

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant is a 32-year-old native-born U.S. citizen who became a dual citizen of Turkey as a child through the actions of his parents, who also obtained a Turkish passport for him. He renewed that passport in 1992 and 2002. He has used both his Turkish and U.S. passports when entering Turkey. He retains both his Turkish citizenship and passport. He has three uncles and an aunt in Turkey, but the relationship is not a close one. He has a wife and child who are U.S. citizens. His answers to two questions on his security clearance application were either not deliberate or not shown to have been false. The retention of his Turkish passport violates the provision in a binding DoD memorandum that such retention requires the denial or revocation of a DoD security clearance. Adequate mitigation has not been established. Clearance is denied.

CASENO: 04-02305.h1

DATE: 09/17/2005

DATE: September 17, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No.04-02305

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M .SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 32-year-old native-born U.S. citizen who became a dual citizen of Turkey as a child through the actions of his parents, who also obtained a Turkish passport for him. He renewed that passport in 1992 and 2002. He has used both his Turkish and U.S. passports when entering Turkey. He retains both his Turkish citizenship and passport. He has three uncles and an aunt in Turkey, but the relationship is not a close one. He has a wife and child who are U.S. citizens. His answers to two questions on his security clearance application were either not deliberate or not shown to have been false. The retention of his Turkish passport violates the provision in a binding DoD memorandum that such retention requires the denial or revocation of a DoD security clearance. Adequate mitigation has not been established. Clearance is denied.

**STATEMENT OF THE CASE**

On March 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 24, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on May 6, 2005. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. In this case, the receipt was due by June 17, 2005. No response was response was received. The matter was assigned to me for resolution on July 7, 2005.

## FINDINGS OF FACT

Applicant is a 32-year-old employee of a defense contractor. The SOR contains three allegations, 1.a. - 1.c., under Guideline C (Foreign Preference, two allegations, 2.a and 2.b., under Guideline B (Foreign Influence); and two allegations, 3.a and 3.b., under Guideline E (Personal Conduct). In his response to the SOR, Applicant admits allegations 1.a., 1.b., and 1.c and denies allegation 1.d. He admits allegations 2.a and 2.b., and he denies allegations 3.a and 3.b. (Item 3). His admissions are accepted and made Findings of Fact. After considering the totality of the evidence derived from the contents of the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

### *Guideline B (Foreign Preference)*

1.a. - At the time of the issuance of the SOR, Applicant exercised dual citizenship with the United States (U.S.). His Turkish citizenship was based on his birth in 1972 to Turkish parents then residing in the U.S. When traveling to Turkey at age 8, Applicant received a Turkish passport through the actions of his parents. He was a U.S. citizen by reason of his birth in the U.S., even though his parents apparently did not understand that fact. He exercised his Turkish citizenship by applying for and accepting the renewal of his Turkish passport in 1992 and again in 2002. He retains his Turkish citizenship and his still valid Turkish passport.

1.b. - As of January 13, 2004, when he was interviewed by an agent of the Defense Security Service (DSS), Applicant possessed a valid Turkish passport that was renewed on June 2, 2003, even though Applicant had a valid U.S. passport issued on November 15, 2002. The Turkish passport would expire on April 21, 2007. He renewed his Turkish passport in early June 2003 because he planned to travel to Turkey later that month. His understanding was that Turkish authorities required

Turkish citizens to use a Turkish passport to enter and leave the country and he wished to avoid complications (Item 3).

1.c. - Applicant renewed his Turkish passport in 1992 and 2003 because he was planning vacations to that country and wanted to show his Turkish passport, along with his U.S. passport, to Turkish authorities.

1.d. - Applicant used both his U.S. and Turkish passports to enter and exit Turkey in 1986, 1988, 1993, 1996, and 2003. He showed his Turkish passport in order to expedite entry into that country.

At the time of the closing of the record in this matter on June 17, 2005, Applicant had not established that he had

surrendered his Turkish passport (July 7, 2005 emorandum from Department Counsel). In the absence of such evidence, I find he still possesses a valid Turkish passport. In addition, Applicant has not expressed a willingness to renounce his Turkish citizenship, thus failing to avail himself of this mitigating condition.

*Guideline B (Foreign Influence)*

2.a. - Applicant has three uncles and one aunt who are citizens and residents of Turkey.

2.b. - Applicant traveled to Turkey in 1986, 1988, 1993, 1996, and 2003. He wants to maintain his Turkish heritage and may return there when he retires (Item 6, page 4). Viewed in the context of the evidence under Paragraph 1, above, I cannot conclude that Applicant has demonstrated an unequivocal preference for the United States.

*Guideline E (Personal Conduct)*

3.a. - Applicant did not intentionally falsify material facts in his January 9, 2003 security clearance application (SF 86) when he responded to Question "**15 Your Foreign Activities - Passport** In the past seven years, have held an active passport issued by a foreign government?" by answering "No" and deliberately failing to mention the Turkish passport cited above, and;

3.b. Applicant did not intentionally falsify material facts in his January 9, 2003 security clearance application (SF 86) when he responded to Question "**16 Foreign Countries You have Visited** Have you traveled outside the U.S. other than on official Government business during the past seven years," by answering "No" and deliberately failing to list his travel to Turkey in 1996.

**POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and his response thereto.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## **CONCLUSIONS**

*Guideline C (Foreign Preference)* -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 United States.

1.a. - The SOR alleges that Applicant exercises dual U.S./Turkish citizenship. Applicant is a native-born U.S. citizen. His Turkish parents registered him as a Turkish citizen, and obtained a Turkish passport for him at age 8 when preparing for a trip to Turkey. Applicant first personally exercised that Turkish citizenship by applying for a renewal of his

Turkish citizenship in 1992. He has continued to exercise his dual citizenship by using that passport when entering Turkey and by applying for renewal of his Turkish passport in 2002

1.b., 1.c., and 1.d. - are all related to his use of the Turkish passport. The evidence indicates he used the Turkish passport for the sake of convenience and avoiding possible problems with Turkish authorities. Applicant states he also presented his U.S. passport when he entered Turkey, along with his Turkish passport (Item 5 -his sworn statement of January 2004 and Item 6 - Response to Interrogatories). The cover and first page of Applicant's U.S. passport were admitted as Item 7, but no pages were included that showed whether or not Applicant's U.S. passport was also stamped upon entry to Turkey. However, in the context of the entire record, I find no reason to doubt Applicant's claim, and I accept it as credible and true. In context, however, the overall weight of the evidence is against Applicant.

Disqualifying Conditions (DC) (1)- the exercise of dual citizenship and (2) possession and use of a foreign passport are applicable. Mitigating Condition (MC), (1) is applicable since his Turkish citizenship is based on his parents' Turkish citizenship; but (2) is not applicable, since although he is a U.S. citizen by birth, there was an indicator of a foreign preference when he renewed his Turkish passport in 1992 and 2002, his use of that passport, and the fact that he still retains it.

In addition, and as independent factor, Applicant's retention of his Turkish passport, particularly after receiving the Money Memorandum, requires a finding against Applicant.

*Guideline B (Foreign Influence)* - The Concern: A security risk may exist when [members of ]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk ((Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002): The Government has not suggested that Turkey should be considered a "hostile" country. Turkey is not listed by the U.S. government as being among the most active intelligence gatherers in the U.S., but it a country where some people/terrorists are anti-U.S. (Items 5 and 6).

Appeal Board guidance states that: "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

2.a. and 2.b. - Applicant was born and raised in the U.S. by parents who had emigrated from Turkey. He has lived here his entire life and has "never developed any kind of close relationship with these three uncles and one aunt" (Item 3). His contacts with them are limited to "annual or semi-annual telephone calls during holidays or special occasions" and sporadic contacts during some of his trips to Turkey (*Id.*). The trips in 1986, 1988, 1993, 1996, and 2003 were primarily vacations for his family. His strongest ties are with his immediate family members, all of whom are residents and citizens of the United States" (*Ibid.*).

Disqualifying Conditions - I conclude that none are applicable since Applicant's relationships with his aunt and uncles in Turkey are not indicative of "close ties of affection or obligation" (DC (1)). Mitigating Conditions - To the degree that the relatives may qualify as "immediate family members," the risk suggested by the record is both minimal and acceptable (MC (1)).

Summary - The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have carefully considered the totality of the record, relating to the presence of relatives in Turkey. There is certainly

some basis for the Government's concerns and about the relatives.

There is no question that Applicant has the ultimate burden of proof in establishing eligibility, and faces the difficulties of proving a negative. I have carefully considered this 33-year-old Applicant's birth and life in the United States. He is presently a "Research Fellow" for a defense contractor to the national defense. However, on balance, I conclude that Applicant's parents, parents in-law, and siblings are not agents of a foreign government and are not likely to be asked to apply pressure on Applicant. Even more importantly, I conclude that Applicant is an American by birth here, and has done and said nothing to suggest anything less than an unequivocal preference for the United States over Turkey or any other country. Specifically, I conclude Applicant has demonstrated that he is not vulnerable to improper pressure from any source and can be relied upon to protect U.S. security interests.

#### Guideline E (Personal Conduct)

3.a.- I have considered Applicant's explanations for why he answered "No" to Question 15 in the January 2003 SF 86. He states that he did not have the Turkish passport with him when he completed the SF 86, that his last previous trip to Turkey had been in 1996, and that he thought the expiration date his Turkish passport "must have surpassed seven

years" (Item 3). In context, while he was mistaken, the record does not suggest an intent to deceive.

3.b. - I have considered Applicant's explanations for his "No" answer to Question 16. In his January 2003 SF 86. He should have reported his 1996 trip to Turkey, which was seven to eight years earlier, depending on the exact date (not stated in the record) in 1996 when the travel occurred.

In any case, I conclude the Government has not established that Applicant was obligated to report his 1996 travel in his 2003 SF 86.

*Applicability of the Money Memorandum* - Considering the present state of the evidence, the problem for Applicant at this point is that he has not established the surrender of his Turkish passport. The earliest evidence of record shows he said he would do so if asked or necessary. In his response to the SOR (Item 3), Applicant stated he "will furthermore provide certified true copies of documents that verify the surrender of my Turkish passport." He was put on notice about the consequences of retaining the passport when he received the Money Memorandum (Item 10), which was part of the File of Relevant Material. He did not respond to the FORM, as he was told he could do and there is thus no evidence he has actually surrendered his Turkish passport. Under these circumstances, the Money Memorandum is controlling, specifically the following language:

[c]onsistent application of the guideline [C] 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.

There is no evidence of either exception. Consequently, under the Memorandum, Applicant is not eligible to hold a DoD security clearance regardless of any other factors. In the year that must pass after a final decision before Applicant can reapply for a security clearance, he will have the opportunity to mitigate the Government's concerns.

### **FORMAL FINDINGS**

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

Guideline C (Foreign Preference) Against the Applicant



Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 3.a. For the Applicant

Subparagraph 3.b. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**