



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



In the matter of:)	
)	
)	ISCR Case No. 08-00424
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Pro Se

November 26, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an security clearance application, Standard Form 86 (SF 86) on January 31, 2006. On April 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, 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), 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 19, 2008, Applicant answered the SOR and requested a determination be made on the written record. Department Counsel prepared a File of Relevant Material (FORM) on July 29, 2008. The FORM was forwarded to Applicant on that same date. He received it on August 11, 2008. Applicant had 30 days from the receipt of the FORM to submit additional matters. He did not submit additional matters. The case was assigned to me on October 10, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

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 shares borders with Syria, Iraq, and Iran. The United States 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; Item II at 1.)

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; Item IV at 2-3.)

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.)

Findings of Fact

In his Answer to the SOR, dated January 14, 2008, Applicant admitted to all the SOR allegations with the exception of SOR ¶ 2.f.

Applicant is a 38-year-old software architect/consultant employed with a Department of Defense contractor. He has worked for his current employer since May 24, 1999. He has a B.S.E degree. He is married and has one son. (Item 4; Item 5; Item 7.)

Applicant was born and raised in the United States. His parents are dual citizens of the U.S. and Turkey. He is a Turkish citizen based on his parents' status as Turkish

citizens. (Item 4; Item 5) His wife is a citizen of Turkey. She resides with Applicant and their son in the U.S. (Item 3.)

When Applicant was a child, Applicant's parents applied for Turkish citizenship and a Turkish passport on his behalf. The last passport expired in June 1998. Applicant did not renew the Turkish passport because he could travel to Turkey using his U.S. passport. Applicant traveled to Turkey using his Turkish passport in July 1988, July 1990 and July 1992. (Item 5.) After his Turkish passport expired in June 1998, Applicant used his U.S. passport when he traveled to Turkey. (Item 5; Item 6.)

In order to maintain his Turkish citizenship, Applicant is required to serve in the Turkish military or pay a fee. He has no intent to serve in the Turkish military and is willing to renounce his Turkish citizenship. His first priority is to the U.S. and protecting the national security of the U.S. (Item 3, Item 5.)

Applicant's mother and step-father are dual citizens of Turkey and the U.S., who currently reside in the U.S. His parents-in-law and brother-in-law are citizens of and reside in Turkey. He also has extended relatives (aunts, uncles, cousins) who are citizens of and reside in Turkey. (Item 3; Item 5.) Applicant claims none of his family members, including his in-laws, have any contact with government officials aside from each males having to fulfill their military service obligation when they were young. His father-in-law owns an engineering and consulting services company, and a company that exports natural stone, such as marble, from Turkey. (Item 3; Item 5.)

When Applicant was a child, his mother purchased a single unit in an apartment building in Turkey. She put his name on the deed. His mother uses and has control over the apartment. He has no financial interest in the apartment. He asked his mother to remove his name from the deed. The apartment is worth \$60,000. (Item 3; Item 5)

Applicant's father-in-law listed Applicant as a shareholder on one of his businesses. Applicant did not purchase the shares. His father-in-law purchased the shares. Applicant signed a power of attorney for his father-in-law to act on his behalf during share holder meetings. Applicant has no vested interest in the company. He requested his father-in-law remove his name as a shareholder. Applicant has approximately \$370,000 in assets located in the U.S. (Item 3; Item 5.)

Applicant visited family members in Turkey on a yearly basis from 1998 through 2004. He did not travel to Turkey in 2005 or 2006. He traveled to Turkey in 2007. (Item 3; Item 6.) Applicant has sponsored his parents-in-law, his brother-in-law, two cousins and several friends when they traveled to the U.S. for visits and vacation. (Item 5.)

Applicant visits with his mother and step-father on average of 20 times per month via telephone and in person. They reside in the U.S. He contacts his parents-in-law and brother-in-law several times a year. He and his wife visit with them about once a year. They travel to Turkey or his parents-in-law visit him and his family in the U.S. He has contact with his extended relatives (aunts, uncles, and cousins) when he and his

wife visit Turkey. At least once a year, he may speak with extended relatives on the telephone as well. (Item 5; Item 6.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

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 classified 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.

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 security decision.

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 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 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*) applies. Applicant possessed a valid Turkish passport from June 1972 through June 1998. He used his Turkish passport in lieu of his U.S. passport when he traveled to Turkey in July 1988, July 1990, and July 1992. Applicant’s possession and use of a Turkish passport is considered an exercise of his rights of foreign citizenship and raises a security concern under foreign preference.

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*) applies. While Applicant was born in the United States, his parents were Turkish citizens. They completed Applicant’s Turkish citizenship paperwork when he was a child. They also applied for a Turkish passport for him.

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) applies. Applicant states that he is willing to renounce his Turkish citizenship.

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*) partially applies. Applicant’s parents submitted his application for Turkish citizenship and applied for his Turkish passport when he was a child. However, he traveled on his Turkish passport after becoming an adult so FP MC ¶ 11 (c) only partially applies.

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 has not possessed a valid Turkish passport since June 1998. He has traveled using his U.S. passport when visiting family members in Turkey since that time.

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. While a dual U.S. and Turkish citizen, he was born and raised in the U.S. His Turkish passport has been expired for over ten years. He is willing to renounce his Turkish citizenship. Although he has family ties in Turkey, he has lived in the U.S. his entire life. Guideline C is found for Applicant.

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 parents-in-law, brother-in-law and members of his extended family consisting of uncles, aunts and cousins are citizens of and reside in Turkey. He 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.

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, including his in-laws who reside in Turkey. His close ties to his relatives in Turkey is evident based on his numerous visits to Turkey. With regard to his parents-in-law, there is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. (ISCR Case No. 01-03120 at 4 (Appeal Board, February 20, 2002))

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 a U.S. citizen.

Applicant's mother and stepfather are dual citizens of the Turkey and the U.S. They reside in the U.S. I find no foreign influence concerns with respect to Applicant's mother and stepfather. SOR ¶ 1.c is found for Applicant.

FI DC ¶ 7(e) (*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*) applies with respect to the apartment that he owns in Turkey, and his status as a shareholder in a Turkish company owned by his father-in-law.

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 are connected with the Turkish government. 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, Applicant was born and raised in the U.S. His most significant family members, his wife and mother, reside in the U.S. While Applicant travels to Turkey to visit his family members, his longstanding ties in the U.S. support that 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.

FI MC ¶ 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*) applies. When Applicant was a child, his mother purchased an apartment in Turkey. She listed Applicant's name on the deed. She uses the apartment when she travels to Turkey. It is worth approximately \$60,000. Applicant has no financial interest in the property. He asked his mother to remove his name from ownership of the apartment. Applicant's father-in-law listed Applicant's name as a shareholder in a company he owns in Turkey. Applicant is a passive shareholder. He provided no money towards purchasing these shares and has no vested interest as a shareholder. He asked his father-in-law to remove him as a shareholder. All of Applicant's other investments are located in the U.S. The total value of his U.S. assets is approximately \$370,000. Neither of these financial interests are likely to result in a conflict. Due to his lack of a financial stake in either interest, they are unlikely to influence, manipulate, or pressure Applicant.

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

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance 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 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. While security concerns were raised due to Applicant's relatives who are citizens of and reside in Turkey and two financial interests in Turkey, the concerns have been mitigated based on Applicant's longstanding ties to the U.S, and his lack of financial involvement towards the two financial interests in Turkey. His willingness to remove his name from each financial interest shows that he cannot be influenced by either interest. While Applicant traveled to Turkey in the past using a Turkish passport, he has not possessed a valid Turkish passport in over ten years and is willing to renounce his Turkish citizenship. Applicant mitigated the concerns raised under foreign influence and foreign preference.

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
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.g:	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 security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge