



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



In the matter of: )  
)  
) ISCR Case No. 10-04616  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2011

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

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

**Statement of Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 8, 2010. On October 28, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, and 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 January 21, 2011, DOHA received Applicant's Answer to the SOR. He requested that his case be determined on the record in lieu of a hearing. After compiling its File of Relevant Material (FORM) on March 7, 2011, the Government provided the FORM to Applicant on March 14, 2011, with instructions to submit any additional information or objections within 30 days of receipt. The FORM contained documents identified as Items 1 through 7. In addition, the Government compiled facts about Turkey from four official U.S. government publications, provided them to Applicant and to me, and requested that I take administrative notice of those facts. I have marked the administrative summary and the four source documents as Administrative Exhibit (AE) A. Applicant received the file on April 7, 2011. His response was due on May 7, 2011. Applicant timely submitted additional information, which I marked as Item A and admitted to the record without objection. On June 3, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains ten allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.j.), and one allegation that raises security concerns under Guideline C, Foreign Preference (SOR ¶ 2.a.). In his Answer to the SOR, Applicant admitted all Guideline B and Guideline C allegations. His admissions are admitted herein as findings of fact.

Applicant, who is 59 years old, was born in Turkey. In 1971, when he was 20 years old, he was drafted into the Turkish army and served two years of mandatory service. In 1980, he immigrated to the United States. In 1987, he returned to Turkey to marry his wife, who later became a U.S. citizen. Applicant became a naturalized U.S. citizen in 1989. Applicant and his wife are the parents of a daughter, who is in college, and a son, who is a high school student. (Item 5; Item 6; Item A.)

Since March 2010, Applicant has been employed in a linguist program by a government contractor. He seeks a security clearance for the first time. (Item 5.)

Applicant's brother and sister are citizens and residents of Turkey. His mother-in-law, brother-in-law, and sister-in-law are citizens and residents of Turkey.<sup>1</sup> In addition, Applicant admitted that his aunt and nine uncles are citizens and residents of Turkey. However, the aunt is not further identified in the record, and the only information provided in the record about the nine uncles is that they all served mandatory military service in Turkey. None of Applicant's relatives who are citizens of Turkey are employed by the Turkish government. (Item 5; Item 6; Item 7.)

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<sup>1</sup> The record establishes that Applicant's brother-in-law is his wife's brother and his sister-in-law is his brother's wife. Applicant identified them as immediate relatives in responses to DOHA interrogatories. (Item 7 at 7.)

On April 6, 2010, Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM.)<sup>2</sup> Applicant told the investigator that he has a close familial relationship with his sister, brother, and mother-in-law. As a first-born son, Applicant feels a responsibility to provide for his brother and sister if they have financial need. He speaks with them and his mother-in-law on the telephone six or seven times a year. Additionally, Applicant and his family enjoy traveling to Turkey for vacations and to see their relatives. On his e-QIP, he listed travel to Turkey in 2004 and 2006. (Item 5; Item 6; Item A.)

Applicant told the investigator that he was not required to renounce his Turkish citizenship when he became a naturalized U.S. citizen. He retained his Turkish passport, which expired in 1984. In 2010, as a condition of employment with his current employer, Applicant wrote to Turkish authorities and renounced his Turkish citizenship and surrendered his expired Turkish passport. His expired Turkish passport was returned to him. There is no documentation in the record to establish that Applicant's renunciation of Turkish citizenship was acknowledged by responsible Turkish government representatives. Applicant, his wife, and their children consider the United States as their home. (Item 6 at 5; Item A.)

In 1998, Applicant purchased a home in Turkey, which he uses for vacations.<sup>3</sup> The house has an estimated value of \$35,000. Applicant's mother-in-law lives in the house during the summer months. Applicant told the investigator he would be willing to surrender possession of the home, if necessary, in order to receive a security clearance. (Item 6 at 6.)

Additionally, Applicant receives a pension from the Turkish government of approximately \$400-\$500 a month. He authorizes the deposit of the pension proceeds into a bank account he owns in Turkey with a value of approximately \$3,000. Applicant's sister shares joint control of the account with Applicant and is authorized to withdraw money for her needs. Applicant stated he would be willing to abandon his interest in the checking account and his Turkish pension, if necessary, to receive a security clearance. (Item 6 at 3, Item 7 at 9.)

I take administrative notice of the following facts about Turkey, as contained in official U.S. government documents provided by Department Counsel to Applicant in the FORM:<sup>4</sup>

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<sup>2</sup> On September 21, 2010, after reviewing the investigator's report, Applicant signed a statement that the report accurately reflected his April 6, 2010 interview. (Item 6.)

<sup>3</sup> In his personal subject interview, Applicant told the investigator he purchased the vacation home in Turkey in 1985. (Item 6 at 6.)

<sup>4</sup> The following official U.S. Government documents were used to provide the factual summary on Turkey quoted in this decision: U.S. Department of State, *Background Note: Turkey*, November 19, 2010 (9 pages); U.S. Department of State, *Turkey: Country Specific Information*, July 29, 2010 (10 pages); U.S. Department of State, *2009 Human Rights Report: Turkey*, March 11, 2010 (29 pages); U.S. Department

Turkey is a constitutional republic with a multiparty parliamentary system and a president with limited powers. Turkey has a population of about 76.8 million people. 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 the straits leading from the Black Sea to the Mediterranean Sea and sharing 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.

Domestic and transnational terrorist groups have targeted Turkish citizens and foreigners in Turkey for more than 40 years. Terrorist groups that operated in Turkey have included Kurdish nationalists, al-Qaida, Marxist-Leninist, and pro-Chechen groups. The most prominent among terrorist groups in Turkey is the Kurdistan Workers' Party (PKK). The PKK operates from bases in northern Iraq and directs its forces to target mainly Turkish security forces.

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 terrorist groups have targeted U.S. and Western interests as well. Terrorists claiming association with al-Qaida were responsible for suicide bombings in Istanbul in 2003 that targeted Western interests. Terrorists do not distinguish between official and civilian targets.

In terms of human rights, 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. Security forces committed unlawful killings as well. Other forms of human rights abuses continue with respect to detainees, fair criminal trials, and freedom of speech, the press, and religion. In addition, societal attitudes allowing such practices as the "honor killing" of women continue to be a widespread problem.

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant then bears the burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

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of State, Office of the Coordinator for Counterterrorism, Country Reports on Terrorism 2009, Chapter 2, Country Reports: Europe and Eurasia: Overview, August 5, 2010 (30 pages). I have omitted footnotes in the quoted text and have modified some spelling and punctuation.

## 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 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 B, Foreign Influence**

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

Turkey, an ally of the United States and other Western nations, shares geographical borders with Syria, Iraq, and Iran. Terrorist groups, including Kurdish nationalists, al-Qaida, and pro-Chechen groups, target Turkish citizens and foreigners in Turkey. Terrorist bombings in Turkey over the past five years have struck government, political, religious, tourist, and business targets throughout Turkey.

Despite its positive relationships with the West, Turkey has ongoing human rights problems. Turkish security forces have been involved in torture, beatings, and unlawful killings. Additionally, Turkish cultural practices, such as the “honor killing” of women continue.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts in this case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(e). Under AG ¶ 7(a), it is disqualifying if “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country . . . creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Under AG ¶ 7(b), it is disqualifying if “connections to a foreign person, group, government, or country . . . 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.” Under AG ¶ 7(e), it is disqualifying if an applicant possesses “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.”

Applicant has 15 relatives who are citizens and residents of Turkey. He accepts a retirement pension from the Turkish government. Applicant has particularly close familial relationships with his brother, sister, and mother-in-law, all of whom are citizens and residents of Turkey. As the oldest child in his family, Applicant feels a duty to care for his siblings if they are in need. For that reason, he has given his sister joint control over a checking account he maintains in Turkey to receive his monthly pension payments from the Turkish government. Additionally, in the summer season, he provides his mother-in-law with housing in his vacation home, which is located in Turkey. He stays in touch with his brother, sister, and mother-in-law in Turkey, and he speaks with them on the telephone six or seven times a year.

Applicant also has a brother-in-law and sister-in-law who are citizens and residents of Turkey. In response to DOHA interrogatories, he identified these individuals as immediate family. Applicant also admitted that his aunt and nine uncles are citizens and residents of Turkey. While Applicant’s relationships with these individuals were not as explicitly enumerated in the record as his relationships with his sister, brother and three in-laws, they are also part of the extended family with which he has some contact. He failed to show that his relationships and contacts with his aunt and nine uncles would not be of security significance.

Applicant owns a home valued at \$35,000 in Turkey. He uses the home when he returns to Turkey for vacations. Additionally, he owns a bank account in Turkey, which contains about \$3,000 in proceeds from his Turkish pension.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant’s case. If “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.,” then AG ¶ 8(a) might apply. If “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,” then AG ¶ 8(b) might apply. If “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,” then AG ¶ 8(c) might apply. If “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, then AG ¶ 8(f) might apply.

Applicant's relationships with his brother, sister, and mother-in-law are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. He feels a strong familial obligation to these individuals, and he uses his financial and real property resources in Turkey to provide them with benefits. His concern for these individuals also suggests a collateral concern for his brother's wife (sister-in-law) and his wife's brother (brother-in-law), both of whom are also citizens and residents of Turkey. Applicant identified them as immediate family members in his response to DOHA interrogatories. His relationships with his aunt and nine uncles are less explicit, although it is noted that Applicant's immediate relatives also have relationships with them that could be exploited to Applicant's detriment.

Turkey has a history of terrorist activity; its location in the Middle East exposes it to the dangers of ongoing terrorism. Governmental agents in Turkey are known for violating human rights. In this environment, Applicant's concerns for his family members who are Turkish residents and citizens are understandable. At the same time, his loyalties to his family members in Turkey could also expose him to exploitation and coercion.

Applicant receives a retirement pension from the Turkish government. He owns property valued at about \$35,000 in Turkey. The value of these assets is not inconsequential, and the visible connections they provide to Turkey raise unresolved security concerns, for they could make Applicant vulnerable to exploitation, pressure, or manipulation.

In summary, Applicant's many familial relationships with relatives in Turkey, a country subject to instability and terrorism, raises unresolved security concerns. Additionally, Applicant's property interests in Turkey expose him to further risk of exploitation or pressure in his work as a federal contractor, and this could raise additional concerns that might also threaten U.S. security interests. Although Applicant offered to divest himself of his bank account and summer home, if necessary, in order to be granted access to classified information, he failed to provide information to rebut or mitigate these security concerns. I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), 8(c), and 8(f) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **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.

As a U.S. citizen, Applicant receives retirement benefits valued at \$400 to \$500 each month from the Turkish government. Under Guideline C, this action could show a preference for Turkey over the United States. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶ 10(a)(3).

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." As a mature adult and a U.S. citizen, Applicant receives a monthly pension from the government of Turkey. While he has stated he would relinquish the pension, if necessary, in order to be granted a security clearance,

he has not done so. Accordingly, I conclude that AG ¶ 11(c) does not apply in mitigation in this case.

### **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 an applicant's conduct and all relevant circumstances. The administrative judge must also 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, who became a U.S. citizen in 1989, is in frequent contact with his immediate family members who are citizens and residents of Turkey. He is a concerned and generous family member. He owns a bank account in Turkey into which he deposits retirement benefits he receives from the Turkish government. His sister can access the account for her financial needs. Applicant owns a house in Turkey valued at \$35,000. He permits his mother-in-law to live in the house for the summer months. Applicant uses his resources in Turkey for the benefit of his many family members who are citizens and residents of Turkey. At the same time, by these actions, he is vulnerable to foreign influence, expresses a preference for Turkey, and exposes himself to the risk of exploitation and coercion.

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 the foreign influence and foreign preference adjudicative guidelines.

### **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 B:

AGAINST APPLICANT

Subparagraphs 1.a. through 1.j.: Against Applicant

Paragraph 2, Guideline C: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest 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