

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant mitigated security concerns about foreign preference by turning in his passport and renouncing citizenship with Turkey. He mitigated concerns about foreign influence by establishing his excellent record as a holder of a security clearance for 15 years and his reputation for security awareness. Based on the whole person analysis, clearance is granted.

CASENO: 03-19300.h1

DATE: 10/28/2005

DATE: October 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19300

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Peregrine C. Russell-Hunter, Esq. , Chief Department Counsel

FOR APPLICANT

Yelda Basar, Esq. , Personal Representative

SYNOPSIS

Applicant mitigated security concerns about foreign preference by turning in his passport and renouncing citizenship with Turkey. He mitigated concerns about foreign influence by establishing his excellent record as a holder of a security clearance for 15 years and his reputation for security awareness. Based on the whole person analysis, clearance is granted.

STATEMENT OF THE CASE

On November 18, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 8, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on June 20, 2005, and a Notice of Hearing was issued August 10, 2005, for a hearing held on August 29, 2005. The Government introduced five exhibits at the hearing and requested that administrative notice be taken of four government documents. The Applicant introduced 24 exhibits attached to his answer, and two more with multiple separately lettered appendages at the hearing. All were accepted into evidence. Four witnesses including his personal representative at the hearing testified for Applicant, and he testified on his own behalf. The transcript was received on September 28, 2005.

FINDINGS OF FACT

Applicant admitted the specific facts in all allegations under Foreign Preference-Guideline C, and under Foreign Influence-Guideline B with explanatory information provided for each allegation. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 51-year-old employee of a major defense contractor working as an engineer. He was born in Turkey, served almost two years in the Turkish military, and emigrated to the U.S. in 1975 when he was 21 years old on a student visa when his former wife was a graduate student. He became a citizen in 1989. His wife is also a naturalized U.S. citizen from Turkey and he has two daughters by a former wife who are U.S. citizens.

From the time of his arrival in the U.S. until 2000, with the exception of one nine month period, Applicant worked for a U.S. defense contractor owned by a Turkish-American. Applicant became vice president/engineering of the company and in 2000 it was sold to a major U.S. defense contractor for whom Applicant is still employed. As a result of his Turkish language skills and knowledge of the country, Applicant was sent by his employer to Turkey to work between 1994 and 2001 on a program supplying defense materiel under Defense Department contract with Turkey. He also worked in Saudi Arabia for 18 months and Spain for two years for his employer on a similar program. He has held a security clearance for 15 years since 1990 and has held a NATO security clearance.

His work overseas resulted in extra pay allowing him to accumulate capital. He had hoped to retire in 2001 but the turndown in the stock market changed his plans. Applicant has investments in the U.S. of over \$700,000.00 and is financially secure. His only financial foreign interests are a private social security account that will begin paying him \$200.00 per month this year and the likelihood of an inheritance of approximately \$30,000.00 upon the death of his mother from the sale of property which he and his brother will inherit. In view of Applicant's total assets, these funds are not so significant as to raise security concerns.

Applicant has been a dual citizen of the U.S. and Turkey, but turned in his Turkish passport to the Turkish embassy in April 2005 upon being advised of the process to do so. He had renewed his Turkish passport three times since becoming a U.S. citizen, but had not realized that the possession of the passport created security concerns until so advised by investigators in 2003. He began to take appropriate steps to relinquish it, but Turkish law made it difficult to do so. Subsequent changes in the law made it easier. His Turkish passport was used to enter and exit Turkey on his business trips which facilitated his travel but he also used his U.S. passport on many of his trips. He traveled to Turkey in 2002 and 2003 for personal reasons using only his U.S. passport.

Applicant's mother, brother, and several in-laws live in Turkey. His mother is 78-years-old and lives in a nursing home. His brother is soon to be retired as a medical doctor working as a teacher and traveling abroad for the United Nations on health issues. Neither have any connections with the Turkish government.

The fact that Applicant lived in Turkey for six years working for his employer was the result of needs and requirements of his company and the overseas pay he received rather than any deep seated desire to live in Turkey. In fact, both he and his wife were anxious to leave Turkey and return to the U.S. but the requirements of his employer dictated that they stay. Applicant's extensive and frequent travels for his company were responsible for his inability to secure citizenship in the U.S. as early as he desired since he could not fulfill the residence requirements earlier.

Applicant is highly regarded by his supervisor who testified on his behalf stating that he "has always handled sensitive information in a highly professional and correct manner"(TR. 40). A former supervisor stated that "his adherence to codes of conduct required of any U.S. corporation doing business in a foreign country was without exception" (Exh. Y-E). Both attested to his excellent work ethic, honesty, and dedication. He is well regarded by friends and family for his loyalty to them and his trustworthiness and sense of values.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential

for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.)

Applicant surrendered his Turkish passport to the Turkish Consul General in April 2005, and renounced his Turkish citizenship. He had not realized until 2003 that his dual citizenship created security concerns since he had long held a security clearance while holding a Turkish passport. The government conceded that the passport issue was largely mitigated but expressed concern about the voluntary use of it in his trips to Turkey. However, Applicant's explanation of the reason for its use and the rationale for using it is reasonable since he was engaged in international defense sales and its use facilitated his travels.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection

or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has met that burden through application of the whole person test.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. 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. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

The family members of the Applicant in Turkey are his mother, brother, and several of his wife's relatives. None of them pose a security threat or are in a position to be influenced by the conduct of their government. None work for the Turkish government. Applicant does not have a close relationship with any except his mother and brother. Turkey is a trusted ally of the United States, a fact appreciated by the U.S. Government and factored into the decisions of Applicant in his work. His mother is infirm and his brother is independent of any likely influence that could be brought to bear on him. Difficulties that Turkey has with dissident groups largely is internal and unrelated to issues with the U.S., although some of those dissident groups have complaints directed at the U.S. (Exh. II).

Applicant is a mature person who has a responsible position of trust and is doing an effective job for his company. He has spent his entire adult life since age 21 in the U.S. He was educated in an American school in Turkey, and then embarked on a promising career path in the U.S. utilizing his language and Turkish heritage to further the interests of the U.S. defense community through the work of his company. He provided sincere, credible, and reliable testimony as to his relationships with his family, his motivations, his loyalty to the U.S. He provided both testimonial evidence and statements from present and former supervisors as to his security consciousness and adherence to security rules over a 15 year period. His is the classic story of the successful immigrant with drive and determination who succeeds and brings credit to the U.S.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I

conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2 Guideline B: 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

Subparagraph 2.f.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge