

DATE: October 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11785

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

#### **FOR APPLICANT**

Paul A. Chiniche, Esq.

### **SYNOPSIS**

Applicant's continuing receipt of his pension after renouncing his foreign citizenship and becoming a U.S. citizen in May 1999 has not been mitigated by Applicant's favorable character evidence. Under the circumstances of this case, by continuing to accept the pension, Applicant continues to accept a right or privilege that only a military officer of Turkey is entitled to. The favorable character evidence does not dispel the foreign influence concerns triggered by Applicant's close bonds of affection with three immediate family members. Clearance is denied.

### **STATEMENT OF CASE**

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On June 16, June 17, June 18, and March 5, 2005, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on March 24, 2005. On April 4, 2005, this case was set for hearing on May 5, 2005. The Government submitted five exhibits; Applicant submitted two exhibits. Applicant's exhibit (AE) B contains 8 enclosures including three character references and two performance evaluations. AE C, received as a post-hearing exhibit, is a copy of Applicant's Turkish passport. Testimony was taken from Applicant and two witnesses. The transcript was received on May 13, 2005. On May 23, 2005, Applicant proposed (via facsimile and regular mail) that the words "orders on," at page 90, line 18, be replaced by the word "original." Department Counsel was consulted on May 24, 2005 about the proposed change and expressed no objection. On May 24, 2005, Applicant was notified the proposed change was accepted.

### **FINDINGS OF FACT**

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). Applicant admitted all factual allegations except for subparagraph 2.e. Applicant's admissions shall be incorporated in the following Findings of Fact. Applicant is 49 years old and has been employed as a development technical engineer by a defense contractor since September 2002. He seeks a top secret security clearance.

Applicant was born in Turkey in July 1956 to Turkish parents. At age 14 in 1973, Applicant enrolled in a naval high school in Turkey and graduated in 1976 with a bachelors of science degree in marine engineering. Applicant held various positions in the Turkish Navy from August 1976 to March 1995 (subparagraph 1.a.). Initially, he was employed in electronics and maintenance jobs. In August 1981, Applicant enrolled in the master's degree program at a United States (U.S.) post-graduate school. He received his master's degree in December 1983. Just before he was awarded his degree, he married in the U.S. Applicant stated, "My spouse became a Turkish citizen by marriage, but the Turkish Armed Forces did not allow officers to marry foreign nationals. However, my managers ignored the rules and allowed me to remain in the Navy." (GE 2)

During the period of August 1984 to March 1995, Applicant built ships for the Turkish military. From 1989 to 1995, Applicant was also assigned to research and development duties where he became chief of weapons systems. As chief, his primary responsibility was to integrate combat systems aboard Turkish Naval ships purchased from other countries. Applicant also served on North Atlantic Treaty Organization (NATO) steering committees tasked in a collaborative effort with European countries to develop and maintain certain weapon systems. These steering committee assignments required security clearances. All his clearances expired before he became a U.S. citizen in May 1999. Applicant is currently working under a non-disclosure agreement with his employer that precludes him from discussing his work, even with his wife. (Tr. 97)

Applicant accepted early retirement from the Turkish Navy in March 1995. He emigrated to the U.S. for economic reasons and to expose his two sons, dual citizens of Turkey and the U.S., to better opportunities. (GE 2)

When Applicant retired from the Turkish Navy, he began receiving a pension (subparagraph 1.b.), representing approximately 2 or 3% of the combined yearly earnings (\$87,000.00, gross income) of Applicant and his wife from their current employment (Tr. 37). The pension is still paid by the Turkish Navy into a bank account in Turkey every two or three months. The beneficiary or his proxy must collect the pension. Applicant's mother collects the money whenever she is in town where the bank is. Even though Applicant's mother is financially independent (Tr. 110), the pension money is still entirely for her benefit (Tr. 39); however, she sent the pension benefits to Applicant during 2002 when he was looking for work. (Tr. 48) Applicant's wife believes his mother will send the money to the family when the mother feels they need it. (Tr. 49) If problems arise related to the pension, Applicant's wife believes Applicant would cut it off (Tr. 51-52); however, he has not because the security office at his employer advised him to take no action while security clearance is in question. (Tr. 55; 57)

Applicant owns his own home worth about \$170,000.00. (Tr. 107) As noted in the preceding paragraph, Applicant and his wife earned \$87,000.00 in 2004. Applicant has a retirement account worth about \$50,000.00 from a previous employer and a retirement account estimated at \$10,000.00 with his present employer. He also has a few stocks. (Tr. 108) He has no financial interests or property in Turkey. (Tr. 82) Applicant does not believe the pension will affect his judgment. (Tr. 83)

Appellant's mother was born in Turkey in September 1929; she is a resident citizen of the country. (subparagraph 2.a; GE 1) Before she retired, she was a teacher. She currently collects retirement benefits from her teaching position, survivor benefits from her husband's pension, and Applicant's pension benefits. She also owns property. (Tr. 51) During her retirement, she has visited Applicant three times since he emigrated in 1995; she also has visited Applicant's sister on occasion. The mother's visits may last up to six months. Applicant tries to speak with his mother twice a month (Tr. 91). Applicant's wife considers his mother close and speaks with her about once every three months. (Tr. 44)

Applicant's brother (subparagraph 2.b.) was born in Turkey in March 1959. In September 2002, Applicant's brother was a Turkish Air Force officer, specializing in radar and air defenses. (GE 2) At the hearing, Applicant testified his brother is stationed in Belgium working for NATO. Applicant contacted his brother by letter about six times a year or through an occasional telephone call. (GE 3) The first time Applicant saw his brother since 1995 was in July 2004 when

Applicant visited Turkey.

In May 1962, Applicant's sister was born in Turkey. Now, she is a resident citizen of Kuwait. She is 43 years old. She was working as a secretary for the a Kuwaiti health department but now is personal editor correcting a medical professor's written products before publication. (Tr. 96) Applicant communicates with her about once or twice monthly by electronic mail (e-mail) or talks to her by telephone when their mother is visiting her. (Tr. 105) However, Applicant's sister has never visited the U.S. (Tr. 47)

Applicant has two uncles who are citizens and residents of Turkey. (subparagraph 2.d; GE 2) They are the brothers of Applicant's mother. The age of these relatives is unknown. One is employed as a practicing medical doctor. The other uncle is a pharmacist. The last time he spoke with both uncles was in July 2004, and before that in 1995. (Tr. 104) Applicant's aunt passed away. (subparagraph 2.e.) Applicant traveled to Turkey in 2000. (subparagraph 2.f.)

Applicant stated that he would notify the proper authorities, e.g., his employer's security office, the Federal Bureau of Investigation (F.B.I.), the Naval Criminal Investigative Service (N.C.I.S.), should there be attempt by someone to pressure or coerce him. (GE 2;

Applicant's performance evaluations for 2002 through December 2004 were very good. His sister-in-law, an officer in the U.S. Army Reserve for 28 years, has known Applicant for 23 years and believes he is deeply dedicated and loyal to the U.S. According to his sister-in-law, Applicant's mother, his brother, and his sister are supporters of the U.S. government.

A second character reference met Applicant in February 1996 when they worked for another business. Based on the coworker's knowledge of Applicant's naval background and their many conversations about politics, the coworker believes Applicant is a loyal American.

The third character reference is an official in U.S. Department of Commerce. She was an exchange student living in Applicant's home in Turkey from 1977 to 1978. She has kept in constant contact with Applicant over the years and knew Applicant wanted to come to the U.S. to raise his family. She believes Applicant is trustworthy.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531 "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481U.S. at 531; *see* Directive E2.2.2.

## **Foreign Preference**

The security concern arises when an individual acts in a way that indicates a preference for a foreign country over the United States (U.S.).

## Foreign Influence

The security concern emerges 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 U.S. or may be subject to duress. Contacts with citizens of other countries or financial interests in other countries are also relevant in deciding whether these contacts make the individual potentially vulnerable to coercion, exploitation, or pressure.

## CONCLUSIONS

Security concerns may be raised under foreign preference (FP, Guideline C) when an applicant takes actions indicating a preference for a foreign country over the U.S. Dual citizenship (based on parents' citizenship or an applicant's birth in a foreign country) itself is not disqualifying. See, ISCR Case No. 99-0454 at 6 (App. Bd. October 17, 2000). However, the exercise of dual citizenship places a person in the position of being subject to duties or obligations owed to different countries with potentially conflicting claims and interests. The Directive cites nine types of affirmative action that raise FP concerns. The Government's case under FP falls within the scope of FP disqualifying condition (DC) E2.A3.1.2.3. (*military service or a willingness to bear arms for a foreign country*). The record evidence reflects Applicant served in the Turkish Navy for almost 19 years. Applicant's continuing receipt of \$300.00 a month from the Turkish government (subparagraph 1.b.) as a part of his military pension also activates FP DC E2.A3.1.2.4. (*accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*). The record reflects since 1995 the pension has been regularly deposited in an account that Applicant's mother (as proxy) has withdrawn occasionally. While Applicant may have originally chosen his mother to be sole beneficiary of the pension benefits, he also has acquired some psychological benefit knowing his mother enjoys greater financial comfort during her retirement. Furthermore, his mother sent the pension benefits to him in 2001 and 2002 while he was searching for employment. Though Applicant has the authority to cancel the pension at any time, he has not done so because of the advice he received from his security office. That advice however, is not consistent with the foreign preference guideline in Department of Defense Directive 5220.6.

Because Applicant's exercise of dual citizenship is based on more than simply his birth in a foreign country, FP mitigating condition (MC) E2.A3.1.3.1. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) is not sufficient to mitigate the security concerns of Applicant's exercise of dual citizenship. E2.A3.1.3.3.2. (*indicators of possible foreign influence occurred before obtaining U.S. citizenship*) applies to mitigate Applicant's military service that ended (March 1995) before he became a U.S. citizen (May 1999). However, given the fact Applicant has continued to accept his Turkish pension (a benefit of his foreign citizenship that was renounced) for more than six years after he received his U.S. citizenship, FP MC E2.A3.1.3.2. does not apply to mitigate Applicant's continuing acceptance of benefits.

Since Applicant's collection of Turkish pension benefits is not authorized by the U.S., E2.A3.1.3.3. (*activity is sanctioned by the U.S.*) is not relevant. Applicant's surrender of his Turkish passport and statements of intention to renounce his Turkish citizenship represent additional pieces of evidence that weigh in Applicant's favor under E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). However, the physical surrender of his passport (AE C) and stated willingness to renounce foreign citizenship does not eliminate the continuing security concerns occasioned by Applicant's continuing acceptance of military pension benefits. In sum, the choice to maintain this pension constitutes evidence of a competing foreign preference that cannot be reconciled by any of the mitigating conditions under the foreign preference guideline, and even though the pension benefits represent only about 3 % of the total income of Applicant and his wife.

Renunciation of foreign citizenship is part of the oath of allegiance when a person becomes a U.S. citizen. However, renunciation of foreign citizenship when becoming a naturalized citizen does not preclude the government from examining the security significance of an applicant's conduct after he takes the oath and becomes a citizen, particularly where the applicant continues to accept a right or privilege of a citizen of that foreign country. When Applicant took his oath in ay 1999 to renounce all foreign allegiances and demonstrate complete support for the U.S. Constitution and its laws, the oath included terminating benefits received from any foreign country. While Applicant's continued acceptance of pension benefits between May 1999 and January 2003 (GE 3) may be extenuated by Applicant's lack of understanding that the pension was an indicator of foreign preference, he should have discerned during the

interview/sworn statement in January 2003 that his sources of financial support during his periods of unemployment were a security concern. When Applicant received the SOR in June 2004 alleging his pension benefits could jeopardize his security clearance application, he should have taken action to invalidate the benefit. Applicant's choice in accepting the advice of the security department, and taking no action, does not constitute a cognizable position that will enable Applicant to prevail under the foreign preference guideline.

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 U.S. or may be subject to duress. These situations could create potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Foreign influence (FI) disqualifying condition (DC) E2.A2.1.2.1. (*an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) is applicable to this case as Applicant's mother and brother are resident citizens of Turkey while his sister is resident citizen of Kuwait. <sup>(1)</sup> Under FI, it is important to take into account all an applicant's immediate family ties, not just each individual family tie by itself. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). In addition, FI DC E2.A2.1.2.3. (*relatives, cohabitants, or associates who are connected with any foreign government*) applies to Applicant's ties to his brother who is a military officer in the Turkish Air Force. Military officers are considered agents of a foreign power. ISCR Case No. 02-29143 at 3 (App. Bd. Jan. 12, 2005)

FI MC E2.A2.1.3.1. (*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 U.S.*) applies when the person is an agent of a foreign power and not in a position that could result in pressure being placed on Applicant. When evaluating the evidence under FI MC E2.A2.1.3.1., it is important to also look at the ties between the immediate family members and Applicant. FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*). Contacts with an immediate family member in a foreign country raise a rebuttable presumption the contacts are not casual in nature. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1.2002). There is no indication Applicant's mother is an agent of a foreign power as she spent her career in the teaching profession. She has retired and lives comfortably with: (1) the pension she receives from her career, (2) the survivor benefits she receives from her husband's pension, and (3) Applicant's pension benefits. Contacts by Applicant and his wife with his mother are more than casual however. Applicant communicates with his mother by phone twice a month and his wife characterizes her relationship with Applicant's mother as close. Given the facts that she is 76 years old and retired, the chances of her being in a position where pressure is placed on her, and through her to Applicant, are diminished somewhat, but cannot be regarded as non-existent because of the close bond Applicant has with her. Applicant's contacts with his sister, an editor for a medical professor, appear to be less frequent but still cannot be considered casual when viewed together with the contacts Applicant has with his mother and the other two family members. Though Applicant's sister is not an agent of a foreign power, there is insufficient evidence for me to conclude that she could not be pressured in a way that could force Applicant to choose between his sister and the U.S. Because Applicant has not satisfied the second portion of FI MC E2.A2.1.3.1. regarding his sister and mother, subparagraphs 2.a. and 2.c. are found against Applicant.

Having weighed and balanced all the evidence surrounding Applicant's brother, I find against Applicant under subparagraph 2.b. The brother, who is a resident citizen of Turkey, must be viewed an agent of a foreign power because he is an officer in the Turkish Air Force. While Applicant's knowledge of his brother's job duties may be limited, he indicated his brother specialized in radar air defenses. Contact between the two in September 2002 (GE2, Applicant's sworn statement) was about six times a year through letters and an occasional telephone call. As an agent of a foreign power, the brother's military position increases his chances of being exploited by a foreign power in a way that could force Applicant to choose between loyalty to his mother, sister, and brother and the U.S. Subparagraph 2.b. is found against Applicant.

Subparagraph 2.d. is found in Applicant's favor as his two uncles do not fall within his immediate family. Even if they were found to be a part of Applicant's immediate family, their status would fall inside FI MC E2.A2.1.3.1. as there is no

indication they are agents of a foreign power or in a position to be conduit for pressure or influence directed at Applicant. Additionally, Applicant's contact with them falls within the scope of FI MC E2.A2.1.3.3. as being casual and infrequent.

The reason for Applicant's trip to Kuwait in 2000 was to check on the condition of Applicant's sister. The trip does not raise any security issues. I find in Applicant's favor under subparagraph 2.f.

Applicant's favorable credibility at the hearing lends credence to his claim he would report any improper contacts to his security office or the appropriate authorities. However, the action he may take in the future under a set of hypothetical circumstances is not entitled to the same weight as concrete action already performed. *See*, ISCR Case No. 02-26826 (November 12, 2003). Hence, I cannot give his statements regarding future action much weight.

Turkey is considered an ally of the US. and a member of the NATO. However, Applicant's burden of persuasion is not lowered because of the friendly relations U.S. has with other countries; relations may change suddenly based on the internal and external issues. There are no words in the foreign influence guideline that restricts its application to countries that are hostile to the U.S. Moreover, not all countries who seek unauthorized access to U.S. classified information are seeking to damage the U.S. Some non-hostile countries simply seek U.S. classified information for their own personal gain. *See*, ISCR Case No. 02-26976 (App. Bd. Oct. 22, 2004)

Applicant's security clearance application is strongly supported by his sister-in-law as well as a former colleague and an official from the from the Department of Commerce. These favorable opinions of Applicant's character, together with his reputation for honesty among church members, and his commendable performance evaluations reduce, but do not eliminate the foreign preference concerns caused by the pension. Foreign influence concerns are triggered by Applicant's bonds of affection with immediate family members who are potentially vulnerable to foreign influence through coercive or non coercive means. In reaching my adverse decisions under foreign preference and foreign influence, I have also examined this case under the general factors of the whole person concept.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Preference, Guideline C): AGAINST THE APPLICANT.

- a. For the Applicant.
- b. Against the Applicant.

Paragraph 2 (Foreign Influence, Guideline B): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. 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.

Paul J. Mason

Administrative Judge

1. Applicant's aunt is deceased and no longer represents a security concern. Subparagraph 2.e. is found for Applicant.