

DATE: November 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32065

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence resulting from his wife's citizenship in Turkey and his brother-in-law's service as a Turkish military officer. As Turkey is a long-time U.S. ally, I conclude there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. While his wife's misconduct while he was in the U.S. military led to his being barred from all AAFES facilities for a period of 60 days in 1995, there is no evidence that he himself engaged in any personal or criminal misconduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 15, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1, personal conduct (Guideline E) in paragraph 2, and criminal conduct (Guideline J) in paragraph 3. Applicant replied to the SOR allegations in an Answer notarized on November 20, 2003, and requested a decision be made on the administrative record.

Department Counsel prepared a File of Relevant Material (FORM) on February 2, 2004, which he forwarded to Applicant with the explanation that he would have thirty days from the date of receipt to submit any objections or any additional information. He received the FORM on February 17, 2004, but submitted no additional information. The case was assigned to me on March 25, 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 47-year-old employee, began working for a defense contractor (Employer #1) in October 1999 in Turkey. In June 2000 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. From 1994 to 1999 he worked for Employer #2 in Turkey. From 1989 to December 1993 he was on active duty in the military and was assigned to overseas duty in Turkey. He served in the Air Force from 1973 to 1994. He was granted a Defense Department Top Secret clearance in 1974. (Exhibits 4, 5)

Foreign Influence

Applicant married his wife, a citizen of Turkey, in 1980. They have a child born in 1988. His wife's family are citizens of Turkey: her mother, her sister, her sister's husband, and his wife's sister's son. (Exhibit 4) His wife and daughter have green cards, but since his marriage, he has not been assigned to the U.S. long enough for his wife to become a citizen. His wife's financial interests were established before he married her as he moved into his wife's home that was given to her by her mother. His wife has worked as a dramatic stage actress⁽²⁾ for the Turkish state theater for thirty years and has also worked in movies, television, and radio. Applicant does not have a Turkish bank account and instead deposits his salary in a U.S. bank. (Exhibit 3) Applicant admits that his wife's sister's husband is a colonel in the Turkish military service and that he sees him at casual family gatherings once or twice a month. He admits that he does have Turkish friends, but he is not close to these friends and his contact is infrequent.

Throughout Turkey there is potential for violence and terrorist actions against U.S. citizens. (Exhibit 8) However, Turkey is a long-term U.S. ally.⁽³⁾

Personal Conduct and Criminal Conduct

Applicant received no courts martial, no Article 15 punishments, or no letters of reprimand in his military career. He was assigned responsible jobs while he was in the military because of his technical knowledge, reliability, judgment and ability to work with the Turkish military and civilian contractors. (Exhibit 3)

While he was in the military, Applicant's wife was subject to two Air Force investigations-- in June 1995 for blackmarketing items purchased from the community shoppette and in January 1991 for excessive purchase of duty-free merchandise and/or wrongful transfer of duty-free merchandise to unauthorized recipients in violation of USAFE Regulation 30-6. In May 1992 his wife's ration card and purchase privileges were revoked for one year. In 1995 Applicant was barred from all AAFES facilities for a period of 60 days; his dependent spouse was barred from all AAFES facilities indefinitely. (Exhibits 6, 7) Applicant admits he was investigated for black-marketing in 1990, but he did not participate in such activity. He admits in 1995 that his ration privileges were suspended, not because he was black marketing, but because he did not properly supervise his wife's use of that ration card. (Exhibit 3)

In a May 1995 interview by the Air Force Office of Special Investigations (AF OSI) Applicant admitted that his wife shopped frequently and may have purchased items for her family members, but Applicant did not believe she had sold any items for profit. Applicant stated that his wife was an employee of the Turkish Government, working for the national theater as an actress. Applicant terminated the interview before he could not provide a written statement. (Exhibits 6, 7)

Applicant refuted the Government's allegations that he falsified his SF 86 form as the only evidence supporting these SOR allegations 2.a. and 2.b. of his Turkish financial ties is a AFOSI investigative report, which is hearsay evidence. Therefore, I conclude Applicant did not falsify with respect to Question 12 (when he failed to disclose he owns an apartment in Turkey and a Turkish bank account) as there is no evidence other than a hearsay statement in a AFOSI report that he owned an apartment in Turkey which he denies or that he maintained a Turkish bank account which he denies.

Applicant refuted allegation SOR 2.c. that he falsified his answer to Question 19 regarding his medical history. The Government alleges that he failed to disclose to a Special Agent of the Defense Security Service (DSS) on January 31, 2001, that he had ever seen a mental health professional; however, no DSS statement was offered in evidence to establish these facts. Applicant admits that he took his daughter for treatment for Attention Deficit Hyperactivity Disorder (ADHD) and that she was evaluated by a mental health professional, but he states that he himself had not

consulted such an professional. (No evidence in the FORM establishes such any visit or falsification over such treatment.)

There is no evidence that Applicant himself was investigated for any criminal activity.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

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: (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.

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;

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;

3. Contact and correspondence with foreign citizens are casual and infrequent;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an

applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

The Government failed to establish that Applicant has substantial financial ties in Turkey as he credibly denied he owns an apartment in Turkey or has a bank account in Turkey. Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has a wife who is a citizens of Turkey, a brother-in-law who is a Turkish military officer, and Turkish friends.

While I have considered these concerns over the potential for foreign influence that could result in the compromise of classified information, I conclude Applicant presented sufficient evidence to meet the burden⁽⁴⁾ those circumstances present in light of Turkey being a long-term U.S. ally. These security concerns are mitigated by the fact that there is no evidence that Applicant's wife has in the past been subject to pressure and any future pressure would seem unlikely. Although his wife works in the state supported theater, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. While his brother-in-law is an officer in the Turkish military, Applicant has limited contact with him. Given the strategic ties between the U.S. and Turkey, there is no substantial likelihood that Applicant's wife or brother-in-law would be subject to duress and thus exercise foreign influence over Applicant. Given Applicant's history of responsible conduct as evidenced by his military and civilian record, I conclude Applicant is not vulnerable to duress merely because of these family ties.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.g. in Applicant's favor.

Personal Conduct

Applicant rebutted the Government's security concerns over personal conduct issues. As detailed in the Findings, there is no credible evidence that Applicant omitted relevant and material information about this foreign financial ties or over a visit to a doctor to address his daughter's ADHD issues. The Government raises legitimate personal conduct concerns over Applicant being barred from all AAFES facilities for a period of 60 days while he served in the military in 1995; however, there is no evidence that he knew of his wife's misconduct. Sufficient time has passed for these concerns over these rule violations by his wife for which he was held responsible to be mitigated.

After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. through 2.e. under SOR Paragraph 2.

Criminal Conduct

Applicant rebutted the Government's security concerns over criminal conduct issues. As detailed in the Findings, there is no credible evidence that Applicant knew or condoned his wife's misconduct which led to his being barred from all AAFES facilities for a period of 60 days in 1995. There is no evidence that he was ever charged with any criminal misconduct while he was in the military.

After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors

set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. His wife is not a linguist as alleged as the only supportive evidence is a hearsay statement in a 1991 AFOSI report. Similarly, I accept that he does not own an apartment in Turkey nor maintain a Turkish bank account as the only supportive evidence is a hearsay statement in a 1995 AFOSI report where he did not provide a signed, sworn statement.
3. President George W Bush has praised regional ally Turkey during talks in the capital, Ankara, ahead of a NATO summit in Istanbul. Turkey demonstrated how to be a Muslim nation that embraced democracy, freedom, and the rule of law, Mr Bush said. BBC New World Edition, June 27, 2004.

4. As Turkey is a long-term U.S. ally, the Government presented no evidence of any hostile nature in the relationship.