

DATE: January 2, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32233

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, his wife, and oldest child were born in Turkey but came to the U.S. so Applicant could pursue graduate studies. Applicant has lived and worked in the U.S. since 1982, except for two years when he returned to Turkey to fulfill the obligations of his Fulbright scholarship. Applicant's two other children were born in the U.S., and Applicant, his wife, and oldest child have become U.S. citizens. Applicant has mitigated the foreign influence security concerns resulting from his family and associates who are citizens and residents of Turkey. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 24 July 2003, DOHA issued a Statement of Reasons (SOR)⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 11 August 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge, but was reassigned to me on 12 November 2003. On 9 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 30 December 2003.

FINDINGS OF FACT

Applicant was born in Turkey in 1955 of Turkish parents. In 1979, he married a Turkish citizen. In 1980, their daughter was born in Turkey. In 1982, Applicant came to the U.S. with his family. Applicant had been selected to further his education in the U.S. on a Fulbright Scholarship. The terms of the scholarship required Applicant to return to Turkey for two years. In 1984, Applicant's twins were born in the U.S. During the 1986-87 time period, Applicant finished his Ph. D. in electrical engineering and began work on the university faculty in the U.S.

Applicant applied for a waiver of the requirement that he return to work in Turkey for two years. The Government of

Turkey was willing to waive his return, but the U.S. Government was not. Accordingly, in 1987, Applicant returned to Turkey. Applicant worked for a telecommunications company during his two-year return to Turkey. In 1989, Applicant and his family returned to the U.S. Applicant, his wife, and older daughter applied for and were granted U.S. citizenship. Applicant received his U.S. passport in 1999 shortly after he became a U.S. citizen. He has traveled exclusively since then on his U.S. passport. His Turkish passport expired.

Applicant's mother, brother, and mother-in-law still reside in Turkey. Applicant's mother and mother-in-law live on pension derived from her husbands' employment. Applicant's father held a job with the Turkish social security administration.⁽²⁾ He retired around 1972 and died in 1990. Applicant's father-in-law was the chief of security for the Turkish prime minister.⁽³⁾ He retired around 1966 and died around 1975. Applicant's brother is an executive with a banking conglomerate. Applicant's brother-in-law and sister-in-law live in Turkey. He is a retired accountant; she is a housewife. Applicant thinks he and his wife could inherit shares in their mother's houses when they die, but he is not sure. Even if they inherited it would represent a small sum when compared to his relative worth.

Applicant and his brother both served in the Turkish military. However, because of their education and the number of men required to perform military service, they were only required to serve for one month, completing basic training. Applicant stays in touch with his relatives in Turkey by phone every month or so. He has visited Turkey in 1990, 1998, and 2003.

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

In the SOR, DOHA alleged Applicant's mother, brother, and sister (¶ 1.a) and his mother-in-law and brother-in-law (¶ 1.b.) are citizens and residents of Turkey; he maintains telephonic contact with his mother and mother-in-law (¶ 1.c.)

and his brother and sister (§ 1.d.); his mother is a retired employee of the Turkish social security administration (§ 1.e.); his father-in-law was the head of security of the Turkish prime minister and a member of the Turkish Secret Service (§ 1.f.); he worked for a Turkish firm from 1987-89 (§ 1.g.); and he may inherit property from his mother and mother-in-law in Turkey (§ 1.h.). A security risk may exist when an applicant's immediate family, and other person 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 (his mother and brother)⁽⁴⁾ and those to whom he is bound by affection or obligation (his mother-in-law and brother-in-law) are citizens and residents of a foreign country. DC E2.A2.1.2.1. A determination that the foreign associates are not agents of a foreign power or in a position to be exploited is a mitigating condition. MC E2.A2.1.3.1. In order for the mitigating condition to apply, both parts of the test must be met-the associates may not be agents nor must they place an applicant in a position of vulnerability to foreign influence by coercive or noncoercive means. ISCR Case No. 00-0628 at 5 (App. Bd. Feb. 24, 2003). Whether an applicant's foreign associates make him a security risk necessarily requires an evaluation of the foreign nation involved.

Turkey is a constitutional republic, member of the North Atlantic Treaty Organization, and close U.S. ally. Although there is a Kurdish separatist movement, most of its activities occur in the eastern region of the country. Applicant's associates reside in and around Istanbul, the capital, which is located in the far west. Applicant's foreign associates are not in a position to be exploited by a foreign power such as to place Applicant in a position of choosing between loyalty to them and loyalty to the U.S.

There is a possibility Applicant and his wife may inherit a share in their mothers' residences when they die. It is unclear whether such an inheritance would be substantial enough to invoke DC E2.A2.1.2.8. Regardless, an applicant does not have a financial stake in a country merely because he may inherit a speculative sum of money at some time in the future from his parents who reside in that country. ISCR Case No. 97-0403 at 3 (App. Bd. May 13, 1998).

After carefully reviewing all of the facts in this case and the applicable law and policy, I find Applicant has mitigated any security concerns.

FORMAL FINDINGS

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

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

Subparagraph 1.h.: For Applicant

DECISION

In light of all of 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. Clearance is granted.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Contrary to the allegation contained in SOR ¶ 1.e., Applicant's father, not his mother, worked for the Turkish social security administration. Tr. 17.
3. Contrary to the allegation contained in SOR ¶ 1.f., the evidence does not support a finding Applicant's father-in-law worked for the Turkish Secret Service. Tr. 17.
4. Contrary to the allegation in SOR ¶ 1.a., Applicant does not have a sister. Tr. 15.