

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a Turkish born, United States citizen, used a Turkish identification card with his United States passport, when entering and leaving Turkey, to avoid paying a visa fee. When he became aware that the card identified him as a Turkish citizen, rather than just Turkish born, which is what he initially believed, he returned the card to the Turkish embassy. None of Applicant's family members, who are citizens of and reside in Turkey, are in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

CASE NO: 02-24402.h1

DATE: 05/25/2004

DATE: May 25, 2004

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24402

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Karla L. Kraus, Esq.

SYNOPSIS

Applicant, a Turkish born, United States citizen, used a Turkish identification card with his United States passport, when entering and leaving Turkey, to avoid paying a visa fee. When he became aware that the card identified him as a Turkish citizen, rather than just Turkish born, which is what he initially believed, he returned the card to the Turkish embassy. None of Applicant's family members, who are citizens of and reside in Turkey, are in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 28, 2003, to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on foreign preference (guideline C) related to his exercise of dual citizenship with the United States and Turkey and foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response dated September 29, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 2, 2004, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated February 18, 2004, a hearing was held on March 18, 2004.

At the hearing, Department Counsel offered five documentary exhibits (Government Exhibits 1 - 5) and no witnesses were called. Applicant offered fifteen documentary exhibits (Exhibits A - O) and offered his own testimony. The transcript (TR) was received on April 1, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. The SOR contains two allegations, 1.a. and 1.b., under Guideline C and eight allegations, 2.a. through 2.h., under Guideline B. Applicant admitted all of the SOR allegations with the exception of 1.a.. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 54 years old and is employed as a Senior Software Engineer by a United States defense contractor that wants him to have a security clearance. Applicant was born in Turkey. While he was living in Turkey, he was required to serve in the Turkish military, which he did officially from July 1975 through October 1975. Applicant came to the United States in 1978 with a student visa. He became a United States citizen in 1991.

Applicant received a Ph. D. degree in Computer Science from a United States university in 1983. He is divorced, and he has one 11 year old son, who was born in the United States and is a United States citizen.

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

From 1996 through 2003, on 6 separate occasions, he used a Turkish identification card with his United States passport, when entering and leaving Turkey, to avoid the necessity of paying a visa fee for him and his son. He testified that he was unaware that the card identified him as a Turkish citizen; rather he believed that it simply identified him as Turkish born. In 2004, when he became aware of the fact that the card actually identified him as a Turkish citizen, he returned

the card to the Turkish embassy. At that time, he also renounced his Turkish citizenship and returned his expired Turkish passport, which he never used after he became a United States citizen in 1991 (Exhibits B and C).

Applicant testified that it was his belief that when he became a United States citizen in 1991, he renounced his Turkish citizenship (Tr at 27).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's mother, two brothers, one sister-in-law, and a nephew and niece reside in and are citizens of Turkey. None of these family members belong to, participate in, or are active with any government agency of Turkey (Tr at 28, 33-36).

Applicant's mother, who is 74 years of age, has always been a homemaker. He communicates with her by telephone approximately once a week. She has come to visit him here in the United States on several occasions (Tr at 41-43).

Applicant's two brothers are both physicians. He rarely telephones his older brother, and he speaks to his younger brother approximately every other week (Tr at 25, 26). In the past, he emailed his nephew and niece fairly regularly, but now that they are older teens, he rarely initiates contact with them (Tr at 32-36).

He does not anticipate receiving any inheritance or other financial interest in Turkey. He has estimated his financial holdings in this country to be worth in excess of one million dollars (Tr at 27, 35, 36).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other

pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

The following guidelines and concerns are relevant to this case:

Guideline B Foreign Preference

E2.A3.1.1. The Concern: 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.

Guideline B Foreign Influence

E2.A2.1.1. 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 not citizens of the United States 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 to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's use of a Turkish identification raises some foreign preference (guideline C) concerns. Disqualifying condition (DC) E2.A3.1.2.1., the exercise of dual citizenship could be argued to apply. However, I conclude that Applicant never was aware that the Turkish identification card identified him as a Turkish citizen. I find his testimony credible that he believed the card only showed him to be Turkish born, and that he would not have used it had he been aware of its full implication. It is also significant that while using this card he always only used his United States passport. I therefore rule that DC E2.A3.1.2.1 does not apply.

While Applicant always believed that when he became a United States citizen he renounced his Turkish citizenship, since there was some question, he officially renounced his Turkish citizenship in 2004. Mitigating Condition (MC) E2.A3.1.3.4, an expressed willingness to renounce dual citizenship, applies.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other

persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. The evidence of Applicant's immediate family members, who are citizens of and reside in Turkey comes within DC E2.A2.1.2.1. Based on the nature of the overall record and the totality of the evidence, including the lack of government involvement of Applicant's family members and Applicant's extremely strong attachment to his son in the United States, and his substantial financial interests here, I have determined that his family members in Turkey do not constitute an unacceptable security risk, and MC E2.A2.1.3.1. is applicable. This states that a determination that the immediate family member(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.

After considering all of the evidence of record on this issue, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would reject it, and would report the incident to the proper authorities.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1. a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Subparagraph 2.g.: For the Applicant

Subparagraph 2.h.: 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.

Martin H. Mogul
Administrative Judge