

DATE: August 1, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-01827

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jonathan A. Beyer, Esq., Department Counsel

#### **FOR APPLICANT**

Douglas C. Greene, Esq.

### **SYNOPSIS**

The Applicant was a dual Turkish-U.S. citizen, whose parents are Turkish citizens living in Turkey. His wife is a dual Turkish and naturalized U.S. citizen. In the mid 1980's the Applicant completed compulsory, Turkish military service and voted in a foreign election. He once held and used a Turkish passport, now expired and surrendered. The Applicant has renounced his Turkish citizenship. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his relative's citizenship and his actions of the mid 1980's. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 8, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) On February 2, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on February 25, 2003. A Notice of Hearing was issued on arch 27, 2003, scheduling the hearing, which was held on April 9, 2003. The hearing was continued and held on April 11, 2003.

The Government's case consisted of seven exhibits (Gov Ex). The Applicant relied on his own testimony and a single exhibits (App Ex) with 24 sub parts. The transcripts (Tr.) of the hearing were received on April 17, 2003 and April 23, 2003.

### **FINDINGS OF FACT**

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits that he held a Turkish passport, voted in a Turkish election, participation in 1988 in the Turkish army, and that is parents are Turkish citizens. He denies being a dual U.S. - Turkish citizen, using his Turkish passport in preference to his U.S. passport, and denies with explanation his spouse is a dual Turkish-U.S. citizen. Those admissions are incorporated

herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 47-years-old, has worked for a defense contractor since February 1985, and is seeking to maintain a security clearance. The Applicant is loyal, industrious, outstanding, hard-working, excellent, honest, valued member of his company, a "straight arrow," who is willing to devote extra time to the job, a man of integrity, and a family man. The Applicant received a certificate of appreciation for his outstanding support during the U.S. President's visit to Turkey in 1992. (App Ex A, Tab 15)

In 1956, the Applicant was born in New York State (App Ex A, Tab 12) to Turkish citizens. At the time of his birth, his parents were living in the U.S., while his father attended university. In 1958, the Applicant--then age two and one half--returned to Turkey with his family. The Applicant's father, mother, father-in-law, and mother-in-law are citizens of Turkey living there. The Applicant's father is a retired Turkish naval officer who retired in 1976. His mother is a homemaker. He has weekly telephone communication with his parents and, on occasion, sends them letters and pictures. The Applicant's father-in-law is also a retired Turkish naval officer and his mother-in-law is a homemaker. He has casual, weekly telephone contact with them. In March 1989, the Applicant married his current wife who is a high school math teacher in the US. His wife was born in Turkey. In 1996, she was naturalized and issued a U.S. passport. (App Ex A, Tab 18) She now resides with the Applicant and is willing to renounce her Turkish citizenship. (Tr. 56) The Applicant's two children are dual Turkish-U.S. citizens who were also born in Turkey and reside with the Applicant.

The Applicant's wife's aunt is a citizen of Turkey and is a retired secretary who lives in Turkey. The Applicant has monthly telephone contact with his individual. His wife's nephew, a doctor, is a citizen of Germany. The Applicant has twice monthly e-mail and once every two months telephone contact with him in. The Applicant's brother-in-law is a citizen of Turkey who is currently a college student in Sweden. The Applicant has monthly telephone contact with his individual. The Applicant has other distant relatives who are Turkish citizens residing there. The Applicant does not have close contact with these relatives and his only contact is when he is in Turkey. None of his foreign relatives are employed by or affiliated with a police, government, or intelligence agency.

The Applicant grew up in Turkey and graduated from high school in 1974. The Turkish elementary and high schools he attended were taught by American instructors. (Tr. 154) These were private schools attended by many American students whose families were living in Turkey. All of the courses were taught in English. While growing up, his father was an English language instructor working for an American university at a U.S. Air Force base in Turkey. (Tr. 92) In August 1975--at age 19--the Applicant came to the U.S. to attend college. In November 1980, he graduated from two universities and received dual degrees. (App Ex A, Tabs 13, 14, Tr. 92) The Applicant visited his family in Turkey during the summers of 1976, 1978, 1982, in 1983. In 1980 this family came from Turkey to visit him in the U.S. for graduation and also visited him in 1984. Following graduation, the Applicant secured a job with a U.S. corporation. He has never considered returning to Turkey to permanently live or work. (Tr. 208)

In July 1958, the Applicant--then age two and a half years--was issued a U.S. passport prior to leaving the United States. (App Ex A, Tab 1) In 1975, the Applicant's parents obtained a Turkish passport for him, because he was leaving Turkey to attend university in the United States. His U.S. passport was also renewed at this time. (App Ex A, Tab 2) The Applicant was issued a Turkish passport in August 1988 which was subsequently extended until November 1994. (App Ex A, Tab 7) This passport was last used in October 1994 and has not been renewed since it expired.

In 1975, the Applicant entered the U.S. to attend college, he was told he should use his U.S. passport to enter the country since he was a U.S. citizen. An Immigration and Naturalization Service (INS) agent told him the INS recommended he use his Turkish passport going in and out of Turkey and use his American passport for all other travel. (Tr. 141, 159) The Applicant was issued U.S. passports in May 1981 (App Ex A, Tab 3); February 1996 (App Ex A, Tab 4); October 1989 (App Ex A, Tab 5); and August 2000 (App Ex A, Tab 6) When working in Turkey, he would present his U.S. passport and if asked for his visa, he would then present his Turkish passport. At these times, he would attempt to get both passports would be stamped. (Tr. 112) In six of his eight trips to Turkey both passports were stamped. His U.S. passports were stamped nine time when entering Turkey. His Turkish passport was stamped eight times, of which six correspond the U.S. passport stamps. (App Ex A, Tab 24) Whenever he used his Turkish passport--which was limited to entering and leaving Turkey in order to avoid securing a visa--he always presented his U.S.

passport at the same time. (Tr.111) He has always used his U.S. passport as his primary proof of citizenship during his travels outside of the US.

From 1975 until 1986, the Applicant had no ties with Turkey. He never voted there, paid taxes there, and was under the impression that none of the Turkish laws applied to him, a U.S. citizen living the United States. (Tr. 172-173)

In the mid-1980s, the U.S. and Turkey entered into a joint venture to build aircraft in Turkey. In late 1986, the Applicant was asked by his company to go to Turkey and work on this project. The position was a promotion for the Applicant. The company considered the job a long-term foreign assignment in excess of one year. The Applicant was selected based on his qualifications. His company, after researching the matter, recommended that he enter Turkey to do this job using his Turkish passport. (Tr. 40, 170) He was told the Turkish embassy would not issue a work visa to an individual who, at the time, had a valid Turkish passport. (Tr. 193) This also negated the need to secure a visa. He had both his Turkish and U.S. passports stamped as he entered and exited Turkey. (Tr. 170) While working in Turkey, he lived in company-provided housing and was paid by his U.S. company in U.S. currency.

The Applicant voted one time in a Turkish general election after having received notification of the election in the mail. (Tr. 124) A Turkish citizen is required to vote in Turkish general elections and failure to do so results in a fine in an amount set by the election committee. (App Ex A, Tab 8, Tr. 125) After that first vote, the Applicant researched the matter and determined that, as a U.S. citizen, he was not required to vote in Turkish elections and never voted again in a foreign election. Since that single vote, he has never exercised or accepted any rights, privileges, or benefits offered by Turkey to its citizens in preference to those of the US. The Applicant has voted in U.S. elections.

In 1988, the Applicant--then age 32--received a draft notice from the Turkish military which informed him to report for military duty within one month. He was in Turkey as part of the joint venture to build aircraft. The Applicant sought advice from his company as to what he should do. Military service is mandatory for Turkish male citizens (App Ex A, Tab 20) and the normal period of service is 18 months. After researching the matter, the Applicant was informed he had no option but to fulfill the mandatory service requirement. The Applicant would not be allowed to leave the country without fulfilling his military obligations. (Tr. 44, 120) The Applicant requested and received a leave of absence from his job to fulfill his Turkish military requirements. (App Ex a Tab 16) The Applicant reluctantly served approximately 50 days of mandatory military training with the Turkish army as a conscript. He was in the hospital with the flu 20 of his 50 training days. (Tr. 121) During this time he had no rank. Most of his time was spent marching and going through basic training.

Since returning to the U.S. at age 19, the Applicant considers the U.S. his home. He graduated from college here, got a job here, lives here, and will remain here. (Tr. 105) The Applicant does not provide any financial support to citizens of foreign countries. Neither he nor his wife, have any property or real estate in Turkey. They have no financial assets overseas, foreign interest, investments, land holdings, or business connections. He does not maintain his dual citizenship to protect financial interest in Turkey. The Applicant owns a house in the US, all of his property, his bank accounts, and all of his financial assets are in the US. The Applicant pays taxes in the U.S. and has never paid taxes to foreign government. The Applicant has no retirement benefits in Turkey, never having worked for a Turkish company or any other foreign company. He has no income from Turkish sources or any other foreign sources.

In October 2001, the Applicant completed a signed, sworn statement indicating he was unwilling to renounce his Turkey's citizenship, because he was an only child and renunciation of his citizenship would cause inheritance problems. (Gov ex 3) Having further considered the matter, the Applicant chose to renounce his Turkish citizenship. In March 2003, he has completed the required forms, returned his expired Turkish passport, and renounced his Turkish citizenship. (App Ex A, Tabs 9, 10, 11, 19) When he called the embassy seeking information about renunciation of his Turkish citizenship, he was told that he had to complete his military service before he could renounce citizenship. This was not a problem because he had completed his mandatory service in 1988. The Applicant was informed that renunciation would take six months or longer.

## POLICIES

The Adjudicative Guidelines in 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 determinations that are clearly consistent

with the interests of national security. In making 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 in the context of factors set forth in section E 2.2.1. of the Directive as well. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent 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. E2.A3.1.1.

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

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.
8. Voting in foreign elections. E2.A3.1.2.8.

Conditions that could mitigate security concerns include:

4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

**Foreign Influence (Guideline B)** 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.

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.A2.1.2.1.

Conditions that could **mitigate** security concerns include:

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.A2.1.3.1.
3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a

'right' to a security clearance." 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.* 484 U.S. 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." Executive Order 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.

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*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the U.S. The Applicant's dual citizenship raises concerns over the Applicant's possible foreign preference. The Applicant was a dual U.S. Turkish citizen having been born in the U.S., but having lived in Turkey from the age of 2 ½ to age 19, and then during a period in the mid-1980s.

The Applicant chose to exercise his dual citizenship by availing himself of the benefits of citizenship by maintaining his Turkish passport, which was issued in August 1988 and subsequently extended until November 1994. Disqualifying Condition (DC) 1-(2) applies. The Applicant possessed a Turkish passport until arch 2003, when he renounced his Turkish citizenship and returned his expired Turkish passport. On occasion, when entering or leaving Turkey, the Applicant would show his U.S. passport and then, if requested, would present his Turkish passport. This use of the Turkish passport occurred after he had been issued a U.S. passport. DC 2-(3) applies.

While working for an American company in Turkey, the Applicant was required to complete 50 days of military service. The compulsory service was as a conscript doing basic training duties.

This service occurred after the Applicant was a U.S. citizen since he was a U.S. citizen from birth. DC 3-(4) applies. Additionally, the Applicant voted in one general election in Turkey. DC 8-(5) applies.

The issue of the Applicant exercising dual citizenship and possessing and using the Turkish passport requires an in-depth review. Mitigating Condition (MC) 1-(6) does not apply because there was more to the Applicant's actions than simply his parent's citizenship. MC 3-(7) does not apply because there is no indication the U.S. Government has sanctioned his exercise of dual citizenship.

The Applicant was born in the U.S. and, although he grew up in Turkey, his elementary and high school were taught by

American instructors and many classmates were American students whose families were living in Turkey. Since returning to the U.S. at age 19, the Applicant considers the U.S. his home. He graduated from college here, got a job here, lives here, and will remain here. He has no property, real estate, financial assets, investments, or business connections in any foreign country. He does not maintain his dual citizenship to protect financial interest in Turkey. He owns a house in the U.S., all of his property, his bank accounts, and all of his financial assets are in the U.S. The Applicant pays taxes in the U.S. and has never paid taxes to a foreign government. The Applicant has no retirement benefits in Turkey, has never worked for a Turkish company, nor any other foreign company. The Applicant is committed to the U.S. and the American way life. He intends to remain a citizen of the U.S. and to raise his family here.

The Applicant completed compulsory, military service in Turkey. He attempted to avoid this service, but after researching the matter, determined he had no option but to fulfill the mandatory service requirement. He would not have been allowed to leave the country without fulfilling his military obligations. The Applicant reluctantly served 50 days of mandatory, military training with the Turkish army as a conscript. He also voted one time in a Turkish general election after having received notification of the election. After he voted, he researched the matter and determined, as a U.S. citizen, he was not required to vote in Turkish elections, and never again voted in a foreign election. Since that single vote, he has never exercised or accepted any rights, privileges, or benefits offered by Turkey to its citizens in preference to those of the US. He has voted in U.S. elections. Both the conscripted service and voting were done under the mistaken belief he had no choice, but to comply with Turkish law. He did not want to do either of these things, but believed he was required by law to take these actions.

When he returned to Turkey in the mid-1980's he followed advice from his company and the Turkish embassy informing him that, as a Turkish citizen, he would not be issued a work visa and should use his Turkish passport when entering the country. Whenever he entered or left Turkey, he first presented his U.S. passport and then, when asked for his work permit, would present his Turkish passport. In all travel, except to and from Turkey, his U.S. passport was used. This was in compliance with instructions he received from an INS agent who had informed him the INS recommended he use his Turkish passport going in and out of Turkey and use his American passport for all other travel.

In March 2003, the Applicant surrendered his Turkish passport and renounced his Turkish citizenship. MC 4<sup>(8)</sup> requires only a willingness to renounce foreign citizenship and does not require the actual renouncement of foreign citizenship. However, the Applicant has gone further than merely expressing a willingness to renounce; he has actually done so. The renouncement of his Turkish citizenship, the surrender of his Turkish passport, coupled with the entire picture presented by the Applicant, are sufficient to apply MC 4. The Applicant has taken objective steps to show and prove his preference and loyalty to the U.S. I find for the Applicant as to SOR subparagraphs 1.a., 1.b., 1.c. and 1.d.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, a security risk may exist when an individual's immediate family, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's parents and in-laws are citizens and residents of Turkey. His wife is a citizen of Turkey and a naturalized U.S. citizen who lives with him in the US. His two minor children are also dual Turkish-U.S. citizens. Disqualifying Condition (DC) 1<sup>(9)</sup> applies.

Although the Government established a *prima facie* case against him, he has nevertheless, successfully mitigated those security concerns. After observing and hearing the Applicant, I am convinced that his family members in Turkey do not represent a credible security risk to this nation.

Neither his parents, in-laws, wife, nor children are agents of a foreign power. Nor are his relatives in a position that they could be exploited by a foreign power such that Applicant would be forced to choose between his loyalty to his family and the U.S. MC 1<sup>(10)</sup> applies. The Applicant has been a U.S. citizen since birth. It is in the national interest to grant him a clearance. Finding is for Applicant as to SOR subparagraphs 2.a. and 2.b.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or

absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

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

Paragraph 1. Foreign Preference (Guideline C): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Foreign Influence (Guideline B): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.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 the Applicant. Clearance granted.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
3. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
4. DC 3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.
5. DC 8. Voting in foreign elections. E2.A3.1.2.8.
6. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
7. MC 3. Activity is sanctioned by the United States. E2.A3.1.3.3.
8. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
9. DC 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.A2.1.2.1.
10. MC 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.A2.1.3.1.