

DATE: April 29, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-11269

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's exercise of dual citizenship, and his unwillingness to renounce his Turkish citizenship in order to protect his foreign financial interests, have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On August 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 21, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on November 21, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 26, 2003, and did not submit a reply.

The case was assigned to the undersigned for resolution on April 26, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, and the contents of the FORM. The Applicant is 43 years of age. He is employed as a Contract Finance Manager by a defense contractor. He seeks a security clearance in connection with employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for a clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Turkey and the United States. He was born in Turkey in 1961, and raised there most of his life. He attended a Turkish Army military academy and also another University in Turkey. In 1989, at the age of twenty eight, he moved to the United States, after marrying a United States citizen. He became a naturalized citizen of the United States in 1993. The Applicant held an active Turkish passport until he became a naturalized citizen, at which time he allowed it to expire. He has not used it since then. For all foreign travel, he uses his United States passport exclusively. He states that he surrendered his foreign passport last year in order to obtain his security clearance. (*See Government Exhibit 3*).

The Applicant traveled to Turkey in 1990 or 1991, and in 1998. (*See Government Exhibit 5*).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's parents, and a brother are citizens of Turkey and reside there. His parents stay with him for three month out of every year in the United States. His brother he has only seen twice in the last fourteen years. The Applicant admits that he has some emotional ties to Turkey, that being his country of origin. As a citizen of Turkey, the Applicant has the right to inherit his parent's real estate in Turkey. This property is worth approximately \$100,000.00 in United States dollars. The Applicant is unwilling to renounce his Turkish citizenship because of his emotional ties to Turkey, and because renouncing his foreign citizenship may cause difficulties as to his rights to inherit his parent's property. He does not want to deny his children the inheritance he will receive from his parents. The Applicant may also be eligible to inherit some survivor benefits from his father's military pension after his death, as his father was a career Non-Commissioned Officer in the Turkish Army medical corps. (*See Government Exhibit 5*).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

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:

1. The exercise of dual citizenship;
6. Using foreign citizenship to protect financial or business interests in another country.

#### Condition that could mitigate security concerns:

None.

### Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Turkey and the United States. He has indicated that in order to protect his inheritance in Turkey, he is unwilling to renounce his foreign citizenship. Disqualifying conditions 1 and 6 under Guideline C. None of the mitigating factors apply. Thus, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has foreign contacts, family ties, and financial interests in Turkey. His immediate family members, in this case his parents and a brother are citizens of Turkey and reside there. He has not shown that the contacts are infrequent and casual. In fact, he is very close to his parents, as they come to visit him in the United States for three months every year. Under these particular circumstances, there remains the possibility of pressure being placed on his foreign relatives, and through them, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Disqualifying condition 1 applies under Guideline B. None of the mitigating factors apply. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C or B.

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

1.c.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge