

DATE: September 3, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31606

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, with dual U.S.-Turkish citizenship and grandparents who are citizens and residents of Turkey, who is willing to bear arms for Turkey, failed to sufficiently mitigate foreign preference and foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 21 February 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the foreign preference (Guideline C) and foreign influence (Guideline B) personnel security guidelines of the Directive. Applicant answered the SOR in writing on 18 March 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 9 June 2003. On 24 July 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. DOHA received the transcript (Tr.) of the proceeding on 1 August 2003.

FINDINGS OF FACT

Applicant's father was born in Turkey. Ex. 1 at 6. He came to the U.S. around 1960 to attend college. After graduating and obtaining an advanced degree, he stayed in the U.S. where he worked as an engineer. Ex. 2 at 1. Applicant's father married a U.S. citizen and Applicant was born in the U.S. in 1974. Ex. 1 at 1, 6; Ex. 2 at 1; Tr. 23. In 1980, Applicant's family moved to Turkey for two years while his father taught at a university there. The entire family returned to the U.S. in 1982 and his father continued teaching. Ex. 2 at 2.

Around 1985, the marriage fell apart and Applicant's parents eventually divorced. Applicant's mother married a native-born U.S. citizen. Applicant's father married a Turkish citizen residing in the U.S. Applicant's father became a

naturalized U.S. citizen in 1987; his stepmother became a U.S. citizen in 1997. Ex. 2 at 2; Ex. 1 at 6. Applicant's father, step-mother, siblings, and step-siblings hold dual citizenship in the U.S. and Turkey. Ex. 1 at 6-7.

Applicant resides in the U.S. with the mother of his son. The son was born in the U.S. in 2001. Applicant claims the child is a dual citizen of the U.S. and Turkey. Ex. 2 at 4; Ex. 1 at 7.

Applicant has one grandparent and two step-grandparents, two aunts, and one uncle who are citizens and residents of Turkey. Another aunt and uncle are Turkish citizens who currently reside in Germany. Tr. 20. Applicant talks to his step-mother's parents via telephone once every two months. He talks to his father's mother once every month and his aunts and uncles less frequently. Ex. 2 at 2-3.

Applicant's parents obtained a Turkish passport for him when he was a child, and Applicant caused it to be renewed in 1998. Applicant traveled to Turkey several times with his family while he was a child on his Turkish passport. On those occasions, his father would handle the passports. Tr. 32; Ex. 2 at 4. Applicant did not travel on his Turkish passport after 1994. In August 2002, Applicant took his fiancée and son to Turkey to meet his relatives there, he used his U.S. passport. Tr. 33; Ex. 2 at 4. On 24 July 2003, prior to the start of the hearing, Applicant mailed his Turkish passport to the Turkish Consulate. Tr. 30.

As a male Turkish citizen, Applicant is obligated to serve 18 months of military service. In 1994, Applicant's father and cousin went to Turkish government officials in Turkey, on Applicant's behalf and with his knowledge, requesting Applicant be granted an extension of the service requirements. Applicant was granted an extension until he is 39 years old. Because Applicant resides in a NATO member country, he may fulfill his military obligation to Turkey by serving in a U.S. military reserve unit. Ex. 2 at 4. Applicant originally intended to fulfill his Turkish military obligation by so serving in a U.S. reserve unit. *Id.* However, he now intends to pay the \$10,000 fine instead. Tr. 19.

Applicant "would be willing to comply with an obligation to serve or to bear arms on behalf of Turkey depending on the cause." Ex. 2 at 4. "If [Applicant] believe[s] a cause is worth fighting for, [he] is willing to bear arms on behalf of that country, no matter which country it is." Tr. 18-19. He is "willing to bear arms for a cause which I believe in, no matter what the country." Tr. 19. He would not bear arms for Turkey against the U.S. Tr. 37.

Applicant has no financial interests in Turkey and has not received any tangible benefits from the Turkish government, other than the passport he used. He has never voted in any foreign election Tr. 17, 27; Ex. 2 at 5.

Applicant has expressed his reluctance to renounce his Turkish citizenship. "I am not willing to renounce my Turkish citizenship as a condition of access to classified information." Ex. 2 at 4.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).*

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)*; *see Directive ¶ E3.1.15*. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." *ISCR Case No. 01-20700 at 3.*

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Turkey (¶1.a.), possessed a Turkish passport (¶ 1.b.), was willing to bear arms on behalf of Turkey (¶ 1.c.), intended to serve his Turkish military obligation by serving in a reserve unit of the U.S. military (¶ 1.d.), and contacted Turkish government authorities in Turkey regarding his passport and compulsory, military service extension (¶ 1.e.). An applicant who acts in such a way as to indicate a preference for a foreign country over the U.S. may be prone to provide information or make decisions that are harmful to the interest of the U.S. *Directive ¶ E2.A3.1.1.*

The Government established by substantial evidence, and Applicant's admissions, that Applicant exercised dual citizenship (DC 1), possessed and used a foreign passport (DC 2), and expressed a willingness to bear arms for a foreign country (DC 3) and to fulfill, in some way his Turkish military service obligation. Applicant contends that his dual citizenship is based solely on his father's citizenship (MC 1) and suggests his ties to Turkey are part of his cultural heritage (Ex. 2 at 4).

Without a doubt, the source of Applicant's Turkish citizenship is his father's Turkish citizenship. Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. *ISCR Case No. 99-0454, 2000 DOHA LEXIS 221 at **14-15 (App. Bd. Oct. 17, 2000)*. It is the exercise of that citizenship that is the disqualifying condition. DC 1. Applicant was not just a dual citizen. He exercised his Turkish citizenship by possessing his Turkish passport without the sanction of the U.S. Government.⁽³⁾ Although he turned his passport into the Turkish Consulate, he did so reluctantly, only on the date of the hearing and under threat of disqualification. *See Memo. from Arthur L. Money, Asst. Secretary of Defense, Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline (Aug. 16, 2000)*. The so-called "Money Memo" requires that any security clearance be denied or revoked "unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

Applicant's bonds to Turkey are, in some measure, a reflection of his respect for his Turkish heritage. Evidence of a foreign preference must go "beyond mere sentiment, respect for his [foreign] heritage, or symbolism." *ISCR Case No. 99-0454, 2000 DOHA LEXIS 221 at *16 (App. Bd. Oct. 17, 2000)*. And in this case, Applicant's affinity for Turkey is more than just respect and interest in the country from which his forbears emigrated. Instead, it represents such a close tie that Applicant is willing to serve in the Turkish armed forces or pay a \$10,000 fine to the Turkish Government to avoid such service. Although the means by which Applicant now claims he intends to fulfill his Turkish military commitment have changed (paying the \$10,000 fine rather than performing substitute service in a U.S. military reserve unit), his underlying intention to do so has not. Therefore, Under the circumstances, the finding is against Applicant on ¶ 1 and all its subparagraphs.

Guideline B-Foreign Preference

In the SOR, DOHA alleged Applicant's father, stepmother, sibling, step-siblings, and son are dual citizens of Turkey and the U.S. and reside in the U.S. (¶ 2.a.), three grandparents, three aunts, and an uncle are citizens and residents of Turkey (¶ 2.b.), and he traveled to Turkey in 1994 and 2002, and prior to 1994, every two years (¶ 2.c.). A security risk

may exist when members of an applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence, and Applicant's admissions, that members of his immediate family who reside in the U.S. are dual U.S.-Turkish citizens. DC 1. The Government also established that members of Applicant's extended family are Turkish citizens living abroad. DC 1. Applicant asserts these relatives are not agents of a foreign power (MC 1) and his contacts with them are casual and infrequent (MC 3).

Applicant's relationship with his immediate family members and foreign relatives cannot be divorced from his foreign preference for Turkey over the U.S. ISCR Case No. 01-12452 at 4 (Jan. 27, 2003) (holding, under the whole person concept, it would be arbitrary and capricious for an administrative judge to consider conduct in isolation from other conduct). Applicant's relatives are important to him. The evidence established that Applicant's father and step-mother are still very much involved in Turkey. They return to Turkey for two months every summer. Ex. 2 at 5. Applicant talks to his grandparents frequently on the telephone and visited these relatives in Turkey to show them his young son. Under all the circumstances of this case, it is clear that Applicant does have close ties of affection and obligation to his grandparents. DC 1. While there is no evidence that these relatives are agents of a foreign power, Applicant failed to demonstrate that his relatives are not in a position to be exploited by a foreign power or that his contacts with them are casual and infrequent under the circumstances of this case. Finding is against Applicant on ¶¶ 2.a. - 2.c.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. I did not consider Applicant's use of his Turkish passport as an exercise of foreign preference as it appears he was still under the dominion and control of his parents when he last used it in 1994. ISCR Case No. 01-02270 at 4 (App. Bd. Aug. 29, 2003).