



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



In the matter of:

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ISCR Case No. 08-07065

Applicant for Security Clearance

**Appearances**

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

June 17, 2009

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**History of Case**

On June 9, 2006, Applicant submitted a Questionnaire for National Security Positions (SF-86). On January 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B and Guideline C. 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.

Applicant answered the SOR in writing on January 23, 2009, and waived his right to a hearing before an administrative judge. On February 27, 2009, Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed Applicant a complete copy on March 2, 2009. Applicant received the FORM on March 11, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On May 15, 2009, DOHA assigned the case me.

## **Procedural Ruling**

### **Request for Administrative Notice**

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Turkey. Attached to the FORM are documents marked as Items I through IV pertinent to that request. Applicant did not object to my consideration of those exhibits. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all factual allegations contained under Paragraphs 1 and 2 of the SOR and offered some explanations.

Applicant is 53 years old and never married. He was born in Turkey and raised in Iraq.<sup>1</sup> His mother was born in Turkey and his father in Iraq. He graduated from an Iraqi college with a Bachelor of Science degree in Physics in 1980. After college, he began mandatory military service in the Iraqi army reserves from 1980 to 1985. He was recalled in 1990 for eight months before the Gulf War. After leaving the Iraqi Army, he was required to work as a teacher from 1986 until 1989. (Item 6 at 6; 28) In 1991, he left Iraq and went to live in Turkey, where he was supported by one of his sisters, living in the United States. In 1992, he was conscripted into the Turkish army. He served for 58 days and would have served longer, but he paid the government \$3,500 to be released. (Item 6 at 28-29) In June 1993, he immigrated to the United States. He became a naturalized U.S. citizen in May 2000. (Item 5 at 7)

Applicant's mother became a naturalized U.S. citizen in November 1998. She resides in the United States. His father is deceased. He has three sisters who were born in Iraq. One became a naturalized U.S. citizen in November 1984, one in March 2001, and the other in October 2001. They live in the United States. (Item 5)

Applicant previously possessed an Iraqi and a Turkish passport. The last time he used them was in 1991 and 1995, respectively. Both were destroyed after he

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<sup>1</sup>The SOR does not raise any Guideline B or Guideline C security concerns pertaining to Iraq.

interviewed for his linguist job in December 2003. He obtained a U.S. passport in October 2003. (Items 5, 6 at 4, 29)

After arriving in the United States, Applicant worked at various jobs and owned a store from January 1995 to January 2001. He was unemployed from October 2001 until October 2002 when he found a job with a private company. (Item 5) In December 2003, Applicant began working as a U.S. Army Linguist in Iraq. In August 2005, he suffered a heart attack and was sent from Iraq to a military hospital in Germany. Subsequently, he went to Turkey where he recuperated from September 2005 to April 2006 and stayed with his retired cousin. (Item 6 at 31) In April, he returned to the United States and in June 2006 he resumed his position as an Iraqi linguist. (Item 5 at 11; Item 6 at 35) As a linguist, he assists in gathering and translating intelligence. He held an Interim clearance until recently and believes he worked with Top Secret information. (Item 6 at 32) He would tell his supervisors if he were threatened or approached by a foreign national seeking sensitive or classified information. (Item 6 at 31) He speaks Turkish, Arabic, including Iraqi, Lebanese and Egyptian dialects.

Applicant possesses a Turkish identification card, initially issued at his birth in October 1955. He renewed the card in 1991 and 2005. That card gives him rights and privileges of Turkish citizenship, including the right to own property. In 2005, Applicant purchased real estate in Turkey for \$90,000 (US) with funds he earned through his employment. He spent about \$110,000 (US) renovating the property and intends to use it as a family vacation home after he retires in the U.S. (Item 6 at 32) Until the recent global economic downturn and devalued dollar, the property was worth about \$280,000 (US); it is now worth about \$180,000 (US). (Answer) He has approximately \$4,000 (US) in a Turkish bank account that is left over from the renovation. (Answer) Applicant asserted that he informed his employer of the property purchase in March 2006. (Answer)

During a March 2008 interview, Applicant could not estimate what portion of his total net worth the real estate in Turkey represented, or imagine under what circumstances he would abandon the house; however, he could sell the property if necessary, as it does not affect his loyalty to the United States. (Item 6 at 32)

In September 2008, Applicant completed a Set of Interrogatories. Question No. 21, which inquires into one's net worth, is listed twice in the Interrogatories. In both instances, Applicant listed his total net worth as approximately \$430,000 (US). (Item 6 at 14; 23) In response to Questions No. 15 and 31, which ask the value of his property in a foreign country and Turkey (respectively), he listed the value as \$280,000. (Item 6 at 10, 26) In response to Question No. 16(c), "value (in U.S. dollars) of your foreign financial interest or income," he wrote \$430,000 (US). (Item 6 at 23) Applicant did not disclose any financial interests in Turkey other than the aforementioned real estate and a \$4,000 bank account.

There is no derogatory information in the file concerning Applicant's police or financial records. He has never been fired from a job. He has no police record, has never used illegal drugs, or been involved in an alcohol-related incident. (Item 5)

### **Character Evidence**

Applicant submitted four letters of recommendation from officers in the U.S. Army, who have worked with him. In March 2005, a captain wrote that he started working with Applicant in March 2004 when Applicant was one of the two interpreters assigned to the captain's unit. He is very complimentary of Applicant's work and professionalism. He learned to rely on Applicant and his ability to help the captain accomplish his mission. He noted, "Without [Applicant], we would have been in some tight situations." (Item 6 at 39) After working with Applicant for a year, a lieutenant colonel (the commanding officer) stated in April 2005 that Applicant "regularly demonstrated exceptional bravery in conducting numerous raid operations. . . . He functions particularly well in support of security forces and police investigative units. His work ethic is unmatched by anyone." (Item 6 at 38) In a letter of March 2007, the master sergeant for Applicant's task force wrote:

"[Applicant] distinguished himself as a skilled translator. His verbal translation skills, coupled with his intimate understanding of Iraqi customs, ensured flawless cross-cultural communications between the Coalition forces and the Iraqi population. Many of his products were used to successfully build target packets against enemies of the United States in the war on terror. Despite highly stressful work conditions, extended work hours, and long periods of time away from home and family, [Applicant] consistently performed his duties to the best of his ability." (Item 6 at 41)

This master sergeant reiterated those compliments in a May 2008 follow-up letter of endorsement he wrote for Applicant. (Item 6 at 40)

Applicant submitted copies of six certificates of appreciation or achievement for his work in Operation Iraqi Freedom. (Item 6 at 42-47)

### **Republic of Turkey<sup>2</sup>**

Turkey is a constitutional republic with a multiparty parliamentary system and the president's powers are not precisely defined and his influence depends on his personality and political weight. Turkey's primary political, economic, and security ties are with the West. It has been a member of NATO since 1952. The United States and Turkey have had a close relationship since 1947. Turkey cooperates closely with the U.S. on many security issues.

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<sup>2</sup> All of the information under this section is from Items I through IV.

Turkey, its citizens and foreigners in the country have been targeted by domestic and transnational terrorists groups for many years. There have been terrorist bombings in the past five years resulting in deaths. The targets have been religious, government, government-owned, political, tourist and business locations throughout the country. In addition, leftist and Islamic terrorist groups have also targeted U.S. and Western interests. Terrorist claimed connections with Al-Qaeda were responsible for suicide bombings in Istanbul in 2003. The potential for future terrorist attacks remains high.

Turkey's judiciary is declared to be independent, but is in need of reform. The Turkish government generally respects the human rights of its citizens. However, there are some abuses among its security forces. There are other human rights abuses with respect to detainees, criminal trials and personal freedoms.

### **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 commonsense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 and 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* Executive Order 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 this guideline is set out in AG ¶ 9:

[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, and then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(5) using foreign citizenship to protect financial or business interest in another country; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant exercised dual citizenship when he chose to renew his Turkish identification card in 1995 and 2005, which he subsequently used to purchase property in Turkey in 2005 after becoming a naturalized U.S. citizen in May 2000. Those facts are sufficient to raise a disqualification under AG ¶ 10(a) (5) and AG ¶ 10(b).

After the Government raised a disqualification, the burden shifted to Applicant to establish any appropriate mitigating conditions. AG ¶ 11 provides six conditions that could potentially mitigate security concerns raised under this guideline:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant has not expressed a willingness to relinquish his Turkish identification card, which gives him the rights and privileges of Turkish citizens, including the right to purchase property. He did not produce evidence to support the application of any of the above conditions.

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

The security concern relating to this guideline is articulated 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 county 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.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (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; and

(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.

In 1992, Applicant briefly served in the Turkish government's army. He currently owns property and has a bank account there, with an estimated value of at least \$184,000 (US). Because the Government has raised foreign influence security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions.

Two mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

(b) 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; and

(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.

Applicant's life in the United States and his connections to the United States developed over the last 15 years tend to have some application to the foreign influence security concerns. His immediate family members are naturalized U.S. citizens, residing here for many years. He owned a business for several years and worked at various jobs before securing his current position in December 2003. He destroyed his Turkish and Iraqi passports. He is a dedicated U.S. citizen, making significant contributions to national security and demonstrating that he will resist any attempts by a foreign power at exploitation. I conclude AG ¶ 8(b) mitigates the security concern raised by Applicant's former service in the Turkish army, and has some application to those concerns raised relating to his ownership of property in Turkey.

Applicant has a substantial financial interest in Turkey that includes real estate and a bank account. About half of his net worth is in Turkey and half in the United States. Because Turkey's has been an ally of the United States for many years, it is unlikely that his real estate interest there will result in a conflict. Both AG ¶ 8(b) and AG ¶ 8(f) partially apply.

### **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) the 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.

Some facts in this record support foreign preference and foreign influence security concerns because of Applicant's connections to Turkey. Applicant used his Turkish identification card to purchase real estate in Turkey, which is worth a substantial amount of money. Although Turkey cooperates with the United States on many issues, the possibility of terrorist attacks there remains high and situations involving abuses of human rights are present. There is a possibility that terrorists, aware of Applicant's ownership of the property, could exploit him by threatening to destroy or damage it.

The circumstances tending to support approval of a clearance for Applicant are more significant. He is a mature individual. In 1993, he immigrated to the United States, shortly after mandatorily serving in the Turkish army for 58 days. He became a citizen in 2000. His siblings and mother are naturalized U.S. citizens, residing here for many years. He owned a business in the United States for six years. In October 2003, he destroyed his Turkey and Iraqi passports. In December 2003, he volunteered to serve with U.S. combat forces as a translator in Iraq. Reliable military personnel serving with him in Iraq laud his duty performance and contributions to mission accomplishments. He has put himself in harms' way since December 2003, working alongside U.S. armed forces in numerous operations. He has made significant contributions to national security, fully aware of the risks to himself. He volunteered to return to work in Iraq in 2006 after a serious heart attack. He would report any threats to harm him by foreign nationals. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong sense of loyalty to the United States and especially his employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest."

In addition, Applicant held an Interim security clearance while working in Iraq up to recently without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the nation security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant carried his burden of mitigating the foreign preference and foreign influence security concerns. I do not believe that he can be coerced into compromising his duty to the United States because of the valuable piece of property he owns in Turkey or his other connections to Turkey. Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance.

### **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
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

## **Conclusion**

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

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SHARI DAM  
Administrative Judge