passport.

Sometime in 1999, Applicant's spouse approached him about the purchase of an apartment/condominium in Turkey. Her brother in Turkey was experiencing economic hardship, on occasion not being paid for his work in outside furniture sales. Primarily to provide a home for her brother and his family,⁽²⁾ Applicant's spouse executed in September 1999 an agreement for the purchase of a residential "flat" in Turkey for the price of \$70,000.00 US. While joint marital funds belonging to Applicant and his spouse were used to buy the property, Applicant's spouse is registered on the deed as the sole owner of the condominium. At the time of purchase, Applicant's spouse executed a will in Turkey wherein she devised the property to her brother on her death.

In connection with a periodic reinvestigation into his background for his security clearance, Applicant on November 4, 1999, executed a security clearance application (SF 86) on which he reported the birth in Turkey and the United States naturalization of his current spouse. He failed to report her dual citizenship status, as he thought she was no longer a citizen of Turkey following her acquisition of United States citizenship through naturalization in 1981. With regard to foreign connections, Applicant disclosed the Turkish citizenship and residency of his in-laws. In response to question 12 ("Do you have any foreign property, business connections, or financial interests?"), Applicant indicated ownership of a residence in Turkey. Concerning foreign travel in the last seven years, Applicant listed pleasure trips to Turkey in August 1998 and September 1999.

In July 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Applicant related his spouse was a dual citizen (United States and Turkey) as she had never formally renounced the citizenship of the land of her birth. Applicant explained his spouse traveled solely on her United States passport, but she maintained a Turkish identity card, last updated in 1996, which obviates the need for her to obtain a visa for travel to Turkey. Applicant related that he and his spouse had purchased the flat in Turkey with joint funds, but explained that the flat was solely in his spouse's name as there would be a delay and more paperwork involved if it was in his name as well. Due to tough economic times in Turkey, Applicant and his spouse were allowing her brother and his family to reside in the flat rent-free. With regard to any future plans to reside in the flat, Applicant indicated he and his spouse were giving some thought to spending a portion of the year in Turkey when they retire, but he denied any definite plans.

Applicant and his spouse have continued to allow her brother and his family (homemaker spouse and college student daughter) to reside in the flat in Turkey rent-free since October 1999. Applicant and his spouse have over the last few years spent \$10,000 to \$15,000 US on improvements to the property, with the renovations performed by local contractors in Turkey under the supervision of her brother. Applicant's spouse's brother is responsible for paying the utilities, condominium fees, and real estate taxes on the property. In September 2001, Applicant's spouse executed a will in the United States in which she bequeathed the foreign flat to her brother in Turkey or his issue.

Applicant's mother-in-law, who is 85 years old, has never worked. She continues to reside in her own home in Turkey. Applicant has no future inheritance interest in her property.

Applicant's spouse has two aunts, both widows, as well as two cousins with two children each, all of whom reside in Turkey. One cousin worked as a travel agent, the other served in Turkey's military until his retirement in 2000. Applicant's has had limited contact with these relations, having met some of them once or twice and others not at all.

Applicant's spouse has two friends in Turkey who are affiliated with a technical university as a professor and chancellor, respectively. Her contacts with them are limited to holiday greetings and to an occasional personal visit or telephone call when she is in Turkey.

Applicant recently calculated his and his spouse's joint net worth at \$1.3 million US.

Applicant has proven to be a very capable employee for company A. He has given his employer no reason to question his compliance with his security obligations and he has reported his foreign travel to supervisory authority at the company.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or

pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guideline B:

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's mother-in-law and brother-in-law are resident citizens of Turkey. While the degree of personal affection between Applicant and these in-laws is not clear, there is clearly a bond of obligation to those foreign relations for whom his spouse has such close affection. On every trip to Turkey, Applicant stayed with his spouse at his mother-in-law's home. In September 2001, Applicant traveled to Turkey with his spouse to bring back her mother for a six-week stay at their home in the United States. While not technically his brother-in-law's landlord, Applicant agreed to his spouse's purchase, using joint marital funds, of the condominium in Turkey. When vacationing in Turkey with his spouse, Applicant visited this brother-in-law and his family. Disqualifying condition (DC) E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, applies in evaluating Applicant's security worthiness. Furthermore, since Applicant's spouse remains a dual citizen of Turkey and the United States, DC E2.A2.1.2.2. (sharing living quarters with a person regardless of their citizenship status, if the potential for foreign influence or duress exists) must be considered as well.

The foreign influence concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 (MC E2.A2.1.3.1.). It is noted that Applicant was granted a security clearance back in 1980 when his spouse was not yet a United States citizen and his father-in-law, a retired member of Turkey's military, was still alive. Although Applicant's spouse did not formally renounce her Turkish citizenship, with her acquisition of United States citizenship in 1981 and continuous residency in this country, she presents less of a risk of undue influence than had she remained solely a citizen of Turkey subject only to that nation's laws. Indeed, Applicant's spouse in the late 1980s was considered security worthy in her own right, when she was granted a clearance for her work as a research scientist with a United States defense contractor. With the demise of Applicant's father-in-law in July 2000, his mother-in-law, who is 85 years of age, is in even less of a position to be exploited by a foreign power. Applicant's brother-in-law is currently employed as an outside salesman for a commercial furniture company. There is no evidence he is connected to, or has ever been approached by, an agent of any foreign government. (3)

The Government alleges an additional foreign influence concern based on joint ownership by Applicant and his spouse of the residential flat in Turkey. Applicant has no direct financial stake in the condominium owned by his spouse in Turkey, notwithstanding the flat was purchased with joint marital funds. He does not stand to inherit the property on his spouse's death. Even recognizing the potential for indirect foreign influence through his spouse, this foreign asset, worth no more than \$70,000 US, is viewed as not sufficient to affect Applicant's security responsibilities, given he and his spouse have a joint net worth of about \$1.3 million US. Applicant testified credibly he has never been approached by anyone seeking unauthorized disclosure of classified information or otherwise found himself in strange circumstances when in Turkey. As confirmed by a manager at company A, Applicant has kept his employer apprised of his foreign travel. In the unlikely event Applicant's spouse or his in-laws were to become subject to any undue influence or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests or threats by foreign authorities or individuals. Subparagraphs 1.a., 1.b. and 1.c. are resolved in his favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. This was the second marriage for Applicant. On his security clearance application executed in November 1999, Applicant indicated he had been married before, from 1965 (estimated) to 1972. Listed as immediate relations are two children, a son born in 1963 and a daughter in 1967.
2. Applicant's spouse testified that while she purchased the condominium in the hope it would increase in value, her primary motivation was to help her brother out. As she saw it, her alternatives were to buy the property for her brother and his family to live in or to provide rental assistance for her brother. (Transcript p. 100).
3. Not alleged by the Government were Applicant's spouse's friendships with two Turkish citizens who serve in prominent positions with a technical university in Turkey. Her contacts with them are sufficiently casual and infrequent to fall within MC E2.A2.1.3.3.