

DATE: September 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03126

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of the U.S. and Turkey residing in the U.S. Her parents, brother, and sisters are citizens of and residents of Turkey. The Applicant and spouse own property in Turkey. The Applicant does not intend to renounce her Turkish citizenship because of property and inheritance considerations. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the foreign citizenship and residences of her relatives and her use of her foreign citizenship to protect financial assets. Clearance is denied.

STATEMENT OF THE CASE

On December 18, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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. [\(U\)](#) On January 20, 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 March 27, 2003, scheduling the hearing, which was held on April 10, 2003.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on her own testimony and that of her husband. Following the hearing, additional material was received from the Applicant, provisions having been made for submission following the hearing. Department Counsel having no objection, the submissions were admitted as Applicant's Exhibit (App Ex) A. The transcript (Tr.) of the hearing was received on April 18, 2003.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits: she and her husband own property in Turkey; she maintains dual U.S. and Turkish citizenship because renouncing her Turkish citizenship would deprive her and her children of any inheritance from her parents; her husband is a dual U.S. Turkish citizen; her parents and three siblings are citizens of and residents of Turkey; and her husband own property in Turkey

solely in his name. 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 45 years old, has worked for a defense contractor since January 1966, and is seeking a security clearance.

The Applicant was born in Turkey. Her father is a retired farmer and her mother was a homemaker. Her father-in-law is a farmer and her mother-in-law was a homemaker, prior to her death. Her brother works for the Turkish tax authority, her older sister is a homemaker married to a self-employed person who runs a catering service, and her younger sister is a homemaker whose husband does not work for the government. She calls and talks ten minutes with her parents on a weekly basis. She talks with her sisters by telephone every other month.

Her father owns land that she could possibly inherit at some future date. Any inheritance would be divided with her three siblings. Her share of the estate would be approximately \$25,000. (Tr. 44) The Applicant and her husband own a home worth approximately \$5,000 in Turkey. (Tr. 33) The property was transferred from her husband who had purchased it before their marriage. They intend to sell the property if the economy improves. (Tr. 53) Her husband owns four building lots worth approximately \$20,000, (Tr. 51) which he inherited on his mother's death. The lots are held in limited partnership. Her spouse has a bank account in Turkey contained approximately \$1,000, which is used to pay the \$50 to \$100 per month maintenance fee on the Turkish property. The Applicant's husband also owns farmland with his brother. His share is worth approximately \$5,000. (Tr.54)

In 1977, the Applicant's husband came to United States on a student visa. Following graduation, he worked in the U.S. until 1985 when he returned to Turkey. In September 1986, the Applicant married her husband in Turkey. She obtained her green card in 1988. In December 1989, the Applicant-then age 21--her spouse and child came to the U.S. In February 1993, her husband became a naturalized U.S. citizen. In 1994, she became a naturalized U.S. citizen. (Tr. 22) In 1995, she received her university degree. The Applicant has three children, the oldest of whom was born in Turkey.

In 1997, the Applicant and her spouse purchased a home in the U.S. worth approximately \$170,000, on which they have a \$125,000 mortgage. They own two cars with a combined value of \$31,000. The Applicant and her husband have a 401(k) retirement plan, which contains approximately \$40,000 to \$50,000. Additionally, they have other savings accounts, thrift accounts, and various IRA accounts, which are worth, as of December 2002, approximately \$164,000.

In 1995, the Applicant obtained a U.S. passport. Before that date and until its expiration in November 2001, the Applicant had a Turkish passport. The passport was renewed in November 1992, November 1994, and November 1996. She does not intend to renew her Turkish passport. She used her Turkish passport to enter Turkey in December 1991 and to exit from the country in January 1992. The Applicant used her U.S. passport to enter the U.S. in August 1995, August 1999, and June 2002 and to exit Turkey in January 1997, July 2001, and July 2002. The Applicant visits Turkey yearly and spends approximately three to four weeks there, which allows her children to spend time with their grandparents. (Tr. 24)

In January 2001, the Applicant made a sworn statement (Gov Ex 2) stating she would maintain her Turkish citizenship in order to protect family real estate. In October 2002, she repeated this intention saying she would not renounce or Turkish citizenship because Turkish citizenship was necessary to retain ownership of land and property located in Turkey. At the hearing, she again stated her intent to retain her Turkish citizenship. (Tr. 26)

The Applicant's allegiance is to the United States. She wants to raise her children in the U.S. and intends to remain in the U.S. for at least 10 years. At which time she retires and does not know where she will reside.

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 proven 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.
6. Using foreign citizenship to protect financial or business interests in another country. E2.A3.1.2.6.

Conditions that could mitigate security concerns include:

None apply.

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. E2.A2.1.1.

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

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.
3. Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3.
8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. E2.A2.1.2.8.

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.

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 disqualifies, 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, the applicant then has the burden of establishing her 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 her 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. Security concerns over the Applicant's foreign preference arise from her dual U.S. and Turkish citizenship. She intends to retain her Turkish citizenship so she can maintain real estate and property in Turkey and because renouncing her Turkish citizenship would deny her and her children from inheriting property from her parents. Disqualifying Conditions (DC) 1-(2) and 6-(3) apply.

The Applicant is a dual U.S. and Turkish citizen who travels to Turkey on a yearly basis, owns real estate there, does not intend to renounce her Turkish citizenship because of property and inheritance considerations. She renewed her Turkish passport after being issued a U.S. passport. The Applicant intends to remain in the U.S. for at least 10 years. However, once she retires she does not know where she will reside. These factors all indicate a preference for Turkey over the United States.

None of the mitigating factors apply for her dual citizenship is not based solely on her parent's citizenship or birth in a foreign country. There are indicators of possible foreign preference that occurred after she obtained her United States citizenship. There is no showing the activities have been sanctioned by the United States. Not only has the Applicant not expressed a willingness to renounce dual citizenship, she has expressed just the opposite, she intends to retain her dual citizenship for property and inheritance reasons.

I find against the Applicant has to SOR subparagraph 1.a. and 1.b.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to whom she is bound by affection who are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's parents, brother, and sisters are citizens and residents of Turkey. Thus, DC 1-(4) applies.

Her brother works for the Turkish tax authority a part of the Turkish government. Because her brother is connected with a foreign government DC 3-(5) applies.

The Applicant's spouse is a naturalized U.S. citizen residing in the U.S. He is a dual U.S. Turkish citizen with property

holdings in Turkey. However, his U.S. assets are sizably more than his Turkish assets. He is employed in the U.S., owns a home in the U.S., has savings and retirement accounts in the U.S., and his children reside in the U.S. He is not an agent of a foreign power. For these reasons I have determined the Applicant's husband is not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to him and United States. I find for the Applicant as to SOR subparagraph 2.a.

The Applicant has a heavy burden of persuasion to demonstrate she is not at risk of being vulnerable due to family ties. She must show close relatives are not in a position to be exploited by a foreign power. Additionally, the Applicant's parents, brother, and sisters are immediate family members, with whom the individual has close ties of affection and are citizens of, and reside in a foreign country. There is no showing her parents or sisters are agents of a foreign government. The Applicant's contact with her parents, brother, and sisters cannot be said to be casual or infrequent. Therefore, MC 3 does not apply to them. I find against the Applicant as to SOR subparagraph 2.b.

The Applicant and her husband own a home, building lots, and agricultural land in Turkey. The value of this property does not exceed the value of their U.S. property. However, it cannot be said to be "minimal" nor insufficient to affect the Applicant security responsibility for the Applicant has repeatedly stated she intends to retain her foreign citizenship to maintain this property. Therefore, MC 5⁽⁶⁾ does not apply. I find against the Applicant as to SOR subparagraphs 2.c. and 2.d.

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): **AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2 Foreign Influence (Guideline B): **AGAINST THE APPLICANT**

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against 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 or continue a security clearance for the Applicant. Clearance denied.

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 6. Using foreign citizenship to protect financial or business interests in another country. E2.A3.1.2.6.
4. 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.
5. DC 3. Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3.
6. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.