

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born in Turkey 25 years ago, immigrated to the United States in 1991, became a U.S. citizen in August 1998, renewed his Turkish passport in April 1999, used his Turkish passport to travel to his native country in 1999 and 2000, and stated in his answer he would be willing to forfeit his Turkish passport if it was an obstacle to obtaining a clearance. Because he has not surrendered his Turkish passport or indicated a willingness to renounce his Turkish citizenship, clearance is denied.

CASENO: 01-27312.h1

DATE: 09/03/2002

DATE: September 3, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-27312

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Turkey 25 years ago, immigrated to the United States in 1991, became a U.S. citizen in August 1998, renewed his Turkish passport in April 1999, used his Turkish passport to travel to his native country in 1999 and 2000, and stated in his answer he would be willing to forfeit his Turkish passport if it was an obstacle to obtaining a clearance. Because he has not surrendered his Turkish passport or indicated a willingness to renounce his Turkish citizenship, clearance is denied.

STATEMENT OF THE CASE

On March 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "Defense Industrial Personal Security Clearance Review Program" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reason (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted.

Applicant's undated answer to the SOR was received by DOHA on April 18, 2002. In it Applicant stated he wanted his case decided without a hearing. Applicant received the File of Relevant Material (FORM) consisting of six Items on May 20, 2002. He did not submit a response. The case was assigned to this Administrative Judge on July 16, 2002.

FINDINGS OF FACT

The SOR alleges a security concern is raised under Guideline C (Foreign Preference) by Applicant's possessing a Turkish passport and exercising dual citizenship, and alleges a security concern is raised under Guideline B by Applicant having relatives who reside in Turkey. In his answer, Applicant admits each of the allegations set forth in the SOR, but asserts his preference and allegiance are "clearly" with the United States. I accept Applicant's admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 25-year-old software engineer who was born in Turkey and immigrated to the United States with his mother in 1991 when he was 14-years-old. He has been employed as a software engineer by his current employer (a DoD contractor) since January 2000. He has not previously applied for or held a security clearance.

Applicant was born in Turkey in August 1977. Although both of his parents were also born in Turkey, his father had lived in the United States as an exchange student in 1967 while in high school, and had returned to the United States in the early 1970's to pursue a masters degree in business administration. His parents met while his father was attending graduate school in the United States; they returned to Turkey where they married in 1974. In Turkey, Applicant's father taught and continued his studies eventually earning a Ph.D. Applicant's father did not like teaching in Turkey and immigrated to the United States in 1989. He wrote software for a year and then began teaching at the college where he continues to teach. Applicant and his mother--who had been working for the Ministry of Finance--remained in Turkey until 1991 when they too immigrated to the United States. Applicant and his parents became U.S. citizens in August 1998. He received his U.S. passport in December 1998. Applicant has graduated from high school and college in the United States.

Since arriving in the United States, Applicant has returned to Turkey four times to visit family; two aunts, an uncle and a cousin are Turkish citizens and reside in Turkey. Applicant visited Turkey for three months in 1995, for two months in 1991, for two weeks in December-January, 1999-2000, and for two weeks in December-January, 2000-2001. One aunt is retired; the other aunt and Applicant's uncle are teachers.

When he completed his *Security Clearance Application* (SF 86) in March 2000, Applicant disclosed his dual citizenship and his possession of a Turkish passport--issued June 1994, expiration date, April 2002 (Item 4). Later when the Defense Security Service (DSS) questioned him about his dual citizenship (November 2001), Applicant explained that he maintained his Turkish passport because it enabled him to enter Turkey without a visa and enabled him to avoid paying the \$50.00 charge to enter the country. ⁽¹⁾ He stated that he had renewed his Turkish passport in April 1999--after obtaining his U.S. passport in December 1999--and that he was unwilling to renounce his Turkish citizenship or relinquish his Turkish passport "as a condition of access as long as (his) aunts are alive (Item 5).

Although stating he would not renounce his Turkish citizenship or relinquish his Turkish passport, Applicant asserted his "loyalty lies with the U.S," without limits or reservations. He has never served in the Turkish military, and is under no obligation to do so. He does not travel to Turkey to maintain his citizenship in that country. He does not have any financial or property interests in Turkey, and he has never voted in a Turkish election. He does not receive any benefits from Turkey except the benefit of entering without the \$50.00 charge because of his Turkish passport.

When Applicant answered the SOR in April 2002, he admitted exercising dual citizenship (U.S. and Turkey), but asserted again his "preference and allegiance clearly lies with the United States of America." He repeated all of the specific life interest areas where he has no affiliation or connection with the country of Turkey or its government: he is Turkish citizen "solely by virtue of birth in that country;" he never served in the military and has no desire to bear arms for Turkey; he has spent most of his adult life in the U.S.; he does not have any business or financial interests in Turkey; he does not accept any educational, medical, or other benefits provided to Turkish citizens; and he does not have any affiliation with any overseas association or organization.

Applicant stated he would be willing to "forfeit the Turkish passport, if this is an obstacle to obtaining clearance." He minimized his connections with his Turkish relatives--describing his relationship with them as "casual and typical of a relationship between distant family members." His trips to Turkey have been infrequent and his stays there have been "short." As of the date he signed his answer, Applicant has not indicated what steps if any, he has taken to forfeit or surrender his Turkish passport, ⁽²⁾ and he has not indicated if he is willing to renounce his Turkish citizenship.

The record does not include any information about Applicant's professional expertise or competence.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable

consistency which are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to this case:

FOREIGN PREFERENCE

(Guideline C)

The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship;

E2.A3.1.2.2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

FOREIGN INFLUENCE

(Guideline B)

The Concern: A security concern 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 for financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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 present in a foreign country;

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 could force the individual to choose between loyalty to the person(s) involved and the United States.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the SOR. If the Government established its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the fact proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate 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 security clearance determinations should err, if they must on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case under Guidelines B and C. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2.dealing with Adjudicative Process.

A security concern is raised by Applicant's exercise of dual citizenship. He renewed his Turkish passport after becoming a U.S. citizen and he has used this passport to travel to Turkey since become a U.S. citizen because it enables him to save \$50.00 each time he enters the country. During his background investigation, he stated he would not relinquish his Turkish passport as long as his aunts (residing in Turkey) were still alive. 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.

To quiet the concerns raised by his exercise of dual citizenship, Applicant has repeatedly stated that his "preference and allegiance" are clearly with the United States. He attempts to lend credence to that claim by minimizing his social, professional, and financial connections with his native country. And while favorable consideration has been given to his 11-year residence in the United States, to his completion of high school and college in the United States, to his expressed allegiance toward his adopted country, and to his willingness to forfeit his Turkish passport, these positive indicators of preference for the United States cannot excuse the requirement imposed by the August 16, 2000 Memorandum issued by the Assistant Secretary of Defense [ASD (C3I) - attached to the SOR]. This memorandum "requires" the denial of a security clearance "unless an applicant surrenders his foreign passport or obtains official approval for its use from the appropriate agency of the United States Government. Because Applicant has neither surrendered his Turkish passport or obtained official approval for its use, his security clearance is denied. Guideline C is concluded against Applicant.

A security concern is raised by the members of Applicant's family who reside in Turkey. A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may 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.

The security concern raised by members of Applicant's family residing in Turkey is mitigated by Applicant's statement identifying his relatives as retired, or as being in the teaching profession. They are not agents of the Turkish government or in positions to be exploited in a way that could force Applicant to choose between loyalty to them and loyalty to the United States. Guideline B is concluded for Applicant.

FORMAL FINDINGS

Formal findings as required by Section 3, paragraph 7, of Enclosure 1 of the Directive, are hereby rendered as follows:

Paragraph 1 (Guideline C) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Paragraph 2 (Guideline B) For the Applicant

Subparagraph 2.a. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest

to grant Applicant's security clearance.

John R. Erck

Administrative Judge

1. It is unclear from Applicant's statement if non Turkish citizens are charged \$50.00 for a visa, or if the \$50.00 is an additional charge levied on all non-citizens entering the country.
2. Included with the SOR issued to Applicant on March 8, 2002, was a copy of the August 16, 2002 memorandum by the Assistant Secretary of Defense (C3I)--which requires that applicants for security clearance surrender their foreign passports.