

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant mitigated security concerns raised by (1) her possession and use of a Turkish passport after she became a U.S. citizen and obtained a U.S. passport, and (2) the presence of members of her family and her husband's family in Turkey. Clearance is granted.

CASENO: 04-12520.h1

DATE: 02/08/2006

DATE: February 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12520

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Personal Representative

SYNOPSIS

Applicant mitigated security concerns raised by (1) her possession and use of a Turkish passport after she became a U.S. citizen and obtained a U.S. passport, and (2) the presence of members of her family and her husband's family in 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 21 July 2005 detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 31 August 2005 and elected to have a hearing before an administrative judge. The case was assigned to another judge on 2 November 2005. He scheduled the hearing for 19 December 2005, but was unable to attend due to illness. The case was reassigned to me on 19 December 2005, and I convened a hearing on that date to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 5 January 2006.

FINDINGS OF FACT

Applicant was born in Turkey in 1968. She works as a marketing researcher for a defense contractor for whom she has been employed for seven years. Both her supervisor and the director of security believe she is an excellent worker and should be granted a clearance.

Applicant received her education, including a master's degree, in Turkey. Her parents are both citizen residents of Turkey. Her parents are retired. Her mother did not have a job outside the home. Tr. 27. Her father owns an office building on which he collects rent. Applicant had one sibling, a brother, but he died in 1997.

In 1994, she met her husband in Turkey while he was visiting his family there. They married in 1995 and Applicant came to the U.S. in 1996 on her Turkish passport. She became a naturalized U.S. citizen in July 2000 and was issued a U.S. passport in September of that year. Her Turkish passport did not expire until ay 2005, so she used it to enter and exit Turkey on her nearly yearly visits there. Although she and family did not travel to Turkey in 2005, they intend to go there in 2006. They try to stay for a month each year. While in Turkey, she visits family and friends there. Her mother visited Applicant in the U.S. on a yearly basis, but since Applicant's son was born, she often visits twice a year. Tr. 28. Applicant's father has not visited the U.S. Applicant communicates with her mother a couple times a week (Tr. 28), her father every two weeks (Tr. 29), and some of her friends three or four times a year.

Her Turkish passport expired in May 2005, and she does not intend to renew it. Tr. 34. Applicant had her husband try to surrender her Turkish passport to the Turkish Embassy. The Embassy refused to take it because it had already expired. Applicant is hesitant to renounce her Turkish citizenship because it may affect her ability to inherit from her parents. Tr. 26-27. She now believes she might still be able to inherit even if she renounced her Turkish citizenship. If she inherited assets in Turkey, she thinks she would sell them. Currently, she has no foreign assets.

Applicant's husband is a U.S. citizen by birth. He was born in the U.S. in 1964 of Turkish-born parents. Both of his parents had become naturalized U.S. citizens. When he was six years old, his parents divorced, and he moved to Turkey with his mother. He completed high school in Turkey and, when he was 17 or 18 years old, he returned to the U.S., where he received his higher education. Tr. 33-34. He has worked for the U.S. Navy for the past 16-17 years and holds a security clearance.

Applicant believes her husband's father lives in the U.S., but they do not have contact with him. His mother is retired from working at a leather company. Tr. 30. She is now married to an economist for a privately controlled pharmaceutical company, and they live in Turkey. He is also a dual U.S./Turkish citizen. Applicant talks to them about once every two weeks and visits them in Turkey during the family's visits there. Applicant's mother-in-law visits Applicant and her family in the U.S. every year. Tr. 30.

Turkey is a constitutional republic with a multiparty parliamentary system. The country has a market economy. The Turkish government has generally respected the human rights of its citizen, and has carried out substantial legal reforms to meet the requirements for entry into the European Union. Ex. 6 at 1. Turkey is a member of NATO and has been a staunch U.S. counterterrorism ally in the global war on terrorism. Ex. 7 at 54.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant is a dual citizen of the U.S. and Turkey (¶ 1.a); she possessed a Turkish passport that expired in May 2005 (¶ 1.b); and she used her Turkish passport to travel to Turkey at least four times after becoming a U.S. citizen (¶ 1.c). In her answer, Applicant admitted each of the allegations. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government established each of the allegations in the SOR. But maintaining dual nationality is not a potentially disqualifying condition. Conditions that could raise the foreign preference security concern and may be disqualifying include the exercise of dual citizenship (DC E2.A3.1.2.1) and the possession and/or use of a foreign passport (DC E2.A3.1.2.2).

To be disqualifying, an applicant must have exercised her foreign citizenship. As the allegation in ¶ 1.a fails to allege any exercise of dual citizenship, I find for Applicant.

After she became a U.S. citizen, and until it expired in 2005, Applicant continued to use her Turkish passport to enter and exit Turkey, despite having obtained a U.S. passport in 2000. By doing so, she was able to avoid substantial visa fees. Answer at 1. She still possesses the expired Turkish passport, but now travels only on her U.S. passport. Possession and/or use of a foreign passport is an exercise of dual citizenship. Using the passport for her personal convenience-saving money on visa fees-is not mitigating. *See* ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003).

A clearance must "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." Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). Although it appears from the context of the Memo, that Assistant Secretary Money intended the memo to apply to valid passports, the Appeal Board has held otherwise. ISCR Case No. 01-24306 at 5 (App. Bd. Sep. 30, 2003). I am required to follow the Appeal Board's decisions. ISCR Case No. 03-16516 at 4 (App. Bd. Nov. 26, 2004). But in this case, Applicant attempted to surrender the passport to the appropriate Turkish authorities and was rebuffed. Under the circumstances, I conclude Applicant has taken all reasonable steps to surrender her Turkish passport. I find for Applicant on ¶¶ 1.b and 1.c.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's parents (¶ 2.a) and her husband's mother and stepfather (¶ 2.b) are citizen residents of Turkey; and Applicant traveled to Turkey at least eight times since 1997 (¶ 2.c). In her answer, Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he 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 the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. The totality of an applicant's family ties to a foreign country, as well as each individual family tie, must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B-Applicant has members of her immediate family, and persons to whom she has close ties of affection or obligation, who are citizens, resident, and present in a foreign county. DC E2.A2.1.2.1. While the possession of such ties is not, as a matter of law, disqualifying, it does raise a prima facie concern sufficient to require an applicant to rebut or mitigate it. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001). It is also disqualifying for an applicant to live with a person-in this case her husband-if the potential for adverse foreign influence or duress exists. DC E2.A2.1.2.2. The question arises because Applicant's husband's mother and stepfather are citizens and residents of Turkey.

As the evidence established a potential disqualifying condition, Applicant had the burden to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. The security concerns raised by Applicant's foreign associates may be mitigated when it is determined they are not agents of a foreign power and are not 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 involved and loyalty to the U.S. MC E2.A2.1.3.1.

Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b). The record supports a conclusion that Applicant's foreign associates do not act on behalf of a foreign power, engage in terrorism, or engages in clandestine intelligence or sabotage activities.

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors, including the character of the government and the status of the country involved. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to target U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.

After carefully evaluating all of the evidence, I conclude MC E2.A2.1.3.1 applies to Applicant's case. Turkey is an ally of the U.S. and is not known to target U.S. citizens to obtain protected information. While there is a risk of terrorism in Turkey, as there is in much of the rest of the world today, including the U.S., I conclude the risk is such that Applicant's family members are not in a position to be exploited in a way that could force her to choose between loyalty to the U.S. and loyalty to her family and associates. I find for Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

DECISION

In light of all of the circumstances 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