



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02168
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

June 23, 2010

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of Applicant’s testimony and the record in this case, I conclude that he failed to rebut or mitigate the Government’s security concerns under Guideline C, Foreign Preference. His eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 11, 2008. On January 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 18, 2010, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. On March 25, 2010, DOHA issued a Notice of Hearing scheduling the case for

hearing on April 26, 2010. I convened the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called one witness. He introduced seven exhibits, which were identified and marked as Applicant's Ex. A through Ex. G. All of Applicant's exhibits were admitted without objection. DOHA received the transcript (Tr.) of the hearing on May 4, 2010. The record closed on May 26, 2010. Department Counsel's e-mail of June 2, 2010, affirming that Applicant did not submit additional documentation for the record, is marked as Hearing Exhibit (HE) 1.

### **Findings of Fact**

The SOR contains three allegations that raise security concerns under Guideline C, Foreign Preference (SOR ¶¶ 1.a. through 1.c.). In his Answer to the SOR, Applicant admitted all Guideline C allegations. His admissions are admitted herein as findings of fact.

Applicant, who was born in the United States, is a U.S. citizen and holds dual citizenship with Turkey. He is 27 years old, never married, and the only child of his parents, who immigrated to the United States from Turkey and became U.S. citizens in 2004. (Ex. 1; Tr. 39, 41.)

Applicant has aunts, uncles, and cousins who are Turkish citizens and reside in Turkey. He reported telephone or e-mail contact on a regular basis with two aunts, two uncles, and four cousins in Turkey. Since July 2003, Applicant has traveled to Turkey seven times to visit his relatives there. (Ex. 2 at 5-6; Ex. 5 at 3.)

Applicant received his higher education in the United States. In 2005, he earned a Bachelor of Science degree and graduated with distinction. In January 2007, he earned a Master of Science degree in Systems and Information Engineering. For the past three years, he has been employed as a consultant by a government contractor. He seeks a security clearance for work he may do in the future for his employer. (Tr. 36-37, 39-40.)

In 2002, when he was 19 years old, Applicant's parents advised him of a Turkish law that required all male citizens of Turkey to begin military service at age 19 or to request a delay in their military service. One of the documents required for filing a request for delay in service is a Turkish passport. Applicant's parents took the lead in preparing an application for a Turkish passport for him, and they advised him on the requirements of Turkish law. Applicant then acquired a Turkish passport in 2002. The SOR alleges at ¶ 1.a. that, in November 2002, Applicant acquired a Turkish passport, even though he was a U.S. citizen by birth. (SOR; Tr. 42-43.)

In an interview with an authorized investigator from the Office of Personnel Management (OPM) on October 7, 2008, Applicant explained that as a Turkish citizen,

he is required to serve in the Turkish military. He further explained that Turkish citizens living outside of Turkey are required to serve in the military for three weeks before they reach 35 years of age.<sup>1</sup> He told the investigator that he planned to complete his required Turkish military service at some time in the future. Applicant's compulsory obligation as a Turkish citizen to complete his Turkish military service by October 2021 is alleged at SOR ¶ 1.b. (SOR; Ex. 2 at 6)

At his hearing, Applicant provided more information about the requirements of Turkish military service. He stated that Turkish resident citizens are required to serve from six months to two years in the Turkish military. Failure to serve results in imprisonment. However, Turkish citizens working outside of Turkey for three years are required to serve for three weeks in the Turkish military, provided they also pay a fee of approximately \$9,000. (Tr. 62-64.)

During his October 7, 2008 interview, Applicant also told the investigator that the Turkish passport he acquired in 2002 had expired in November 2007.<sup>2</sup> He told the investigator that he was willing to relinquish the passport, but he was not willing to renounce his Turkish citizenship. On May 18, 2009, Applicant signed a notarized statement that he agreed with and adopted the OPM investigator's summary of the October 7, 2008 interview, with one exception. He stated: "If possible, I would prefer not to relinquish my expired Turkish passport though I have no plans to renew it." (Ex. 2 at 6-7; Ex. 3 at 3.)

On September 4, 2009, Applicant responded to additional questions from DOHA. DOHA asked Applicant: "Are you still required to complete your three-week military service obligation for the Turkish military?" Applicant replied "Yes," and added the following information: "To clarify: To retain Turkish citizenship, I must complete three weeks of military service and pay a fee. However, all procedures concerning my service have been postponed until October 31, 2021." (Ex. 5 at 2.)

DOHA asked: "What steps have you taken to complete your military service requirements? Have you scheduled your service or contacted the Turkish Government about your military service?" Applicant replied: "I have only contacted the Turkish government to postpone my military obligation until October 31, 2021. I have not scheduled nor do I need to schedule military service until this date. I do not plan on making a final decision regarding my service until this date and will not jeopardize my US citizenship under any circumstances." (Ex. 5 at 2.)

DOHA asked: "Have you used your Turkish citizenship to obtain any benefits or privileges (i.e., travel benefits, health care benefits, education benefits, etc.)?" Applicant responded "Yes," and provided the following information: "I have used my citizenship for

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<sup>1</sup> At his hearing, Applicant stated that he has until 2021, when he is 38 years old, to fulfill his Turkish military obligation. (Tr. 59.)

<sup>2</sup> Applicant did not use his Turkish passport to enter Turkey or any other country, nor did he use his Turkish passport for identification purposes. (Ex. 5; Tr. 44.)

travel benefits; specifically, I have entered Turkey as a visitor without a visa which I would not have been able to do if I were not a citizen. The dollar amount varied from \$20 - \$40 for each visit. Dates: July 2003; May 2004; August 2006; September 2007; April 2008; December 2008; August 2009.” (Ex. 5 at 3.)

DOHA also asked: “Have you taken any steps to obtain recognition of your Turkish citizenship?” Applicant answered, “Yes,” and added: “I was born in the US but was a Turkish citizen at birth because of my parents. However, I have received a Turkish ID card, which can be considered recognition of Turkish citizenship. My parents applied and received this card for me when I was a minor. I use this card in conjunction with my US passport when entering Turkey in lieu of a visa.” The SOR alleges at ¶ 1.c. that Applicant exercised his Turkish citizenship on multiple occasions by entering Turkey using his Turkish National Identity (ID) card instead of acquiring a visa.<sup>3</sup> (SOR; Ex.5 at 3.)

In September 2009, in response to DOHA’s questions, Applicant stated that he currently possessed an expired Turkish passport; that he had taken no steps to renew his Turkish passport; and that he had not used his Turkish passport for travel or for identification purposes. (Ex. 5 at 4.)

DOHA then asked Applicant: “Are you willing to renounce your Turkish citizenship?” Applicant replied:

I consider my Turkish citizenship my right through family. I am not willing to renounce it at the moment unless it jeopardizes my US citizenship. However, I may renounce it in the future at the aforementioned date when I must make a decision regarding military service. In all honesty, I do not know what my decision will be at that time since it is over 10 years in the future. I believe there to be no conflict of interest regarding my security clearance application and my dual citizenship. I have sworn my loyalty to the US and owe my life and good fortune to this country.

(Ex. 5 at 5.)

Applicant stated that he had experienced a change in his thinking about his Turkish citizenship between September 2009 and his hearing in April 2010. He stated that he intended to renounce his Turkish citizenship and had taken steps to do so. On April 23, 2010, he relinquished his expired Turkish passport to his employer’s security officer. Additionally, he applied to the Turkish government to renounce his Turkish citizenship. He stated that the Turkish government would process his request and provide him with information on the documents necessary to file for renunciation of his Turkish citizenship. After he filed the required papers, he would be able to renounce his

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<sup>3</sup> At his hearing, Applicant explained that he had the ID card in his possession and that it did not have an expiration date. He stated he would relinquish it when he renounced his Turkish citizenship and surrendered his expired Turkish passport to Turkish authorities. (Tr. 52-54.)

Turkish citizenship. When his renunciation of his Turkish citizenship is completed, Applicant will no longer be required to perform Turkish compulsory military service. To support his statement, Applicant provided a document from an authorized representative of the Turkish government, dated March 24, 2010, which stated, in pertinent part: “[T]his letter serves as formal acknowledgment that [Applicant] has applied to . . . renounce his Turkish citizenship.” (Ex. A; Ex. B; Tr. 42, 45, 57-59.)

Applicant explained his change of heart between September 2009 and the date of his hearing as follows:

Okay. This was almost a year ago and even though I did say I wasn't willing to renounce it, I actually may renounce it at a future date and [it] would be the date when I had to decide on my military service. So I think at that point I had begun to - - -I don't want to say doubts, but feelings that I wasn't entirely comfortable with the Turkish citizenship. And I think really the main thing that's changed is I've only been out of school for three years. And the longer I've been out of school, and the more mature I become, the more I understand how important it is to be an American. And the more I realize that this is where my fortune and my life lies.

So the Turkish citizenship in these past three years, whereas perhaps when I was a student had some sort of allure to it, has lost that allure and it's just diminished in its importance.

(Tr. 55-56.)

Applicant's supervisor for over two years testified on his behalf. He has e-mail contact with Applicant daily, and he and Applicant see one another approximately once a week. He praised Applicant's productivity and work ethic and identified him as one of his unit's top performers. He confirmed that Applicant does not have an immediate need for a security clearance but may need one for work the company hopes to do in the future. (Tr. 27-37.)

Applicant's former supervisor provided a letter of character reference for him. He stated: “Given my 30 plus years of experience at evaluating and judging the behavior and performance of professional men and women in the [U.S. military] and the private sector, it is my opinion that [Applicant] is just as mature, competent and dedicated as anyone I have observed and managed throughout my professional career.” (Ex. G.)

Applicant provided evaluations of his work performance which corroborated his supervisor's identification of him as a valued performer. His undergraduate and graduate transcripts reflect a strong academic record. His credit report reflects responsible management of his financial responsibilities. (Ex. C; Ex. D; Ex. E; Ex. F.)

Applicant explained that he filed his request for an application to renounce his Turkish citizenship on March 24, 2010. He stated he expected to receive confirmation of

his request “within the next month or two.” At that time, he would be required to obtain his expired Turkish passport from his security officer and submit it to Turkish authorities, along with his Turkish ID card and other documents. (Tr. 44-45.)

I left the record open for one month so that Applicant could provide evidence that his application to renounce his Turkish citizenship had been completed and accepted. I advised him to let Department Counsel know if he was unable to provide further evidence of renunciation. After the record in the case closed, I sent an e-mail to Department Counsel and asked if Applicant had filed or provided any additional information for the record. On June 2, 2010, Department Counsel replied by e-mail that Applicant had not filed any additional information. Department Counsel further stated that she had telephoned Applicant to confirm that he had not sent any additional information, and, at that time, Applicant had told her he had not yet received any additional information from authorized representatives of the Turkish government. (HE 1; Tr. 75-79.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching 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.

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 in seeking to obtain 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**

Under AG ¶ 9, the security concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(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:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;

- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;

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

(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; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant is a native-born U.S. citizen who acquired dual citizenship with Turkey when he was born to Turkish citizens living in the United States. In 2002, when he was 19 years old, he became eligible for compulsory military service as a Turkish citizen. He acquired a Turkish passport so that he could file a request to postpone his Turkish military service. Applicant then filed such a request with the Turkish government, thereby expressing his willingness to bear arms for Turkey.

Applicant's acquisition of a Turkish passport as a U.S. citizen also raised a concern that he actively exercised dual citizenship with Turkey. However, his Turkish passport expired in 2007, and he does not now possess a current foreign passport. On the day before his hearing, he surrendered his expired Turkish passport to his employer's security officer.

However, Applicant retains his Turkish National ID card, and he has used it in lieu of a travel visa to enter Turkey. His expressed intent in September 2009 to retain his Turkish citizenship and his expressed intent in May 2009 not to surrender his expired passport suggest a preference for a foreign country over the United States.

Because Applicant does not possess a current Turkish passport, AG ¶ 10(a)(1) does not apply to the facts of his case. Accordingly, I conclude SOR ¶ 1.a. for Applicant. However, I also conclude that potentially disqualifying security concerns are raised under AG ¶10 (a)(2) and ¶10(a)(3).



Under AG ¶11(a), dual citizenship might be mitigated if “it is based solely on [an applicant’s] parents’ citizenship or birth in a foreign country.” Under AG ¶ 11(b), an individual’s dual citizenship might be mitigated if he or she “has expressed a willingness to renounce dual citizenship.” Under AG ¶11(c), an individual’s “exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor.” Under AG ¶11(d), an individual’s use of a foreign passport might be mitigated if it were “approved by the cognizant security authority.” Under AG ¶ 11(e), an individual’s use of a foreign passport might be mitigated if he or she presents credible evidence that “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Applicant acquired passive Turkish citizenship when he was born in the United States to parents who were Turkish citizens. In 2002, he took action to acquire a Turkish passport and a Turkish National ID card. With these actions, Applicant’s dual citizenship with Turkey was no longer passive, and he became an active citizen of Turkey.

Applicant sought a Turkish passport so that he could file a request to postpone compulsory military service in Turkey. He was willing to serve in the Turkish military, but wanted to delay his service to a later time. In 2007, he allowed his Turkish passport to expire, although he continued to use his Turkish National ID card to enter Turkey. In May 2009, in response to DOHA interrogatories, Applicant stated he did not want to relinquish his expired Turkish passport. In September 2009, also in response to DOHA interrogatories, Applicant stated that he perceived his Turkish citizenship as “his right through family” and was unwilling to renounce his Turkish citizenship. At his security clearance hearing in April 2010, Applicant stated he had experienced a change of heart. On April 23, 2010, the day before his hearing, he relinquished his expired Turkish passport to his employer’s security officer. On March 24, 2010, one month before his hearing, he filed an application to renounce his Turkish citizenship with Turkish government authorities. At the time of his hearing, he was awaiting a response and further instructions on the renunciation process from the Turkish government, a process he estimated would take another month or two. Nothing in the record supports a conclusion that Applicant’s use of his Turkish passport and Turkish National ID card were approved by his cognizant security authority.

Accordingly, I conclude that AG ¶ 11(b) applies only partially in mitigation in this case because Applicant’s willingness to renounce his Turkish citizenship was recent and came after a strong assertion seven months earlier that he was not willing to renounce his Turkish citizenship. After a careful review of the record and after assessing Applicant’s credibility and demeanor, I conclude that his rationale for his change of heart appeared ambivalent and lacked credibility. I also conclude that AG ¶¶ 11(a), 11(c), and 11(d) do not apply in mitigation in this case. AG ¶ 11(e) applies partially in that Applicant surrendered his expired Turkish passport to his employer’s security officer.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his or her conduct and all relevant 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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. Applicant is an intelligent and well-educated professional who is considered a valued employee by his government contractor employer. In 2002, at the age of 19, and with the aid and support of his parents, who were, at the time, citizens of Turkey, Applicant, a native-born U.S. citizen, acquired a Turkish passport with the intention to file a request to delay compulsory Turkish military service required of him as a dual citizen of Turkey.

Applicant has several aunts, uncles, and cousins who are citizens and residents of Turkey, and he is in regular contact with them by telephone and e-mail. He has traveled to Turkey seven times since 2003, but he has not used his Turkish passport to enter Turkey. Instead, he has used his Turkish National ID card, which establishes his Turkish citizenship and allows him to enter Turkey without purchasing a visa which would otherwise be required of him as a U.S. citizen.

At his April 24, 2010 hearing, Applicant provided documentation that he had relinquished his expired Turkish passport to his employer's security officer on April 23, 2010. He also provided documentation establishing on March 24, 2010, he had initiated action to renounce his Turkish citizenship. However, these recent actions did not appear to be decisive. Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline C, Foreign Preference.

If he wishes, and if his employer sponsors him, Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes,

he can produce new evidence that addresses the Government's current security concerns.

### **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:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. and 1.c.:	Against Applicant

### **Conclusion**

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

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Joan Caton Anthony  
Administrative Judge