



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03397
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Department Counsel
For Applicant: *Pro Se*

February 18, 2009

Decision

TESTAN, Joseph, Administrative Judge:

On July 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B, C and E. 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 August 27, 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 September 26, 2008. Applicant did not submit a response to the FORM. The case was assigned to me on December 12, 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 30 year old employee of a defense contractor.

Applicant was born in Turkey. At some point he moved to the United States. He earned two degrees from an American university. He became a United States citizen and was issued a United States passport in 2002.

Applicant's wife, to whom he has been married since 2002, was born in Turkey and is a naturalized United States citizen. She, like applicant, considers herself a dual citizen of Turkey and the United States.

Applicant's mother-in-law and siblings-in-law are citizens and residents of Turkey. In his response to the SOR, applicant described his relationship with them as "merely personal and based on being related through my wife."

Prior to becoming a United States citizen, applicant possessed a Turkish passport. He renewed this passport in 2005,¹ after he had become a United States citizen and obtained a United States passport. Applicant used the Turkish passport to travel to Turkey in 2001, 2002 and 2003. In response to interrogatories sent to him by DOHA, applicant stated, "I am not willing to destroy, surrender, or invalidate [the Turkish passport] at this time. I do still have relatives in Turkey whom I visit occasionally and require my Turkish passport to travel within Turkey."²

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in February 2007. In response to Question 17.d., which asked: "In the last seven years, have you had an active passport that was issued by a foreign government?" applicant stated "no." Applicant denies he intentionally provided the false answer. In his response to the SOR, he stated, "I DENY that I deliberately failed to disclose my possession of an active foreign passport because I interpreted the question as to inquiring if I had ever been issued a passport by a foreign country in the last 7 years to which the answer is 'No' since my Turkish passport had been issued in . . . 1995 which is outside the window of 7 years." This explanation is not credible. It is simply unbelievable that a man of applicant's intelligence could have misinterpreted the question as he claims he did.

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

¹This passport will expire in 2010.

²It is not clear if the relatives to whom he refers are his in-laws.

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 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 interest as well. Terrorists claiming association with al-Qa'ida were responsible for suicide bombings in Istanbul in 2003 that targeted Western interests. In August 2005, Turkish police uncovered a planned terrorist attack by a transnational group targeting maritime interests in Turkey. The possibility of terrorist attacks, both transnational and indigenous, remains high.

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.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. And, 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 in-laws who are citizens and residents of Turkey. “As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 04-11577 (App. Bd. Feb. 6, 2007). Applicant’s statement that his relationship with his in-laws is “merely personal and based on being related through my wife” is insufficient to rebut the presumption that he has ties of affection and obligation to his in-laws. This fact alone creates a potential conflict of interest and requires application of the first disqualifying condition. Applicant has traveled to Turkey at least three times since 2000, and intends to travel there in the future to visit his relatives. When applicant is in Turkey, he is potentially vulnerable to exploitation, pressure, or coercion by the Turkish government. These facts require application of the second disqualifying condition.

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.” Because the evidence reveals little to nothing about applicant’s contacts, relationships, and sense of loyalty or obligation to his in-laws, none of the foregoing mitigating conditions is applicable.

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. Accordingly, this disqualifying condition applies.

Paragraph 11 describes potentially mitigating conditions. Under Paragraph 11.c., it may be mitigating if the “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” Because applicant’s Turkish citizenship is based on his birth in Turkey, this mitigating condition applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history

statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” may be disqualifying. This disqualifying condition is applicable.

I considered the potentially mitigating conditions under this Guideline and conclude none apply.

“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 in Turkey. He subsequently moved to the United States, attended college, and became a United States citizen in 2002. After he became a United States citizen, he voluntarily renewed his Turkish passport, and used it to travel to Turkey. Applicant’s dual citizenship, possession and use of his Turkish passport after he became a United States citizen, intention to use his Turkish passport for future travel to Turkey, failure to disclose his possession of the Turkish passport on the e-QIP, and failure to provide details about his contacts and relationships with his Turkish in-laws, preclude a finding that it is clearly consistent with the national interest for applicant to have 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.

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:

Guideline B: AGAINST APPLICANT

Guideline C: AGAINST APPLICANT

Guideline 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