

DATE: May 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26826

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Willard P. McCrone, Esquire

SYNOPSIS

The Applicant attended the Turkish Naval Academy from 1982~1986. He also attended the U.S. Naval Postgraduate School from 1990~1992. In 1994, the Applicant had married a U.S. citizen; and as a result, was Honorably Discharged from the Turkish Navy in 1995. He became a U.S. citizen in March of 2000, and obtained a U.S. passport in April of 2000. He has since only used his U.S. passport to travel abroad. He has also renounced his Turkish citizenship and surrendered his Turkish passport. The Applicant's 65 year old father is retired from the Turkish Army, and his 70 year old mother is a housewife. His younger sister is a medical doctor, and she is also married to a doctor. There is no evidence that any member of his family has any current connection with a foreign government or is in a position to be exploited by any foreign government. Clearance is granted.

STATEMENT OF THE CASE

On December 14, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on or about December 30, 2002.

The case was received by the undersigned on February 26, 2003. A notice of hearing was issued on March 13, 2003, and the case was heard on April 2, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant called a witness to testify on his behalf. The transcript was received on April 18, 2003. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance. [The Applicant admits most of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 39 years of age, has a master's Degree, and is employed by a defense contractor, who seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a.~1.g. and 2.c.~2.f. The Applicant attended the Turkish Naval High School from 1978~1982 (Transcript (TR) at page 22 line 18 to page 23 line 19). Continuing his education, he next attended the Turkish Naval Academy from 1982~1986 (TR at page 26 line 17 to page 28 line 24). After graduating from the Academy, the Applicant went to the Sub-Mariner School, and thereafter was assigned to diesel submarine in the Turkish Navy (*id*). He served as an "Engineering Officer," and did not have "any access to any classified information" (TR at page 28 lines 16~24).

From 1990~1992, the Applicant attended the U.S. Navy Postgraduate School (TR at page 29 line 24 to page 32 line 13). After graduation, he returned to Turkey and became an instructor at their Academy (TR at page 32 line 14 to page 33 line 21). In 1994, however, the Applicant married a U.S. citizen; and as a result, was Honorably Discharged from the Turkish Navy in 1995 (TR at page 34 line 14 to page 38 line 4). He was not permitted to be married to a foreign national and remain in the Turkish Navy (*id*). He was thus placed on an Inactive Reserve list; and although he remained a Turkish national until 2000, he had nothing to do with the Turkish military after his discharge (TR at page 39 line 5 to page 47 line 20, at page 87 lines 3~7, at page 110 lines 7~13, and Applicant's Exhibits (AppXs) A and P).

The Applicant became a U.S. citizen in March of 2000, and obtained a U.S. passport in April of 2000 (TR at page 50 line 17 to page 54 line 4, and AppXs C and D). Since becoming a U.S. citizen, he has only used his U.S. passport to travel abroad (*id, see also* AppX E). He has also renounced his Turkish citizenship and surrendered his Turkish passport (TR at page 62 line 11 to page 75 line 2, and AppXs J~L). He owns no property in Turkey (TR at page 78 line 5 to page 82 line 15, at page 121 lines 10~24, and AppX N).

Guideline B - Foreign Influence

2.a.~2.e. The Applicant's 65 year old father is retired from the Turkish Army, and his 70 year old mother is a housewife (TR at page 23 line 20 to page 26 line 6). They are both citizens of and reside in Turkey (*id*). His younger sister is a medical doctor, and she is also married to a doctor (TR at page 26 lines 7~16, and at page 106 line 19 to page 107 line 7). She is also a Turkish national and resides in Turkey (*id*).

Mitigation

The owner of the Applicant's software company, a retired U.S. Force Lieutenant Colonel, speaks most highly of the Applicant, and has absolutely "No reservations" as to his trustworthiness (TR at page 126 line 1 to page 142 line 6). A litany of respected individuals have also come forward in unqualified support of the Applicant's prayer for a security clearance (AppX Q). Among those offering letters of support are a U.S. Navy Commander, a retired Army Lieutenant Colonel, and three professors at the U.S. Naval Postgraduate School (*id*).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions 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 his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign Preference

Conditions that could raise a security concern:

2. Possession . . . of a foreign passport;
3. Military service . . . for a foreign country;

Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
4. Individual has expressed a willingness to renounce dual citizenship;

Foreign Influence

Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . 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;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide

information or make decisions that are harmful to the interests of the United States. 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

The Applicant became a U.S. citizen in 2000, and has since renounced his Turkish citizenship. The last mitigating condition under foreign preference has thus been more than satisfied, as the Applicant has done more than merely "express a willingness to renounce dual citizenship." Furthermore, since acquiring his U.S. passport he has not used, and has subsequently surrendered, his foreign passport. Although he did serve in the Turkish military, after attending the Turkish Naval Academy, this was prior to his becoming a U.S. citizen. Thus the second mitigation condition is also satisfied. It is also interesting to note that he attended the U.S. Naval Postgraduate School, and three of its professors speak most highly of the Applicant. He is thus now only a U.S. citizen with a U.S. passport. Guideline C is therefore found in his favor.

The Applicant's 65 year old father is now retired from the Turkish Army. His mother is an elderly housewife. His sister is a medical doctor, married to another doctor. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Turkey can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even countenance any such attempt at exploitation. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

f. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge