

DATE: February 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31094

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Mark F. Riley, Esq.

SYNOPSIS

Applicant, a native-born U.S. citizen and a retired U.S. Navy first-class petty officer, is a 55-year-old married man employed by a U.S. defense contractor. In conjunction with his employment, he lives and works in Turkey. Under Guideline E, the record evidence fails to establish Applicant engaged in disqualifying personal conduct. Under Guideline B, although his connections to Turkey raise a security concern for foreign influence, Applicant has extenuated or mitigated that security concern. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ Under Guideline E for personal conduct, the SOR alleges Applicant failed to report to proper authorities that his then wife, a Greek citizen, had been questioned by Greek officials about his employment with a defense contractor in Turkey. Under Guideline B for foreign influence, the SOR alleges three matters: (1) Applicant's wife is a citizen of and a resident in Turkey; (2) Applicant has lived and worked in Turkey since 1994; and (3) as of April 10, 2002, Applicant was in the process of buying two houses in Turkey.

Applicant answered the SOR in a two-page letter, dated April 7, 2003, and he requested a clearance decision based on a hearing record. In his answer, he admitted, with explanations, to the allegations in subparagraphs 1.a, 2.a, 2.b, and 2.c.

On October 7, 2003, the case was assigned to me to conduct a hearing and issue a written decision. Thereafter, on October 27, 2003, a notice of hearing was issued to the parties scheduling the hearing for Thursday, November 13, 2003. Applicant retained counsel who entered his appearance by letter on October 31, 2003. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript November 21, 2003.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following essential findings of fact:

Applicant is a 55-year-old married man and a native-born U.S. citizen. He has been married four times, most recently in March 2002 to a Turkish citizen. He is employed by a U.S. defense contractor in Turkey where he works as a communications technician. He has lived and worked in Turkey since approximately September 1994. From September 1982 to September 1994, Applicant lived in Greece in conjunction with his Navy assignment and then his employment with a defense contractor. Included in the record are letters from eight persons attesting to Applicant's abilities and attributes as an employee as well as his trustworthiness and suitability to hold a security clearance (Exhibits A, B, C, and D).

Applicant's fourth and current spouse is a native-born Turkish citizen. She is employed as an accountant for an American-based multinational company doing business in Turkey. Before marrying, Applicant's spouse lived and worked in Switzerland for about two and one-half years from 1998 to 2000. She has traveled with Applicant twice to the U.S. for vacations and to visit Applicant's family members in the U.S. Both times she used her Turkish passport with a visa as she has no immigration status with the U.S. Applicant's spouse is not employed by or otherwise connected to the Turkish military, law enforcement, or a governmental agency. Other than his spouse and his parents-in-law, Applicant's family members are U.S. citizens and residents.

In December 1966, the then 18-year-old Applicant enlisted in the U.S. Navy. He served honorably, including service in Vietnam, until his retirement in February 1987; he retired at the rank of first-class petty officer and pay grade of E-6. For the first 14 years of active duty, Applicant worked in aviation maintenance. For the last six years, Applicant worked as a cryptologic technician. In that capacity, he served overseas for a Naval Security Group in both Italy and Greece. While in the Navy, Applicant held a security clearance, at the secret and top-secret levels, without an adverse incident or problem.

In approximately 1994 or 1995, Applicant was married to his then third wife, a Greek citizen, who was returning from Greece to Turkey where Applicant was employed. She was on a Greek island at the time and was processing through an airport to return to Turkey. At some point, she was questioned by unknown Greek officials who asked her why she was traveling to Turkey. Her response was to rejoin her husband who works for a U.S. defense contractor in Turkey. The contact was relatively brief, probably a few minutes or less. She was allowed to proceed and returned to Turkey where she mentioned the matter to Applicant.

In turn, Applicant mentioned it to a supervisor at work who told him it sounded like a routine matter and that nothing further need be done. While discussing this matter in a social setting, his then father-in-law speculated or suggested that the officials were Greek intelligence agents. As far as Applicant knows, neither he nor his spouse was ever contacted by Greek officials again concerning this matter.

Sometime thereafter in 1995, as part of a normal office-wide polygraph interview requirement, Applicant told the polygraph technician about the questioning of his wife by the unknown Greek officials. Subsequently, Applicant was interviewed by U.S. security investigators about the incident where he again explained his understanding--based on what his wife told him-- of his wife's contact with the unknown Greek officials. As part of the background investigation for his current security clearance, Applicant provided two sworn statements about this matter in April 2002 (Exhibits 2 and 3).

Applicant and his Turkish spouse are in the process of buying two houses in Turkey. Upon completion, they plan to occupy one and rent the other. They are buying the residential real estate through a cooperative or co-op. Legally, because he does not have a Turkish tax number, Applicant's spouse is the person who will be the owner of the property. To buy the houses, the arrangement is to make a monthly payment to the contractor who is building the co-op. Right now, Applicant and his spouse pay \$1,000.00 monthly. Applicant estimates they have made payments so far totaling about \$25,000.00. As there is no written contract for sale, Applicant does not know how much longer they will be required to make the monthly payments. Applicant expects the houses will be ready to occupy in two years or so. Other than these two houses, Applicant has no other financial interests in Turkey. He does have two bank accounts in Turkey that usually have balances of less than \$1,000.00. These accounts are used to make the monthly housing payment and to

pay other local bills.

Applicant also has financial interests in the U.S. He estimates having about \$40,000.00 in savings and checking accounts, and \$11,000.00 in an investment account. Applicant and his spouse plan to live in the U.S. when they retire from their respective jobs.

Turkey, also known as the Republic of Turkey, is a Middle East country that has been officially secular since 1924. Turkey's system of government is democratic, secular, and parliamentary. Turkey entered NATO in 1952 and serves as the organization's vital eastern anchor, controlling the straits leading from the Black Sea to the Mediterranean and sharing a border with Syria, Iraq, and Iran. A NATO headquarters is located in Izmir. Although recently strained, U.S.-Turkish relations are longstanding and strong.⁽²⁾

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the record evidence as a whole, the following security guidelines are most pertinent here: Guideline B for foreign influence and Guideline E for personal conduct.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

1. Personal Conduct Guideline

Under Guideline E for personal conduct, the concern is that conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. To that end, Guideline E has six conditions that may be disqualifying,⁽¹¹⁾ however, based on the record as a whole, none apply here as the government has not established any disqualifying conduct.

SOR subparagraph 1.a has taken a stale event involving Applicant's third wife and unknown Greek officials and attempted to make a mountain out of a molehill. The basis for this allegation is hearsay, which while admissible, is subject to appropriate weighing and scrutiny. The hearsay evidence consists of whatever Applicant's third wife told Applicant upon her return to Turkey. This took place in 1994 or 1995. Nothing else is known. Based on the record, for

all we know, this event is nothing more than a few questions during a routine border crossing. The possibility of questioning by Greek intelligence agents is based on speculation by Applicant's then father-in-law. Moreover, Applicant reported the matter to his work supervisor. Applicant also disclosed the matter during a routine polygraph interview sometime in 1995 and discussed the matter further with U.S. security officials. Finally, the whole matter was rehashed again in April 2002 during Applicant's background investigation. Taken together, the record evidence simply fails to support the government's concern. Accordingly, Guideline E is decided for Applicant.

2. Foreign Influence Guideline

Under Guideline B for foreign influence, 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 U.S. 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 if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

In addition, the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exist based solely on an applicant's family ties in a foreign country.⁽¹²⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.⁽¹³⁾

Starting first with subparagraph 2.b, the SOR alleges Applicant has lived and worked in Turkey since 1994. Although true, these facts have no security significance. Applicant has lived in Turkey since 1994 while working for a U.S. defense contractor in support of the U.S. armed forces. Simply put, the government cannot have it both ways. It is untenable to expect Americans to work overseas as defense contractors and then suggest a security concern is raised by overseas employment and residence. It is also contrary to common sense, and the reality that the U.S. armed forces are deployed worldwide and, as such, U.S. defense contractors are deployed worldwide in support of the military's mission. SOR subparagraph 2.b is decided for Applicant.

Addressing the remaining allegations in SOR ¶ 2, based on the record as a whole, the government has established its case under Guideline B. In particular, DC 1⁽¹⁴⁾ applies because Applicant's wife is a citizen of and a resident in Turkey. In addition, DC 8⁽¹⁵⁾ applies because Applicant has financial interests in Turkey as evidenced by the ongoing housing project. These circumstances, taken together, raise the possibility for foreign influence. The remaining disqualifying conditions of Guideline B do not apply given the record evidence.

In mitigation, Applicant's spouse is not employed by or connected with the Turkish military,⁽¹⁶⁾ law enforcement, or a governmental agency. Indeed, she has worked in the private sector as an accountant for many years. Moreover, given that Turkey, a member of the NATO alliance, has a secular, democratic, parliamentary government, it is most unlikely that Turkish officials or authorities will place pressure (or worse) on Applicant's spouse in an effort to obtain classified information by either coercive or non-coercive means. Given these circumstances, it is my commonsense assessment that the risk of foreign influence based on Applicant's marriage to his Turkish wife is minimal or negligible. Accordingly, I conclude MC 1⁽¹⁷⁾ applies in Applicant's favor.

Applicant's involvement with his wife in building two houses in Turkey is also mitigated. Based on the record as a whole, including his U.S. financial interests, Applicant's foreign real estate investments are not of a magnitude to make him vulnerable to foreign influence nor affect his security responsibilities. MC 8 applies in Applicant's favor.⁽¹⁸⁾

If he was involved in other foreign-owned or -operated businesses or investments, I would likely view this matter differently. But he is engaged in rather common, low-level real estate investment that happens to be located overseas, which is where he is located working for a U.S. defense contractor in support of the U.S. armed forces. Moreover, all his other major financial interests are in the U.S. Given the totality of circumstances, Applicant's foreign real estate investments, as presently constituted, do not place him at risk for foreign influence.

To sum up, I have considered the record as a whole, weighed the disqualifying and mitigating information, and given appropriate consideration to the various factors under the Directive, including the whole-person concept, and I conclude Applicant has successfully extenuated or mitigated the foreign influence security concern. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline E: For the Applicant

Subparagraph 1.a: For the Applicant

SOR ¶ 2-Guideline B: For the Applicant

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: 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 Applicant. Clearance is granted.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Although I was not asked to take administrative or official notice, these are facts known to this agency through its cumulative expertise in deciding security-clearance cases involving foreign influence or preference. *See* ISCR Case No. 99-0452 (March 21, 2000) at p. 4.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. Directive, Enclosure 2, Attachment 5, at pp. 27-28.
12. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

13. *Id.*

14. "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" (Directive, Enclosure 2, E2.A2.1.2.1).

15. "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence" (Directive, Enclosure 2, E2.A2.1.2.8).

16. *Compare* ISCR Case No. 02-26826 (November 12, 2003) (Appeal Board reversed a favorable decision by the administrative judge where applicant's father was a recently retired Turkish military officer who sought to use his contacts to help applicant obtain a NATO security clearance).

17. "A determination that the immediate family member(s), (spouse, father, 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" (Directive, Enclosure 2, E2.A2.1.3.1).

18. "Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities" (Directive, Enclosure 2, E2.A2.1.3.5).