



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07388

**Appearances**

For Government: Candace L. Le'i, Department Counsel

For Applicant: *Pro Se*

October 22, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 7, 2008, applicant answered the SOR in writing, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on June 19, 2008. Applicant did not submit a response to the FORM. The case was assigned to me on September 15, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

Applicant is a 52 year old employee of a defense contractor.

Applicant was born and raised in Turkey. From 1983 to July 1992, he worked at a Turkish university. Sometime after that, he moved to the United States. He became a United States citizen and was issued a United States passport in 2000. He considers himself a dual citizen.

Applicant served on active duty with the Turkish military for approximately 16 months in the early 1980s. From the time of his discharge from active duty until early 2005, he was on reserve status with the Turkish military.

For a little less than a year in the mid-1990s, applicant worked for the Turkish government while he was living in the United States.

Since 2004, applicant has received about \$400.00 per month in social security retirement from the Turkish government. He must maintain his Turkish citizenship in order to continue receiving this payment.

In 2000, after he became a United States citizen, and again in 2005, applicant used his Turkish passport to enter and exit Turkey. He returned his Turkish passport to the Turkish government earlier this year.

Applicant's wife, to whom he has been married since 1982, was born in Turkey and is a naturalized United States citizen. They have two children, both of whom are dual citizens of Turkey and the United States. Their oldest child was born in Turkey and became a naturalized U.S. citizen at the same time applicant and his wife did. His youngest child was born in the United States. Applicant applied for and received Turkish citizenship for this child in the 1990s.

Applicant's mother, brother, brother-in-law and his wife, and parents-in-law, are citizens and residents of Turkey. Applicant speaks to his mother once or twice a month, and communicates with his brother weekly by email and monthly by telephone. He provides financial support to both of them.

The Government offered four official United States publications with the FORM that provide relevant facts about Turkey. The Government requested that these documents be admitted into evidence. I have admitted the documents into evidence, and I take administrative notice of the following facts found therein:

Turkey is a constitutional republic with a multi-party parliamentary system and a president with limited powers. It has a population of about 70.5 million and is a member of NATO. United States-Turkish relations focus on areas such as strategic energy cooperation, trade and investment, security ties, regional stability, and the global war on terrorism.

Terrorist bombings over the past five years have stuck religious, government, government-owned, political, tourist and business targets in a number of locations in Turkey. A variety of leftist or Islamic terrorist groups have targeted U.S. and Western interests as well.

## **Policies**

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.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. 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. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. 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.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a

way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.a., “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” may be disqualifying. Under Paragraph 7.b., “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Lastly, under Paragraph 7.i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant has at minimum monthly contact with his mother and weekly contact with his brother, both of whom are citizens and residents of Turkey. In addition, since becoming a United States citizen in 2000, he has visited Turkey at least twice. Applicant's presence in Turkey during these trips made him and his family members potentially vulnerable to exploitation, pressure, or coercion by the Turkish government. These facts raise concerns under all three disqualifying conditions.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

None of the foregoing mitigating conditions is applicable. Applicant's contacts with his mother and brother in Turkey are frequent and ongoing. His relationship with them is close, raising the concern that these relationships create a risk for foreign

influence or exploitation. Applicant failed to provide sufficient credible evidence that it is unlikely he would be placed in a position of having to choose between the interests of a foreign government and the interests of the United States, or that he is not vulnerable to a conflict of interest.

### **Guideline C, Foreign Preference**

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

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.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10 a.1., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member may be disqualifying. Applicant possessed and used a Turkish passport after becoming a United States citizen, and he continues to receive retirement benefits from the Turkish government. Accordingly, this disqualifying condition applies. Under Paragraph 10. c., “performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest” may be disqualifying. And, under Paragraph 10.d, “any statement or action that shows allegiance to a country other than the United States” may be disqualifying. Applicant’s service in the Turkish military, and his employment with the Turkish government in the 1990s while living in the United States, requires application of these two disqualifying conditions.

Paragraph 11 describes potentially mitigating conditions. Under Paragraph 11.c., it may be mitigating if the “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor.” Applicant’s active duty military service and his employment with the Turkish government occurred before he became a United States citizen. On the other hand, he served in the Turkish military reserves and possessed and used a Turkish passport after he became a United States citizen, and he received, and continues to receive, retirement benefits from the Turkish government. This mitigating condition applies in part. Under Paragraph 11.e., it may be mitigating if the “[foreign] passport has been destroyed, surrendered to the cognizant security, or otherwise invalidated.” Applicant surrendered his Turkish passport to the Turkish government. Accordingly, this mitigating condition is applicable.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2.a:

“(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.” Under AG Paragraph 2.c., the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was born and raised in Turkey. After performing his mandatory active duty service in the Turkish military, he worked for about ten years at a Turkish university. He then moved to the United States, becoming a U.S. citizen in 2000. Applicant’s conduct since moving to the United States has not evidenced an unequivocal preference for the United States. Even after he became a U.S. citizen, he continued on reserve status with the Turkish military, and he continues to receive retirement benefits from the Turkish government. And, although he obtained U.S. citizenship for himself, wife and oldest child, he went out of his way to obtain Turkish citizenship for his youngest child, who was born in the United States. Perhaps most importantly, he has made no definitive statement concerning his plans for the future, and has offered little to no evidence indicating he has any significant ties to his community or to any United States citizens other than his wife and children. Given these facts, and the fact the rest of his and his wife’s immediate family members are citizens and residents of Turkey, too much uncertainty exists regarding applicant’s true preferences and future intentions to safely conclude it is clearly consistent with the national interest to allow him access to classified information.

Although I have considered the fact that Turkey and the United States are allies, this fact is not determinative. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). It is a known fact that friendly nations and allies have engaged in espionage against the United States.

I have carefully reviewed the administrative record, applicant’s submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guidelines B and C, and I have evaluated applicant’s conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government’s case under Guidelines B and C.

### **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 B:                      AGAINST APPLICANT

Subparagraphs 1.a through 1h:              Against Applicant

Paragraph 2, Guideline C:                      AGAINST APPLICANT

Subparagraphs 2.a and 2.e:                      Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN  
Administrative Judge