



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



In the matter of:	)	
	)	
	)	ADP Case No. 07-14939
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: Pro Se

December 8, 2008

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**Decision**  
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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to sensitive information is granted.

Applicant submitted his Questionnaires for Public Trust Position (SF 85P), on May 10, 2007. On June 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines B and C for Applicant. 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), 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.

Applicant acknowledged receipt of the SOR on June 23, 2008. He submitted a notarized, written response to the SOR allegations on July 7, 2008, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on September 17, 2008. Applicant received the FORM on September 28, 2008. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He timely responded, but did not submit additional documentary evidence. DOHA assigned this case to me on November 19, 2008. The government submitted six exhibits, which have been marked as Item 1-6 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3.

### **Administrative Notice**

In the FORM, Department Counsel requested that administrative notice be taken of certain factual information pertaining to the country of Turkey referenced in four documents. (Items I – IV.) The following is a summary of the facts which administrative notice is taken.

Turkey is a constitutional republic with a multiparty parliamentary system and a president with limited powers. In foreign relations, Turkey's primary political, economic, and security ties are with the West. Turkey entered NATO in 1952 and serves as the organization's vital eastern anchor, controlling access from the Black Sea to the Mediterranean Sea. Turkey is in the process of seeking admission to the European Union. Turkey shares borders with Syria, Iraq, and Iran. The United States (U.S.) and Turkey have a close relationship that began in 1947 with an agreement implementing the Truman Doctrine. Turkey cooperates closely with the U.S. on a number of security issues. (Item I at 1-2, 6-7.)

Domestic and transnational terrorist groups have targeted Turkish citizens and foreigners in Turkey for more than 40 years. Terrorist bombings over the past five years – some causing significant numbers of casualties – have struck 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. Terrorists claiming association with Al-Qaeda were responsible for suicide bombings in Istanbul in 2003 that targeted Western interests. The possibility of terrorist attacks, both national and indigenous, remains high. (Item III at 28-29; Item IV at 2-3.)

Outside observers deemed recent elections in Turkey as fair and free. The Turkish government generally respected the human rights of its citizens; however, serious problems remained in several areas, including a documented rise in cases of torture, beating and abuse by security forces. Other forms of human rights abuses continue with respect to detainees, fair criminal trials, freedom of speech, the press and religion. In addition, societal attitudes of "honor killing" of women continue to be a widespread problem. (Item II at 1, 6-15, 17-22.) The U.S. government has provided

military equipment and support to Turkey. The Turkish government is not an active collector of U. S. economic or military systems.

### Findings of Fact

In his Answer to the SOR, dated July 7, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.e, and 2.a to 2.c of the SOR, with explanations. He partially admitted the factual allegation in ¶ 1.f and denied the factual allegations in ¶¶ 1.b, 1.c and 1.g of the SOR. He also provided additional information to support his request for eligibility for a public trust position.

Applicant, who is 41 years old, has a Bachelor of Science degree in geological engineering and a Masters of Business Administration in finance and banking. He works for a Department of Defense contractor as a manager. He has worked for his present employer since March 2001. In the last 10 years, three other federal agencies have investigated his background and granted him access to classified information. The record lacks any reported violations of security procedures by Applicant.<sup>1</sup>

Applicant was born and raised in Turkey. He immigrated to the U.S. in February 1992. He became a U. S. citizen in 2003 and acknowledges a dual citizenship with Turkey. He has expressed a willingness to renounce his Turkish citizenship. He traveled to Turkey 10 times between 1997 and 2007. With the exception of the last two trips in 2007, he traveled to Turkey for visits with his family and pleasure. In August 2007, he returned to Turkey to visit his seriously ill mother who died a month later. He again returned to Turkey in September 2007 for her funeral. He held a Turkish passport, which he used to travel to Turkey, after obtaining his U.S. citizenship. His Turkish passport expired in May 2007 and he has destroyed it. He now uses his U.S. passport to travel to Turkey. He and his wife have traveled to the Dominican Republic and Germany for pleasure.<sup>2</sup>

Applicant married in September 2004. His wife was born in Turkey, but lives with Applicant in the U.S. She plans on becoming a U.S. citizen when she is eligible, which is at the end of 2008. They have a 22-month-old son who is a U.S. citizen by birth. They own property in the U.S.<sup>3</sup>

Applicant is the youngest of six children. His three sisters and two brothers are citizens of and reside in Turkey. His mother died in September 2007 and his father died in 1976. He talks with his siblings by telephone regularly. He speaks by telephone with one brother on a weekly basis, approximately twice a month with his sisters, and once every two or three months with his oldest brother. He sees his siblings once or twice a year, when he visits Turkey or they visit him. He communicates either by phone or in

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<sup>1</sup>Item 4 (Applicant's Questionnaire for Public Trust Position (SF-85P)) at 1, 2, 4, 7.

<sup>2</sup>*Id* at 1; Item 3 (Response to SOR) at 3; Item 6 (interrogatories and answers) at 2-4.

<sup>3</sup>Item 3, *supra* note 2, at 1; Item 4, *supra* note 1, at 6.

person approximately six times a year with his aunt and uncle, who are citizens of and reside in the United States.<sup>4</sup>

Applicant's 49-year-old brother works for a commercial bank which is subsidized by the Turkish government. This brother works in banking and not in any government position or function. His 53-year-old sister works as a history teacher at a state school. His 51-year-old sister has retired from her position as an architect with a local municipality. His 47-year-old sister has never worked and her income is derived from Applicant's father's retirement. His 55-year-old brother works for the Turkish health system as a provider. His siblings do not have direct contact with government or military officials in Turkey and do not work directly with the government in positions making or implementing government policy, particularly international policy.<sup>5</sup>

Applicant's wife works for an international bank in the United States as a consultant. The bank hired her in June 2002 on a one-year contract, which has been renewed every year since 2002. She obtained this job after graduating from college. Since the Turkish government paid for her education, it required her to work for a period of time.<sup>6</sup>

As a Turkish citizen, Applicant is required to serve in the Turkish military or pay a fee. Prior to completing his SF 85P, Applicant participated in three weeks of military training with the Turkish Army in July 2006. Rather than commit to eight months of military duty as required for Turkish citizens, Applicant paid \$7,000 to the Turkish government, which fulfilled his military obligation. He completed his military obligation to please his mother. At the time, he was not aware that negative consequences would occur as a result of his decision.<sup>7</sup> He is willing to renounce his Turkish citizenship, if necessary. He has not provided any information about the government's allegation that he is a member of the Turkish military reserves. Nonetheless, his first priority is to the U.S. and protecting the interests of the U.S.<sup>8</sup>

Applicant does not believe his family contacts and visits to Turkey impact his loyalty to the U.S. His family members in Turkey do not know that he is seeking a trustworthiness determination. His wife does know.<sup>9</sup>

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<sup>4</sup>Item 5 (interrogatories and answers) at 3-8, 12.

<sup>5</sup>*Id.*; Item 3, *supra* note 2, at 2.

<sup>6</sup>*Id.*

<sup>7</sup>Item 3, *supra* note 2, at 2; Item 5, *supra* note 4, at 5.

<sup>8</sup>*Id.*

<sup>9</sup>Item 5, *supra* note 4, at 5.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” 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 grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following potentially apply to Applicant’s case.

FI DC ¶ 7(a) (*contact with a 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*) applies with respect to Applicant’s relatives who are citizens of and reside in Turkey. His two brothers and three sisters are citizens of and reside in Turkey. He regularly speaks with his siblings by telephone and has traveled on numerous occasions to visit family members in Turkey. Applicant’s numerous visits to Turkey to visit family members create a heightened risk of foreign exploitation, manipulation and inducement.

This disqualifying condition does not apply to his wife, uncle and aunt. While his wife is still a Turkish citizen, she resides with him and his son in the U.S. and plans to apply for U.S. citizenship shortly, as soon as she is eligible to apply. His aunt and uncle have become U.S. citizens and reside in the U.S. Thus, his wife, aunt and uncle do not create a heightened risk for foreign exploitation, manipulation and inducement.

FI DC ¶ 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*) applies for the same reason. Applicant

has close contact with his family members who reside in Turkey. His close ties to his relatives in Turkey is evident based on his numerous visits to Turkey and frequent telephone contact with his siblings.

FI DC ¶ 7(d) (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) potentially applies with respect to Applicant's wife because she is not yet a U.S. citizen.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) have the potential to apply in Applicant's case.

FI MC ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.*) applies. Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that he qualifies for a security clearance. Applicant's ties to his relatives in Turkey are based on familial relationships. None of his family members, who are citizens of and reside in Turkey, work directly for the Turkish government and are not involved in governmental policy making positions. The Turkish government is a U.S. ally with strong ties to the U.S. and other western countries. Turkey currently seeks admission to the European Union, another indicator of its strong ties to the west. It is unlikely Applicant will be placed in a position of having to choose between the interests of his foreign family members and the interests of the U.S.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. Applicant clearly has a sense of loyalty and obligation to his family members in Turkey. However, he chose to move to and live in the U.S. He became a U.S. citizen and his wife plans to do the same. His most significant family members, his wife and son, reside in the U.S. While Applicant travels to Turkey to visit his family members, his ties in the U.S. and his compliance with other federal government agencies processes to handle sensitive information support the premise that he can be expected to resolve any conflict of interest in favor of U.S. interest.

FI MC ¶ 8(c) (*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*) is not applicable. Applicant's relationship with his family members who live and reside in Turkey cannot be considered casual and infrequent.

Foreign Influence concerns are mitigated based on Applicant's longstanding ties to the U.S. Guideline B is found for Applicant.

## Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several disqualifying conditions that could potentially raise security concerns. Foreign Preference Disqualifying Condition (FP DC) 10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport and (2) military service or a willingness to bear arms for a foreign country*) applies. Applicant possessed a valid Turkish passport until May 2007 when it expired. Whenever he traveled to Turkey prior to May 2007 and after becoming a U.S. citizen in 2003, he used his Turkish passport instead of his U.S. passport. He also participated in military training and paid \$7,000 as fulfillment of his military obligation required of Turkish citizens under Turkish law. Use of a Turkish passport and completion of a foreign military obligation are considered an exercise of his rights of foreign citizenship and raises a security concern under foreign preference.

In addition, his decision to comply with the legal mandates of military service for Turkish citizens raised security concerns under FP DC 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*).

The guideline also includes conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FP MC) have the potential to apply in Applicant's case.

FP MC ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply.

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) applies. Applicant stated in his interview, in his response to the SOR, and in his response to the FORM that he is willing to renounce his Turkish citizenship, if necessary. His decision two years ago to follow Turkish law regarding the military obligations of Turkish citizens reflects some level loyalty to Turkey. He made this decision, in part, to please his mother. His reasoning for his decision lessens the level of his loyalty to Turkey.

FP MC ¶ 11(c) (*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*) does not apply.



FP MC ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*) is not applicable to the facts of this case.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. Applicant did not renew his Turkish passport when it expired in May 2007. Two months later, he destroyed this passport in the presence of his security officer. When he visits family members in Turkey, he uses his U.S. passport to enter and exit Turkey, and intends to do so in the future.

FP MC ¶ 11(f) (*the vote in a foreign election was encouraged by the United States Government*) is not applicable because there is nothing in the record evidence suggesting Applicant voted in a foreign election.

Applicant mitigated the Foreign Preference concerns about use of his passport and 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. There is a much higher likelihood that any service in the Turkish military would be in conjunction with the U.S. military operations against U.S. enemies as Turkey has strong ties to the U.S. Turkey is a U.S. ally in the war against terrorism. Guideline C is found for Applicant.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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 ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense 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. After becoming a U.S. citizen, Applicant continued to travel on his Turkish passport when returning to Turkey to visit family members with whom he has strong ties. Two years ago, he complied with Turkey's laws on military service to please his mother. While these actions raises

security concerns, the security concerns are mitigated by his decision to not renew his Turkish passport when it expired, to destroy it and to use his U.S. passport when traveling to Turkey. The Turkish government has very strong ties to the U.S. and western Europe. Turkey supports the U.S. in the war on terrorism and is not likely to take up arms against the U.S. The close relationship between the U.S. government and the Turkish government favors granting the Applicant a trustworthiness determination even though he complied with Turkish law on military service. Applicant is willing to renounce his Turkish citizenship, which also supports granting him a trustworthiness determination. His family members do not directly work for the Turkish government. Rather, they work in non-policy civilian government positions, which are not likely to create conflict of interest issues for Applicant. His sister, who is a school teacher and educator, like many school teachers and educators in this country and countries around the world, works for a governmental entity. The majority of educator jobs worldwide are found in governmental agencies, as these agencies provide most of the educational resources. After weighing all these facts, I find that the weight of the facts favor a finding in favor of Applicant on trustworthiness.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under the foreign influence and foreign preference guidelines.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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MARY E. HENRY  
Administrative Judge