



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17479
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

August 28, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on April 15, 2008. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The SOR alleges security concerns under Guideline C for foreign preference and Guideline B for foreign influence. For the reasons discussed below, this case is decided against Applicant.

In addition to the Executive Order and Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective

¹ Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant's Answer to the SOR is dated May 14, 2008, and she elected a decision without a hearing. Accordingly, the case will be decided based on the written record in lieu of a hearing.

On June 6, 2008, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM)³ was mailed to Applicant on June 10, 2008, and it was received by her June 23, 2008. She replied to the FORM within the allowed 30-day period, and her reply consists of the following: (1) a two-page letter in rebuttal to the FORM; and (2) two letters of recommendation supporting her application for a security clearance. Those matters are admitted as Exhibits A, B, and C, respectively. The case was assigned to me on August 4, 2008.

Procedural and Evidentiary Rulings

First, the government included in its FORM as an item of documentary evidence an account of an interview of Applicant (Exhibit 7). The interview was part of a report of investigation (ROI) prepared by the U.S. Office of Personnel Management. The ROI indicates that the Applicant's interview was an unsworn declaration made in August 2007.

The general rule is that a background ROI may not be received and considered by an administrative judge.⁴ The exception to the general rule is "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence."⁵

In past cases, the government included an ROI in its FORM without an attempt to authenticate it or offer some other method of getting the evidence to the trier of fact (for example, stipulation). The ROI was excluded from consideration in those cases. Here, the government authenticated the ROI through Applicant. In particular, in about

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

³ The government's brief includes several attachments referred to as items. They are referred to as exhibits herein.

⁴ Directive, Enclosure 3, ¶ E3.1.20.

⁵ *Id.*

February 2008, it issued an interrogatory asking Applicant to review the ROI and state if it accurately reflected the information she provided during the interview (Exhibit 7). Applicant indicated it did not; she explained that it was necessary to correct the interview when it referred to inherited property by changing the phrase “my father” to “my family.” With that correction, she considered the interview correct. Accordingly, with the correction duly noted and without objections, the ROI is admitted as a business record or a public record or both and it will be considered.

Second, in its FORM, the government requested that official or administrative notice be taken of certain facts about the country of Turkey.⁶ Accordingly, without objections, the request is granted and notice is taken of certain facts about Turkey as set forth in the request.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 55-year-old employee of a federal contractor. She has worked for her current employer since 1997. Her current position or job title is director of emerging technology. Her primary responsibility is to scout, fund, and direct research. Her educational background includes an M.B.A. degree awarded by a U.S. university in 1996. The two letters of recommendation indicate that Applicant is a highly valuable, professional employee who performs important work (Exhibits B and C).

Applicant was born in Turkey in 1952. She married in 1976, and the marriage took place in Turkey. She and her husband claim dual citizenship with Turkey and the U.S. She became a naturalized citizen of the U.S. in 1995, and her husband did so in 1990. She and her husband have lived at the same address in the U.S. since 1984. They have one child, a son, born in the U.S. in 1986. She has no intention of renouncing her U.S. citizenship, and she has no intention of renouncing her Turkish citizenship (Exhibit 7).

Foreign Preference Allegations

SOR ¶ 1.a alleges that Applicant exercises dual citizenship with Turkey and the U.S. Applicant admits the allegation in her Answer. In addition, it is established by the information in her security-clearance application and interview (Exhibits 5 and 7).

SOR ¶ 1.b and ¶ 1.c concern Applicant’s possession and use of a Turkish identification card. She admits the former and denies the later allegation with an explanation. In her August 2007 interview, Applicant stated that she does not have a valid Turkish passport as it expired several years ago and she has not renewed it (Exhibit 7). She does have a Turkish identification card (Exhibit 6) that she said is

⁶ FORM at 3–5.

similar to an American social security card. She uses it with her U.S. passport to enter Turkey as the card is accepted in lieu of a visa. The card also gives Applicant a tax advantage for real estate taxes in Turkey, but she says the advantage is minor in relation to her net worth.

SOR ¶ 1.d alleges that Applicant intends to exercise her right as a Turkish citizen to buyout a portion of her son's Turkish military obligation, as he is a dual citizen too. She denied this allegation in her Answer. She explained that her son intends to exercise his right as a Turkish citizen to buyout the remainder of his Turkish military obligation after he serves a maximum of six weeks of military training. Also, she explained that her son will use his own resources to do so. Based on her explanation, this allegation is unproven.

SOR ¶ 1.e alleges that Applicant maintains citizenship with Turkey to protect her rights to her financial and business interests in Turkey. Applicant admits this allegation in her Answer.

Foreign Influence Allegations

The allegations in SOR ¶¶ 2.a, 2.b, and 2.c concern financial and property interests in Turkey and will be addressed together. Applicant, individually or jointly with her husband, owns property (land and an apartment) in Turkey. The apartment is used as a rental property. Also, Applicant has about \$150,000 (the balance varies) in a Turkish bank, as the money is from the rental property.

In her rebuttal letter, Applicant stated that she may, in the future, use the property in Turkey as a vacation home for part of the year (Exhibit A). But she further explained that she and her husband are uncertain that they would desire to maintain a part-time residence in Turkey because of the deteriorating political and religious situation there, that the U.S. is their home, and they have three residences in two states in the U.S. Also, she estimated that more than 75% of her financial assets are in the U.S., 10% are in Canada (based on partial ownership of an apartment building), and about 15% are in Turkey. Most of the assets in Turkey were inherited.

SOR ¶ 2.d alleges Applicant traveled to Turkey for pleasure in 1998, 2002, 2004, 2006, and 2007. Applicant admits this allegation in her Answer. Applicant addressed her foreign travel in her August 2007 interview and indicated that she has never had any problems with law enforcement, immigration, custom, or other officials during her trips abroad (Exhibit 7).

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.⁷ As noted by the Supreme Court in 1988 in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁹ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level.¹⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵ The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁶

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions

⁷ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as Duane’s.”).

⁸ *Egan*, 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

(DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁷ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

Analysis

Under Guideline C for foreign preference,¹⁸ a security concern may arise “[w]hen 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.”¹⁹

The most pertinent disqualifying condition here is DC 1, which provides that a security concern may exist and be disqualifying based on the “exercise of any right, privilege, or obligation or foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member.”²⁰ DC 1 applies to Applicant based on her active exercise of Turkish citizenship after she became a U.S. citizen in 1995. Since then, she has possessed and used a Turkish identification card, which is a right or privilege of Turkish citizens. She has benefitted from doing so by avoiding a visa when she travels to Turkey and enjoys a real estate tax advantage. She maintains her Turkish citizenship to protect her financial and property interests in Turkey. These circumstances fall within the meaning of DC 1 of the guideline.

The guideline contains conditions that may mitigate the security concern.²¹ I reviewed the MC under the guideline and conclude that none apply in Applicant's favor. Her possession and use of the Turkish identification card since becoming a U.S. citizen constitutes the active exercise of dual citizenship. In other words, this is not a case of mere passive dual citizenship. Her exercise of dual citizenship is current and ongoing, and there is no indication things will change in the future.

¹⁷ Executive Order 10865, § 7.

¹⁸ Revised Guidelines at 7–8 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁹ Revised Guidelines at 7.

²⁰ Revised Guidelines at 7.

²¹ Revised Guidelines at 7–8.

Under Guideline B for foreign influence,²² a security concern may arise due to foreign contacts and interests “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.”²³

The most pertinent disqualifying condition here is DC 5, which provides that a security concern may exist and be disqualifying based on “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.”²⁴ DC 5 applies to Applicant based on property (land and an apartment) and bank account in Turkey. She estimates the value of these assets at about 15% of her net worth. Although 15% is less than a majority of her assets, 15% is of considerable size, importance, or worth, and it is enough to raise a security concern. Her travel to Turkey is not particularly significant, but it does show her ongoing ties or connections to that country.

The guideline contains conditions that may mitigate the security concern.²⁵ I reviewed the MC under the guideline and conclude that none apply in Applicant’s favor. Her ownership of property in Turkey and six-figure bank account in Turkey are current and ongoing. She estimates the value of these interests at 15% of her net worth, which is too large to be considered minimal and unlikely to affect her security suitability.

To sum up, Applicant has ties and connections to both the U.S. and Turkey, her country of birth. The clear majority of those ties and connections are to the U.S. But her ties and connections to Turkey are not insignificant as evidenced by her possession and use of the Turkish identification card and her property and bank account in Turkey. These ties and connections are ongoing and there is no indication things will change in the future. Indeed, the evidence shows this is a case of divided interests because Applicant has one foot in Turkey and one foot in the United States. Although she became a U.S. citizen in 1995, she continues to exercise the rights and privileges of Turkish citizenship. Although her situation is not illegal or immoral, her ties and connections to Turkey are not clearly consistent with the national interest of the U.S. Accordingly, Guidelines B and C are decided against Applicant.

Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person

²² Revised Guidelines at 5–6 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ Revised Guidelines at 5.

²⁴ Revised Guidelines at 5.

²⁵ Revised Guidelines at 6.

concept was given due consideration and that analysis does not support a favorable decision. This case is decided against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline B:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge