

DATE: November 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24516

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized United States citizen, has close relatives who are citizens of Turkey, and more extended family members who reside in that country. She possesses a Turkish passport that does not expire until May 16, 2004. She has failed to mitigate the security concerns caused by her possession of a foreign passport. Clearance is denied.

STATEMENT OF THE CASE

On July 2, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a response to the SOR, dated July 10, 2003, and requested a clearance decision based on the written record without a hearing. In her response to the SOR, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate or mitigate the security concern raised by the allegation.

Department Counsel prepared a File of Relevant Material (FORM) on September 17, 2003, that was mailed to Applicant the same day. Applicant responded to the FORM on October 30, 2003, stating she did not intend to submit any additional information. ⁽²⁾ She also did not interpose any objection to the material submitted by Department Counsel. The case was assigned to me October 31, 2003.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 28-year-old woman of Turkish ancestry who has never been married. She became a naturalized U.S. citizen on August 20, 2001. She first came to the United States in 1986, when her father, a chief petty officer in the Turkish Navy, was posted in the U.S., serving as a freight forwarding liaison officer for the Turkish Armed Forces. She returned to Turkey with her family in 1989, and remained there until after her father

retired from the Turkish Navy in 1993. Following his retirement, Applicant's father accepted employment in the U.S., moved his family to this country in January 1994, and is presently employed by an exporting/importing commercial company for India.

Applicant attended college in the United States and received a bachelor of science degree in political science on May 17, 1999. She is presently pursuing studies toward a masters degree at the same university. She has worked as an operations manager for the official freight forwarder for the Turkish Ministry of National Defense in the United States since May 15, 1995. Applicant lived with her parents until October 2003, when she moved out on her own.

Applicant's father became a naturalized U.S. citizen on January 23, 2001. Her mother is a permanent resident alien, who attempted to become a naturalized U.S. citizen, but was unable to pass the necessary examinations. Applicant also has a 32-year-old sister who resides in the U.S. as a permanent resident alien. The sister is married to another permanent resident alien and both of them intend to seek U.S. citizenship when they become eligible. Applicant's grandparents, aunts, and uncles, are citizens and residents of Turkey. With the exception of her father, none of Applicant's relatives have ever been employed as agents or representatives of the Turkish government.

Applicant obtained a Turkish passport on July 23, 1992, and renewed that passport on July 12, 1996. She still possesses the Turkish passport, which does not expire until May 16, 2004.⁽³⁾ Applicant traveled to Turkey in 1997, 1998, and 1999 utilizing her Turkish passport. She obtained a U.S. passport on August 21, 2001, and used the U.S. passport when she again traveled to Turkey in 2001. Applicant's travels to Turkey were for pleasure, and she visited with relatives residing there during her 1997 and 1999 trips. Her present contacts with relatives residing in turkey are minimal, consisting of telephone calls on holidays and other special occasions. Applicant does not have any financial interests in Turkey.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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 evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole 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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁶⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

CONCLUSIONS

Foreign Influence. 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.

Based upon the allegations in the SOR, the following Disqualifying Conditions (DC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant:

DC 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;*

DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress*

exists; and

DC 3: *Relatives, cohabitants, or associates who are connected with any foreign government.*

DC 1 applies in this case because Applicant's mother, sister, and brother-in-law are citizens of Turkey. However, each of those relatives is a permanent resident of the U.S., and has attempted to become either a U.S. citizen or plans on becoming one as soon as eligible. Although he is a retired Turkish Navy chief petty officer, Applicant's father has now become a U.S. citizen, and does not have any continuing connection with the Turkish government, other than presumably receiving a military pension. Applicant has convincingly established that her contact with more distant relatives who still reside in Turkey is so limited as to not cause a security concern. Simply put, there is no reason to believe that Applicant could be coerced, exploited or pressured by any action that might be directed against foreign relatives whom she has not seen in approximately four years, and with whom her only contact is telephone calls on holidays and special occasions.

At the time the SOR was issued, Applicant was living with her mother, a Turkish citizen, implicating DC 2. However, as of October 2003, Applicant no longer resides with her parents, and, as the government concedes in the FORM, this disqualifying condition no longer applies. Lastly, the SOR alleged that Applicant's father was a freight forwarding liaison officer for the Turkish Armed Forces. That is the position he held when posted in the U.S. from 1986 to 1989, and has not held since at least his retirement in 1993. However, he is presently employed as a civilian in the U.S. by a commercial importing/exporting company for the country of India which still implicates DC 3.

Once the government meets its burden of proving controverted facts⁽¹⁴⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁵⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁶⁾

The following information about Turkey and its relations with the United States is significant in determining whether a security concern exists under the known facts in this case:

The 1982 Constitution proclaims Turkey's system of government as democratic, secular, and parliamentary. . . . Internationally recognized human rights, including freedom of thought, expression, assembly, and travel, are protected but can be limited in times of emergency and cannot be used to violate what the Constitution considers the integrity of the state or to impose a system of government based on religion, ethnicity, or the domination a one social class. The Constitution prohibits torture or ill treatment. Labor rights, including the right to strike, are recognized in the Constitution but can be restricted. . . .

Turkey's primary political, economic, and security ties are with the West. During the last several years, Turkey has continued to pursue its EU candidacy with the hope of getting a date in December 2004 for the beginning of accession negotiations.

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. . . .

U.S. - Turkey friendship dates to the late 18th century and was officially sealed by a treaty in 1830. The present close relationship began with the agreement of July 12, 1947, which implemented the Truman Doctrine. As part of the cooperative effort to further Turkish economic and military self-reliance, the United States has loaned and granted Turkey more than \$12.5 billion in economic aid and more than \$1.4 billion in military assistance. . . .

The U.S. and Turkey have had a Joint Economic Commission and a Trade and Investment Framework Agreement for several years. In 2002, the two countries indicated their joint intent to upgrade bilateral economic relations by launching an Economic Partnership Commission. Turkey has been designated a Big Emerging Market (BEM) for U.S. exports and investment by the Department of Commerce. In 2001, the U.S. - Turkey trade balance was almost even, with each country exporting approximately \$3 billion to the other. The United States is Turkey's third-largest export market.⁽¹⁷⁾

Because Applicant's father is now employed by a commercial importing/exporting company for the country of India, the following information about India and its relations with the United States is also significant in determining whether a security concern exists under the known facts in this case:

India's nuclear tests in May 1998 seriously damaged Indo-American relations. President Clinton imposed wideranging sanctions pursuant to the 1994 Nuclear Proliferation Prevention Act. The United States encouraged India to sign the Comprehensive Nuclear Test Ban Treaty (CTBT) immediately and without condition. The U.S. also called for restraint in missile and nuclear testing and deployment in both India and Pakistan. The nonproliferation dialogue initiated after the 1998 nuclear tests has bridged many of the gaps in understanding between the countries.

The sanctions were lifted in September 2001. President Bush met Prime Minister Vajpayee in November 2001, and the two leaders expressed a

strong interest in transforming the U.S. - India bilateral relationship. High-level meetings between the countries increased in 2002, and new areas of cooperation are a hallmark of a rapidly expanding relationship. Both leaders met again in the fall of 2002 and 2003 and expressed satisfaction with the increasing levels of contact and cooperation. [\(18\)](#)

Having fully considered Applicant's relatives who reside in the United States as permanent resident aliens, the extent and nature of her contacts with more distant relatives residing in Turkey, her father's employment, and the countries involved, I find Mitigating Condition (MC) 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 applies in this case.*

The information known about Applicant entitles her to receive credit under the "whole person" concept for her stable family life, and continued residence in the same home with her parents since immigrating to the United States, until her recent move into her own residence. She is also entitled to credit for her steady employment with the same company since May 1995, and her academic pursuits that have earned her a bachelor's degree and are progressing toward an award of a master's degree. Additionally, she is entitled to credit for rapidly becoming a United States citizen, and her exclusive use of a U.S. passport for all foreign travel since becoming a United States citizen.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I find Applicant has successfully mitigated the foreign influence security concerns alleged in the SOR. Guideline B is decided for Applicant.

Foreign Preference. 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.

DC 2: *Possession and/or use of a foreign passport* is one of those acts that demonstrate a foreign preference. Applicant obtained and used a Turkish passport before she became a United States citizen on August 20, 2001. She obtained a U.S. passport on August 21, 2001, and used the U.S. passport on her only foreign trip after becoming a U.S. citizen. She has expressed a willingness to surrender the Turkish passport, has indicated she will not use it in the future, and has vowed she will not renew it when it expires. Regrettably, and despite being provided with a copy of the ASD(C3I) Memorandum, dated August 16, 2000 (the Money memo), Applicant has not surrendered the Turkish passport. Further, the Turkish passport will not expire until May 16, 2004.

The Money memo mandates that, "consistent application of the guideline requires that any 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 has done neither of these mitigating acts. I have no discretion under these circumstances but to conclude that Applicant has failed to mitigate the security concern caused by the retention of her Turkish passport. Guideline C is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline C: Against the Applicant

Subparagraph a: Against the Applicant

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

DECISION

In light of all 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant did express a concern that the copy she received of the FORM was missing page 3 of her response to the SOR. The file I received and considered included all pages of her response, including page 3.
3. Applicant was provided a copy of the ASD(C3I) Memorandum, dated August 16, 2000 (the Money memo), as an enclosure to the letter, dated July 2, 2003, forwarding to her the SOR.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.
14. Directive, Additional Procedural Guidance, Item E3.1.14
15. Directive, Additional Procedural Guidance, Item E3.1.15
16. ISCR Case No. 99-0597 (December 13, 2000)
17. U.S. Department of State, Bureau of European and Eurasian Affairs, October 2003, Background Note: Turkey.
18. U.S. Department of State, Bureau of South Asian Affairs, November 2003, Background Note: India.