

DATE: September 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01313

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

James N. Norman, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns were raised regarding a 48-year old Turkish-born naturalized U.S. citizen who had modest foreign investments (insubstantial when compared with her U.S. investments), received Turkish social security, and exercised dual citizenship by using her Turkish passport on two occasions to enter Turkey purely for convenience. She surrendered her expired passport, sold one foreign property and put the other one up for sale, and renounced her Turkish citizenship. She has extended family members in Turkey. No member of her family has any connection or association with the Turkish government, nor are they agents of a foreign government or in positions to be exploited by a foreign government. They do not constitute an unacceptable security risk. Under the facts herein, the government's security concerns are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On March 18, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). [\(1\)](#) On September 16, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline C (foreign preference) and Guideline B (foreign influence) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated October 6, 2005, but notarized October 11, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 18, 2006, and the case was assigned to me on January 23, 2006. A notice of hearing was issued on February 1, 2006, scheduling the hearing for February 22, 2006. The hearing was held as scheduled. During the hearing, two Government exhibits, one Applicant exhibit with numerous subparts, and the testimony of three Applicant witnesses, including

Applicant, were received. The transcript (Tr.) was received on March 3, 2006.

RULINGS ON PROCEDURE

Department Counsel requested Official Notice be taken of the contents of the following documents: U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Turkey*, dated December 2005; U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Turkey*, dated January 11, 2006; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004*, dated April 2005; and U. S. Department of State, *Country Reports on Human Rights Practices: Turkey - 2004*, dated February 28, 2005. Pursuant to Rule 201, *Federal Rules of Evidence* (F.R.E.), I took Official Notice as requested, without any objection by Applicant.

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through 1.e.) and all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.a. through 2.c.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old employee of a defense contractor. She is seeking to obtain a SECRET security clearance. She previously held an interim SECRET clearance, but it was revoked. She has been employed by the same government contractor since March 2004, and currently serves as a project manager. Her immediate supervisor has known Applicant since she started working for the company and he supports her application without reservations and characterizes her as honest and trustworthy.

Applicant was born in 1958 in the Republic of Turkey (Turkey) to Turkish citizens, both of whom are now deceased.⁽²⁾ When she was about one year old, her parents divorced, and she continued to reside with her father, an accountant, and her grandmother.⁽³⁾ After graduation from high school, she worked for about a year before taking her central examinations.⁽⁴⁾ She did well on her examinations and received a state-funded education in Turkey, while continuing to work as a computer programmer or management information systems manager for several private companies.⁽⁵⁾ In 1982, she obtained a degree in electrical engineering, and in 1988, she obtained a B.A. degree in business administration.⁽⁶⁾ While working at her last job in Turkey-with a U.S. advertising company-Applicant compared her qualifications with the many U.S. visitors to her company and she saw opportunities in the U.S.⁽⁷⁾ She immigrated to the U.S. in 1989.⁽⁸⁾

Shortly after arriving in the U.S., Applicant received an H-1b visa as a temporary worker and secured a position with a local corporation.⁽⁹⁾ She worked for a succession of other employers, and eventually received her permanent resident "green card" in February 1994.⁽¹⁰⁾ In April 2001, she became a naturalized U.S. citizen,⁽¹¹⁾ as well as a dual citizen of Turkey and the U.S. The U.S. is her "chosen" country. She likes her job here, loves her life here, and foresees opportunities and happiness here.⁽¹²⁾ She was scheduled to receive an MS degree in computer science from a major U.S. university in June 2006.⁽¹³⁾

After her parents' divorce, Applicant's mother remarried and she and her second husband had two daughters and one son, all of whom remain in Turkey.⁽¹⁴⁾ Until 1997-98, Applicant had no contact with her mother and had never met any of her half-siblings.⁽¹⁵⁾ Since that 1997-98 contact, her mother and the mother's second husband died,⁽¹⁶⁾ and she has had no further contact with the half-siblings.⁽¹⁷⁾

In addition to her half-siblings, Applicant has two aunts (aged 74 and 76, respectively) and one uncle (aged 88)-all siblings of her deceased father-who remain in Turkey.⁽¹⁸⁾ The two aunts are housewives and the uncle was a military doctor who left the military in 1956, before Applicant was born.⁽¹⁹⁾ Her contacts with her aunts and uncle vary. She exchanges telephone calls with one aunt a few times per year, and her other aunt less frequently.⁽²⁰⁾ Applicant last saw her aunts and uncle during a visit to Turkey in 2005.⁽²¹⁾ Other than her uncle's military service, her father's siblings have had no relationship with the Turkish government, or its military, political, or intelligence entities.⁽²²⁾

Applicant has several cousins but only maintains periodic contact with four of them.⁽²³⁾ Three of those cousins remain in Turkey.⁽²⁴⁾ One cousin (aged 42) is employed by a private company. Applicant and this cousin maintain infrequent contact by telephone. They saw each other on two occasions, once in 1997, when the cousin visited the U.S., and once in 2005, when Applicant was in Turkey.⁽²⁵⁾ Another cousin (aged 32) is retired. They have little contact, and last saw each other in 2004 for about 10 minutes.⁽²⁶⁾ The third cousin is an industrial engineer who owns a company that specializes in e-mail marketing. Applicant and this cousin maintain infrequent contact by telephone. They saw each other on two occasions, once in 1997, when the cousin visited the U.S., and once in 2005, when Applicant was in Turkey.⁽²⁷⁾ A fourth cousin (aged 56), immigrated to the U.S. in 2000, and resides here. He had a permanent resident "green card," and is "probably" a naturalized U.S. citizen. Applicant last visited him in 2003.⁽²⁸⁾ None of her cousins have had any relationship with the Turkish government, or its military, political, or intelligence entities.⁽²⁹⁾

Before Applicant immigrated to the U.S., she purchased some real property in Turkey. She purchased a condominium in 1989,⁽³⁰⁾ which she rented out for the equivalent of about \$250.00 per month.⁽³¹⁾ Before departing Turkey, Applicant gave her aunt's husband a power of attorney to serve as property manager for the condominium.⁽³²⁾ The rent proceeds covered the insurance and maintenance for the condominium, and the excess "profit" was used as vacation money.⁽³³⁾ However, because of the potential negative impact the condominium might have on her security clearance application, Applicant decided to minimize the potential foreign financial issues and sell it immediately.⁽³⁴⁾ The condominium was sold in February 2006,⁽³⁵⁾ for the equivalent of about \$45,000.00, of which about \$10,000.00 was spent on taxes, closing fees, and attorney's fees. Since a tenant has been occupying the property for about 10 years and the real estate market was soft, the actual sales price was \$30,000.00.⁽³⁶⁾ She will receive her funds in installments.⁽³⁷⁾

A second property, in a rural area in a conservation district was purchased as an investment for weekend and summer use in 2001 for about \$5,000.00.⁽³⁸⁾ It is empty and does not generate any additional income.⁽³⁹⁾ The estimated value of the property today is about \$20,000.00.⁽⁴⁰⁾ Applicant would like to sell it but is currently unable to do so until a dispute between the condominium association and the inistry of Environment and Forestry over environmental issues is resolved.⁽⁴¹⁾ She has no other foreign investments except for the one savings account.⁽⁴²⁾

Applicant worked in Turkey for 15 years and, during that time, paid into the Turkish equivalent of social security.⁽⁴³⁾ Under Turkish law, a person who works for 15 years can retire and after an additional five years, can start drawing social security benefits.⁽⁴⁴⁾ In Applicant's case, she became eligible to receive social security in 1994.⁽⁴⁵⁾ She currently receives a monthly social security pension of \$300.00 which has been deposited in her savings account in Turkey where it is used for continuing expenses for the unoccupied condominium.⁽⁴⁶⁾

In contrast to her holdings in Turkey, Applicant owns a residence in the U.S. worth about \$360,000 (with a mortgage balance of about \$23,000.00),⁽⁴⁷⁾ an automobile worth about \$10,000.00,⁽⁴⁸⁾ and investments, including mutual funds, 401 (k) plan, certificates of deposit, and savings plan, worth about \$500,000.00.⁽⁴⁹⁾ Her annual salary is over \$81,000.00.

When Applicant left Turkey in 1989, she possessed a Turkish passport.⁽⁵⁰⁾ That passport was renewed on several occasions. Several days after becoming a naturalized U.S. citizen, she obtained a U.S. passport.⁽⁵¹⁾ In May 2001, she used her U.S. passport upon departing the U.S., but when she arrived in Turkey for a visit, she was told by the passport control officer that she needed a visa to enter Turkey on the U.S. passport, but could avoid the hassle and cost if she used her Turkish passport.⁽⁵²⁾ Purely as a convenience, and since she had never been advised that she couldn't continue to use her Turkish passport, she did so.⁽⁵³⁾ She followed the same process when she traveled to Turkey in 2002.⁽⁵⁴⁾

Her most recent Turkish passport expired in January 2003,⁽⁵⁵⁾ and was not renewed because Applicant had no intention to use it again.⁽⁵⁶⁾ In late December 2004, and early September 2005, Applicant took two-week trips to Turkey (the first
⁽⁵⁷⁾

one for dental work and vacation, and the second one to sell her condominium and a vacation), using her U.S. passport, and traveling with a Turkish visa. Applicant reported her foreign travel to her corporate security office each time. (58)

Applicant had no knowledge of the significance of using or maintaining her Turkish passport after 2001 until she received the SOR from DOHA. (59) Despite the questionable requirement that she surrender an expired passport, in October 2005, she surrendered the expired passport to the Turkish authorities. (60) Receipt of her request was acknowledged. (61)

Applicant is no longer a dual citizen, for in February 2006, citing her status as a naturalized U.S. citizen, Applicant filed a petition for renunciation of her Turkish citizenship with the Turkish authorities. (62) Receipt of her petition was acknowledged. (63)

She never served in the Turkish military. (64)

Turkey is a constitutional republic with a multiparty parliamentary system. (65) U.S.-Turkish friendship dates to the late 18th century and was officially established by a treaty in 1830. (66) The present close relationship initially commenced during World War II when Turkey joined the allied forces, and was reinforced with an agreement in 1947, implementing the Truman Doctrine. (67) Turkey is a charter member of the United Nations, and has been a member of the North Atlantic Treaty Organization (NATO) since 1952, where it serves as the organization's "vital eastern anchor," controlling the straits leading from the Black Sea to the Mediterranean. (68) The U.S. military has several military facilities in Turkey and maintains a visible presence there. Among the areas of mutual focus are security ties, regional stability, and the global war on terrorism. Both countries have been victims of acts of terrorism by al-Qaida affiliated terrorists, and they have become staunch counter terrorism allies. (69) There is no evidence that Turkey conducts intelligence operations or economic espionage against the U.S.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case: (70)

GUIDELINE B - FOREIGN INFLUENCE: 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 United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

GUIDELINE C - FOREIGN PREFERENCE: 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 interests of the United States.

Conditions that could raise security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the Conclusions section below.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. It is unclear if a photocopy of the memorandum was ever furnished to Applicant. The memorandum states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. ***Therefore, consistent application of the guideline 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.*** Modification of the Guideline is not required. (Emphasis supplied)

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."⁽⁷¹⁾ For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which raises a security concern under the Directive that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

As noted above, the entire process involves a crucial aspect of the entire analysis and synthesis of the facts—a conscientious scrutiny of the variables known as the "whole person concept." In this instance we are concerned with two different issues, one involving Applicant's actions pertaining to matters which might indicate a foreign preference, and another involving primarily the status of her family members residing in a foreign country. Applicant is a person whose drive and enthusiasm to work hard and excel—characteristics which we used to hold dear in the U.S.—motivated her to obtain extensive education, work hard, invest, and seek opportunity in the U.S. She is to be lauded for her successes.

However, the government has chosen to question her efforts because of several issues which it considers to be negative influences on her security clearance eligibility and suitability. She exercised dual citizenship based on her birth in Turkey and her naturalization as a U.S. citizen; she invested in foreign property and realized a return on her investment; she drew foreign social security after earning it through her years of employment; she used a foreign passport as a convenience; she traveled to Turkey to visit family, vacation, and to seek dental treatment; and she had relatives who remain residents and citizens of Turkey. Thus, Applicant's allegiance to the U.S. has been questioned, and an allegation has been made that she prefers Turkey over the U.S.

Guideline C plainly states an individual may be prone to provide information or make decisions that are harmful to the interests of the U.S. when that individual acts in such a way as to indicate a preference for a foreign country over the U.S. The government has presented evidence under Guideline C which it believes raises that vaguely-defined situation.

A review of the evidence reveals her allegiance and loyalty to the U.S. are resolute, and supported by significant indicia of same. Applicant has: surrendered her Turkish passport after having used it on several occasions for convenience; renounced her Turkish citizenship; received an advanced college degree here; maintained a residence in the U.S.; made investments in the U.S. in addition to the ones she had previously made in Turkey, before becoming a naturalized U.S. citizen; sold one of her two Turkish investments and put the remaining one up for sale; been employed in the U.S.; and declared allegiance to the U.S.

Possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C." ⁽⁷²⁾ The ASD/C³ I memo appears to be conclusive in this regard, negating any consideration of the facts and circumstances. Thus, the issues are whether the following actions by Applicant were indicative of a preference for Turkey over the U.S.: (1) keeping and using her Turkish passport on two occasions as a convenience in 2001 and 2002, and then retaining the expired passport until she surrendered it in October 2005; (2) investing in real estate in Turkey and realizing a return on one of those investments, before eventually selling it; and (3) accepting monthly Turkish social security benefits in the amount of \$300.00.

Applicant's actions in retaining and using the Turkish passport after she became a naturalized U.S. citizen were exercises by her of her Turkish citizenship and fall within Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*the exercise of dual citizenship*) and FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*), and her accepting the monthly Turkish social security benefits in the amount of \$300.00, falls within FP DC E2.A3.1.2.4. (*accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*).

Applicant's dual citizenship is based solely on her birth in Turkey to Turkish parents. Thus, Applicant benefits from

Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*). Her most meaningful action-actual renunciation of her Turkish citizenship-comes within FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). The ASD/C³ I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate to the use of a foreign passport. In this instance, Applicant has used that passport on two occasions to enter Turkey (using her U.S. passport thereafter) in 2001 and 2002. Furthermore, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ."

Upon being advised of the significance of possessing a foreign passport, Applicant immediately surrendered the expired Turkish passport to Turkish authorities and indicated no desire to ever have it renewed. Applicant's actions have complied with the surrender provisions of the ASD/C³ I memo. Additionally, regarding her acceptance of Turkish social security, a benefit which is available to all workers, regardless of nationality, considering the amount in issue-\$300.00 per month-and comparing that amount with her annual salary, one sees the social security is approximately four percent of her annual salary, a rather insubstantial amount, having little security clearance significance.

The remaining issue alleged under Guideline C-investing in real estate in Turkey and realizing a return on one of those investments-is misplaced by the government, for rather than being alleged as foreign preference concerns under Guideline C, they more properly belong as foreign influence concerns under Guideline B. Foreign investments are not indicative of foreign preference, but they may be appropriate issues for examination under foreign influence. Accordingly, those two connected allegations will be discussed under the proper Guideline below.

Applicant has clearly stated her position regarding her relationship with the U.S. and her country preference. The U.S. is her "chosen" country. She likes her job here, loves her life here, and foresees opportunities and happiness here. I have read her statements and listened to her testimony, and I believe her. I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline C. Accordingly, allegations 1.a., 1.b., and 1.e. of the SOR are concluded in favor of Applicant. As noted above, my comments regarding allegations 1.c. and 1.d. of the SOR are below.

Guideline B plainly states 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. Additionally, financial interests in other countries are relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. The government has presented evidence under Guideline B which it believes raises those situations.

Applicant has been portrayed as a person who is a potential security risk because members of her extended, rather than immediate, family or persons to whom she is bound by affection, influence, or obligation--in this instance, Applicant's aunts uncles and cousins--are either not citizens or residents of the U.S. or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the fact that Applicant's aunts, uncles, and cousins--without identifying or quantifying the particular individuals--are Turkish citizens residing in Turkey.

Those simple facts, standing alone, may be sufficient to raise general security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country should not, as a matter of law, be disqualifying under Guideline B. (73) Furthermore, because Turkey is an allied nation, not hostile to the U.S., Applicant's burden in producing evidence that those family ties do not pose a security risk, is not as heavy as it might otherwise be. (74) It is implicit that if close personal relationships with those who are citizens and residents of a foreign country hostile to the U.S. raise greater potential for exploitation or improper influence, (75) an Applicant with more distant relationships with persons who are citizens of a foreign country not hostile to the U.S. raises lesser potential for such exploitation of improper influence. Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded.

As noted above, Turkey is a constitutional republic with a multiparty parliamentary system, whose friendship with the U.S. dates to the late 18th century. The present close relationship initially commenced during World War II when Turkey joined the allied forces. Turkey is a charter member of the United Nations, and has been a member of NATO since 1952. The U.S. military has several military facilities in Turkey and maintains a visible presence there. Among the areas of mutual focus are security ties, regional stability, and the global war on terrorism. Both countries have been victims of acts of terrorism by al-Qaida affiliated terrorists, and they have become staunch counter terrorism allies. Turkey is a nation whose interests are not inimical to the U.S.

There is little merit to the government's concerns regarding the need for heightened awareness regarding Applicant's potential vulnerability to threats in Turkey and the presence of members of her extended family in that country. Specifically, I reject the government's position that such heightened concern is justifiable because terrorists are active in Turkey. That country is the victim of the same terrorism that has afflicted the U.S., and to suggest Applicant or her extended family members are more vulnerable to terrorism in Turkey is to ignore the realities of life where innocent U.S. citizens are not safe in U.S. locations either. I am not unaware that terrorists destroyed aircraft and buildings, and killed innocent Americans and others, on September 11, 2001, and, because of continuing terrorist threats and attempts, air travelers within the U.S. have to participate in lengthy security processes simply to board a domestic aircraft in the U.S. Terrorists are active everywhere and simply suggesting there is a greater vulnerability to Applicant because of her foreign relationships in Turkey, is unfounded and unreasonable.

Applicant's parents are deceased and she has met her three half-siblings only once in her lifetime, in 1997-98. She has not seen nor contacted them since that time. Applicant's relationship with those half-siblings, to extent there is a relationship, does not even raise to the level of casual. Her relationship with her extended family, as opposed to immediate family, members-her two aunts and one uncle-all siblings of her deceased father, as well as her four cousins-all but one of whom remain in Turkey, varies. She exchanges telephone calls with one aunt a few times per year, and her other aunt less frequently. She last saw her aunts and uncle during a brief visit to Turkey in 2005. Other than her uncle's military service, her father's siblings have had no relationship with the Turkish government, or its military, political, or intelligence entities.

Applicant has several cousins but only maintains periodic contact with four of them. She and two cousins maintain infrequent contact by telephone, and have seen each other briefly in 1997 and 2005. Applicant and another cousin have little contact, and last saw each other briefly in 2004 for about 10 minutes. A fourth cousin, last seen briefly in 2003, resides in the U.S. and is "probably" a naturalized U.S. citizen. None of her cousins have had any relationship with the Turkish government, or its military, political, or intelligence entities.

The government contends that because of the residence and citizenship of Applicant's extended family members, and her relationship with them is so close, there is a security concern under Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*). I agree as to some, but disagree as to others. Her relationships with her two aunts, one uncle, and two cousins, while somewhat limited, can be considered close, while her relationships with her half-siblings are non-existent, and her relationships with two cousins, are casual, infrequent, and not close. The situation pertaining to those latter-listed relationships raises the applicability of Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*).

Nevertheless, regardless of the relationship Applicant may have with her two aunts, one uncle, and two cousins, the significance of that conclusion is mitigated by 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 United States*).

Whether an applicant's family ties in a foreign country poses a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. None of Applicant's extended family members, whether close or casual and infrequent, meets the definition of "agent of a foreign power" under 50 U.S.C. § 438(6), 50 U.S.C. § 1801(b), or Exec. Ord. 12968 § 1.1(f). Similarly, none of them would be considered as an "agent of a foreign power" under the

more expansive definition adopted by the Appeal Board. To conclude otherwise, in this instance, would be to create an overly simplistic *per se* rule and obviate the need for any analysis.

As noted above, the "whole person concept" is the heart of the analysis of whether an applicant is eligible for a security clearance. (76) In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. In fact, the Appeal Board has repeatedly held:

Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition 1, the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors. (77)

One factor which must be considered is "the potential for pressure, coercion, exploitation, or duress." In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. (78) In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B." (79) Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. In this instance, Turkey is a strong ally and a nation whose interests are not inimical to the U.S.

Also important is the necessity of considering Applicant's vulnerability to exploitation through her financial interests overseas. As noted above, Applicant owned a condominium in Turkey from 1989 until 2005, which she rented out for the equivalent of about \$250.00 per month. Since 2001, she also owns a second condominium in a rural area in a conservation district. Because of the potential negative impact the properties might have on her security clearance application, Applicant decided to minimize the potential foreign financial issues and sell them immediately. One condominium was sold in February 2006, for a relatively insubstantial sum and she will receive approximately \$30,000.00. The second condominium-worth about \$20,000.00-is empty and does not generate any additional income. Applicant would like to sell it but is currently unable to do so until a dispute between the condominium association and the Ministry of Environment and Forestry over environmental issues is resolved. She has no other foreign investments except for one savings account. From the above facts, the government has seemingly pursued FI DC E2.A2.1.2.8. (*a substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence*), although raising the allegations under the wrong Guideline.

In contrast to her relatively modest holdings in Turkey, her interests in the U.S. are substantial. Applicant owns a residence in the U.S. worth about \$360,000 (with a mortgage balance of about \$23,000.00), an automobile worth about \$10,000.00, and investments, including mutual funds, 401 (k) plan, certificates of deposit, and savings plan, worth about \$500,000.00, with an annual salary of over \$81,000.00. These facts fall within FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Because of Applicant's deep and long-standing relationships and loyalties in and to the U.S., she can be expected to resolve any conflict of interest in favor of the U.S. Consequently, I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 2.a. through 2.c., and 1.c. and 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25. of

Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2., Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

In light of all 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.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated March 18, 2004).

2. *Id.* at 1, 4.

3. Tr. at 51-52, 61.

4. *Id.* at 29.

5. *Id.* at 29-30.

6. *Id.* at 29-31.

7. *Id.* at 32.

8. *Id.* at 31.

9. *Id.* at 33-34.

10. *Id.* at 14.

11. Government Exhibit 1, *supra* note 1, at 1.

12. Tr. at 43.

13. *Id.* at 15; Government Exhibit 1, *supra* note 1, at 1.

14. Applicant Exhibit A (Genealogy Chart depicting family relationships, undated).
15. Tr. at 51-52.
16. Applicant Exhibit A (Genealogy Chart), *supra* note 14.
17. Tr. at 51-52.
18. *Id.* at 53-54; Applicant Exhibit A (Genealogy Chart), *supra* note 14.
19. Tr. at 53-54.
20. *Id.* at 57; Government Exhibit 2 (Affidavit, dated September 9, 2004) at 4.
21. Applicant Exhibit A (Genealogy Chart), *supra* note 14.
22. Tr. at 19.
23. *Id.* at 54-55.
24. *Id.* at 55.
25. *Id.* at 56-58.
26. *Id.* at 56-57.
27. *Id.* at 56-58.
28. *Id.* at 56, 58-59.
29. *Id.* at 19.
30. *Id.* at 18, 36-37; Applicant Exhibit A (Title-Deed Document, dated October 23, 1989).
31. Tr. at 37.
32. *Id.* at 38.
33. *Id.* at 37.
34. *Id.* at 38.
35. *Id.* at 18.
36. *Id.* at 38-39.
37. *Id.* at 49.
38. *Id.* at 40-42; Applicant Exhibit A (Title-Deed Document, dated May 31, 2001).
39. Tr. at 43.
40. *Id.* at 42.
41. *Id.* at 43.
42. *Id.* at 43, 49.

43. *Id.* at 48.

44. *Id.*

45. *Id.*

46. *Id.* at 48-49.

47. *Id.* at 35.

48. *Id.* at 60.

49. *Id.* at 60-61; *see also* Applicant Exhibit A (Investment Portfolio, various dates).

50. Applicant Exhibit A (Photocopy of Turkish Passport, issued January 21, 1988).

51. Applicant Exhibit A (Photocopy of U.S. Passport, issued April 27, 2001).

52. *Tr.* at 44-46.

53. Applicant's Response to SOR, dated October 6, 2005, at 1.

54. *Id.*

55. *Id.*; Applicant Exhibit A (Photocopy of Turkish Passport, issued July 9, 1999).

56. *Tr.* at 46.

57. *Id.* at 62.

58. *Tr.* at 20; Applicant Exhibit A (Corporate Foreign Travel Requests, dated December 20, 2004, and August 26, 2005).

59. Applicant's Response to SOR, *supra* note 53, at 2.

60. *Tr.* at 46; Applicant Exhibit A (Letter to Turkish Consulate, dated October 4, 2005).

61. Applicant Exhibit A (Letter from Turkish Consulate General, dated October 11, 2005).

62. *Tr.* at 47.

63. Applicant Exhibit A (Letter from Turkish Consulate General, dated February 16, 2006).

64. *Tr.* at 47.

65. U. S. Department of State, *Country Reports on Human Rights Practices: Turkey - 2004*, dated February 28, 2005.

66. U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Turkey*, dated December 2005.

67. *Id.*

68. *Id.*

69. U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004*, dated April 2005.

70. It should be noted that on December 29, 2005, the President issued revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. By letter, dated August 30, 2006, the Under Secretary of Defense issued implementing guidance, directing that the new Guidelines would apply to all adjudications in which an SOR has not been issued by September 1, 2006. All adjudications in which the SOR had been issued prior to that date, as it was in this instance, are to be made under the old Guidelines.

71. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1; Sec. E3.1.2.; and Sec. E1.25.), Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2).

72. ISCR Case No. 97-0356 at 5-6 (App. Bd. Dec. 12, 1997).

73. For an expansive discussion of Appeal Board decisions under Guideline B, *see* the decision of my esteemed colleague Administrative Judge Michael J. Breslin, in ISCR Case No. 03-21434 at 7-17 (May 24, 2006).

74. *See, e.g.* ISCR Case No. 04-06386 at 4 (App. Bd. Aug. 25, 2006); ISCR Case No. 03-09053 at 4 (App. Bd. Mar. 29, 2006).

75. *See, e.g.* ISCR Case No. 99-0601 at 5 (App. Bd. Jan. 30, 2001); ISCR Case No. 99-0511 at 10-11 (App. Bd. Dec. 19, 2000).

76. ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

77. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

78. *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

79. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).