

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant was born and raised in Turkey. He became a U.S. citizen in the early 2000s. He says that Turkey considers him a dual citizen. He has traveled to Turkey ten times since the late 1990s. After acquiring U.S. citizenship, he used a Turkish passport which has expired and been destroyed. Applicant participated in three weeks of military training with the Turkish Army after becoming a U.S. citizen. He paid Turkey \$7000 to avoid further service.

The Judge erred in concluding that Applicant met his burden as to mitigation under Guideline C. His Turkish military service, after becoming a U.S. citizen, raises trustworthiness concerns. He said he is on reserve status and should Turkey go to war, he is subject to recall. He provided no evidence to mitigate concerns arising out of his military service or status. An applicant who has provided no information on a matter of concern cannot, as a matter of law or logic, be said to have met a burden of persuasion. Guideline C contemplates a broad scope of concern that an applicant with a foreign preference may be prone to act according to that preference. The concern is not limited to hostile countries. An applicant's preference even for a nation with which the U.S. has enjoyed long and peaceful relations, may pose a concern. The record here does not support a conclusion that Applicant has mitigated the Guideline C trustworthiness concerns arising from his recent Turkish military service. Favorable decision reversed.

CASENO: 07-14939.a1

DATE: 003/11/200

DATE: March 11, 2009

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In Re: )  
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Applicant for Trustworthiness Designation )  
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ADP Case No. 07-14939

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

John Bayard Glendon, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On June 12, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On December 8, 2008, after considering the record, Administrative Judge Mary E. Henry granted Applicant’s request for a trustworthiness designation. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge erred by concluding that Applicant had mitigated trustworthiness concerns arising from his recent service in the Turkish military while a U.S. citizen; whether the Judge erred in concluding that Applicant had mitigated the Guideline B trustworthiness concerns; and whether the Judge’s whole-person analysis is arbitrary, capricious, and contrary to law. Finding error, we reverse.

#### **Whether the Record Supports the Judge’s Factual Findings**

##### **A. Facts**

The Judge made the following pertinent findings of fact:

Applicant is a 41 year old employee of a federal contractor. He holds a B.S. in geological engineering and a M.B.A. in finance and banking.

Applicant was born and raised in Turkey. He came to the U.S. in the early 1990s and became a U.S. citizen in the early 2000s. He acknowledges that Turkey considers him a dual citizen, and he “has expressed a willingness to renounce his Turkish citizenship.” Decision at 3. He has traveled to Turkey ten times since the late 1990s. He has traveled on a Turkish passport even after having acquired U.S. citizenship. The passport has now expired and he has destroyed it. Applicant has siblings in Turkey with whom he regularly communicates.

Turkey requires its citizens to serve in the Turkish military or to pay a fee. Applicant participated in three weeks of military training with the Turkish Army after he had become a U.S. citizen. He subsequently paid Turkey \$7000 to avoid further service.

## B. Discussion

The Appeal Board's review of the Judge's findings of facts is limited to determining if they are supported by substantial evidence—"such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). In evaluating the Judge's findings, we are required to give deference to the Judge's credibility determinations. Directive ¶ E3.1.32.1.

Any factual issues raised by Department Counsel's appeal will be addressed in the discussion below.

### **Whether the Record Supports the Judge's Ultimate Conclusions**

The Appeal Board may reverse the Judge's decision to grant, deny, or revoke a trustworthiness designation if it is arbitrary, capricious, or contrary to law. *See* Directive ¶¶ E3.1.32.3 and E3.1.33.3. Once the government presents evidence raising trustworthiness concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions. *See* Directive ¶ E3.1.15. "The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole." *See* ADP Case No. 05-12037 at 3 (App. Bd. May 10, 2007). A trustworthiness designation must be guided by common sense in light of the record as a whole. *See* Directive ¶ E2.2.3.

In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of the Directive or other applicable federal law. *See* ADP Case No. 06-12901 at 4 (App. Bd. Jul. 31, 2007).

Department Counsel argues that the Judge erred in concluding that Applicant had met his burden of persuasion as to mitigation under Guideline C. This argument has merit. The Judge properly concluded that Applicant's service in the Turkish military, after having become a U.S.

citizen, raised trustworthiness concerns. *See, e. g.*, Item 5, Interrogatories, at 5, which contains a summary of Applicant’s Personal Subject Interview. This document, which was authenticated by Applicant, says that Applicant had attended boot camp for three weeks and had subsequently paid the Turkish government \$7000 in an effort to avoid further service. This document also says that Applicant told the interviewer that: “Even though [Applicant] paid money as to not serve in the military, [he] is still considered to be on reserve status. Due to [Applicant’s] reserve status if Turkey would go to war, [Applicant] would be eligible to be drafted.” As the Judge observed, the File of Relevant Material raises concerns under, *inter alia*, Directive ¶ E2.10(a)(2) (“[M]ilitary service or a willingness to bear arms for a foreign country[.]”)

However, an examination of the record demonstrates that Applicant provided no evidence to rebut or mitigate trustworthiness concerns arising out of his foreign military service and the fact that (at least as far as Applicant understands) Turkey still views him as subject to recall. The Judge appears to acknowledge this in her findings: “[Applicant] has not provided any information about the government’s allegation that he is a member of the Turkish military reserves.”<sup>1</sup> Decision at 4. Nevertheless, she concluded that “Applicant has mitigated the Foreign Preference concerns about . . . his military service. While Applicant may still be a member of the Turkish military reserves, and as such could be called to active duty in the Turkish military, there is little likelihood that future service in the Turkish military would be against the U.S.” Decision at 9. In other words, the Judge found correctly that Applicant’s Turkish military service raised a trustworthiness concerns. One aspect of this concern is the possible extent to which he could be called to active duty in the Turkish military. She also found that Applicant had provided no information to rebut that concern. Nevertheless, she concluded that he had met his burden of persuasion as to mitigation. This conclusion is, on its face, unsustainable. Obviously, an applicant who has provided no information on a matter of trustworthiness concern cannot, as a matter of law or logic, be said to have met a burden of persuasion.

Moreover, Guideline C contemplates a broad scope of concern when an applicant has manifested a preference for another country, that the applicant “may be prone to provide information or make decisions that are harmful to the interests of the United States.” Directive ¶ E2.9. This language does not limit the concern to countries that are hostile to the U.S. or with which the U.S. could, in the foreseeable future, find itself at war. Under the facts of a given case, an applicant’s preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests. The record in Applicant’s case is not sufficient to sustain a conclusion that he has mitigated the Guideline C trustworthiness concerns arising from his recent Turkish military service. The Judge’s favorable decision is not sustainable. In light of this conclusion the Board need not address the remaining issues which Department Counsel has raised on appeal.

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<sup>1</sup>The Board notes that Applicant chose to have his case decided upon the written record, with the result that his credibility could not be evaluated in the context of a hearing. *See* ISCR Case No. 08-00899 at 3 (App. Bd. Jul. 29, 2008).

**Order**

The Judge's adverse trustworthiness designation is REVERSED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairman, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board