



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 11-08097

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2012

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on November 10, 2010. On June 12, 2012, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B and Guideline C. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR, and requested a hearing before an administrative judge. The case was assigned to me on August 1, 2012. DOHA issued a notice of

hearing on August 8, 2012, scheduling the hearing for September 4, 2012. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and presented Applicant's Exhibit (AX) A. I kept the record open until September 18, 2012, for Applicant to submit documentation concerning his bank account. He timely forwarded a document, which is marked as AX B, and was admitted without objection. DOHA received the transcript (Tr.) on September 11, 2012.

### **Procedural Issue**

The Government, through Department Counsel requested that I take administrative notice of certain facts with respect to Turkey. Applicant did not object to the documents. A packet was labeled Hearing Exhibit I and entered into the record.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) with explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

### **Foreign Influence**

Applicant was born in Afghanistan to Turkish parents. His father traveled for work and Applicant spent part of his childhood in Afghanistan, England, Syria and the United States. Applicant and his family resided in the United States from 1979 until 1983. He attended high school in the United States and began his undergraduate studies in an American university, but had to return to Turkey with his family. When his family returned to Turkey for his father's work, he completed his undergraduate degree in Turkey (1987). In 1989, Applicant returned to the United States to obtain a professional position in the field of engineering. He has been with his current employer since 2008. His professional life in the United States has been in the engineering field. He is a senior chief electrical engineer. Applicant has not held a security clearance. He became a naturalized U.S. citizen in 1999. (GX 1) Applicant is married to a naturalized U.S. citizen and has one daughter who is a U.S. citizen.

Applicant and his wife own a home in the United States. He also owns a rental property. He estimates his net worth is approximately \$800,000.

Applicant's brother is a citizen of Turkey and currently resides in Ecuador. His brother owned a restaurant. The business closed and he is not employed. Applicant speaks to his brother on major holidays and birthdays. (Tr. 43; GX 2)

Applicant has another brother who is a citizen of Turkey and resides in the United States. He is in the process of becoming a permanent resident. (AX) He is divorced. Applicant's brother sells cars. Applicant speaks to him on a regular basis. (Tr. 45)

Applicant's father-in-law and mother-in-law are citizens of Turkey. His father-in-law is retired and living in Turkey. He had worked for an import business. (Tr. 46) Applicant occasionally speaks to him via Skype. He sees his father-in-law each year when he visits Turkey for vacation. (Tr. 46) Applicant's mother-in-law is a permanent resident of the United States. She spends part of the year in the United States and part of the year in Turkey. She is in the process of becoming a U.S. citizen. When she is not in the United States, Applicant has contact with her three or four times. (Tr. 47)

Applicant's two cousins are citizens and residents of Turkey. He speaks to them two to three times a year on birthdays or holidays. (Tr.48) Before his mother's death, he had more frequent contact with them. One cousin is retired and the other works for a company. (Tr.50)

Applicant maintains infrequent contact with two childhood friends via Facebook and email. He believes he contacts them three or four times a year. (Tr. 51)

In 2005, Applicant and his wife purchased a vacation home in Turkey. His vacation home is worth approximately \$150,000. The home is located in the southwest coast along the Aegean Sea, which is predominantly a vacation resort. (Tr. 57) He and his family vacation there every year for about three or four weeks. (Tr. 57) At that time, he opened two bank accounts in Turkey. They are now both closed accounts. (Tr. 51; AX B)

When Applicant's mother died in 2010, he inherited four properties. He shares this inheritance with his two brothers. Thus, his share is one-third, which is about \$100,000. (Tr.55) He collects rent on two properties and keeps one bank account in Turkey for deposits which amount to about \$10,000. (AX B)

## **Foreign Preference**

Applicant came to the United States and became a naturalized U.S. citizen in June 1999. He possessed a Turkish passport (issued in 1986) which was to expire in 1999. Applicant obtained an extension until 2004 and another until 2005. He used his Turkish passport when he traveled to Turkey in 2002 and in September 2004, after becoming a naturalized U.S. citizen. His passport expired in 2005. Applicant explained that he travelled to Turkey in 2002 and 2004 and used his Turkish passport. (Tr. 61) He further noted that he carried his U.S. passport.

As for the issue of mandatory military service, Applicant credibly explained that he has been in the United States since 1989. He received waivers for the military service since he was not living in Turkey. Applicant explained after the earthquake in Turkey, the government offered a one-month paid option to fulfill the requirement. The money was donated to a relief fund. He paid a \$5,000 fee and went to Turkey for one month. (Tr. 64) Applicant explained that he stayed on a military installation for about four weeks in 2000. He was taught how to salute, march and shoot a gun. (Tr. 65) He

was adamant that he was not trained for “military service.” He told his U.S. employer that he was going to Turkey but he did not disclose anything about his U.S. citizenship in Turkey. Applicant’s motivation at the time was also due to his mother who suggested he do the mandatory service. (Tr. 70)

Applicant sincerely and credibly states that as far as his allegiance, he can only reaffirm that his wife and daughter intend to live in the United States. He spent his high school years and part of college in the United States. He had to return to Turkey with his family when his father’s work required it. His entire professional career has been in the United States. He intends to stay in the United States. He and his wife purchased a vacation home in an area of Turkey that is international. He feels like a tourist when he is in the country. His father was Turkish and therefore Applicant automatically became a dual citizen. His parents are deceased. He views his relationships as casual and minor with the relatives who remain in Turkey. He emphasizes that he has no strong feelings about Turkey. Applicant states that he does not disclose the nature of his work to people in Turkey. Applicant was candid and sincere when he stated that acting against the interests of the United States would be acting against his family and the future of his daughter. He has no desire to compromise the security of the United States. For that reason, his allegiance to the United States is clear and unequivocal.

Turkey is a constitutional republic with a multiparty parliamentary system and a president with limited powers. Turkey entered World War II on the Allied side shortly before the war ended, becoming a charter member of the United Nations. Turkey is a member of NATO and candidate for the EU, and its primary political, economic, and security ties are with the West. Modern Turkey encompasses bustling cosmopolitan centers, pastoral farming villages, barren wastelands, peaceful Aegean coastlines, and steep mountain regions. More than 70% of Turkey’s population lives in urban areas that juxtapose Western lifestyle with more traditional ways of life.

Turkey is a strategically significant country because of its location straddling Europe and Asia with borders to the Middle East. Turkey controls the straits leading from the Black Sea to the Mediterranean Sea and shares borders with Syria, Iraq, and Iran. There have been violent attacks throughout Turkey and there is a continuing threat of terrorist actions and violence against U.S. citizens and interests throughout the country. Terrorist bombings over the past eight 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. Terrorists do not distinguish between official and civilian targets. In July 2011, 15 terrorists claiming association with al-Qaida were arrested for gathering explosive materials in preparation for a planned attack on the U.S. Embassy in Ankara.

Turkey has played a critical role as a friendly, neutral arbiter in Afghanistan and Pakistan, as a regional facilitator, International Security Assistance Force contributor, and bilateral donor. On the development front, Turkey has provided assistance on health, education, and agricultural projects in Afghanistan. Turkey also conceived and continued to support an annual meeting of the Ministers of Interior of the Neighbors of

Iraq, which focused on supporting regional security, including counterterrorism and border security issues.

### **Policies**

“[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

One disqualifying condition under this guideline is relevant. A disqualifying condition may be raised by “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 if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.” AG ¶ 7(a).

Guideline B is not limited to countries hostile to the United States. “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).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a

nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1989. He is a naturalized U.S. citizen. Applicant's wife and daughter are U.S. citizens. His older brother lives in the United States and is in the process of becoming a permanent resident.

Applicant's father-in-law, mother-in-law, cousins, and his childhood friend live in Turkey. "[T]here 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. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant has no close relationship with his cousins.

After considering the totality of Applicant's family ties to Turkey as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Based on all these circumstances, I conclude that AG ¶ 7(a) is raised.

AG ¶ 7(e) "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation" is also raised. Applicant has acquired a one-third right of inheritance based on his mother's death. The amount is approximately \$100,000. He receives a rental income from two of those properties and has one bank account in Turkey with approximately \$10,000. Applicant and his wife purchased a vacation home in Turkey that is valued at \$150,000.

Security concerns under this guideline can be mitigated by showing 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." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "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.” AG ¶ 8(b).

Security concerns under this guideline can further be mitigated by showing “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.” AG ¶ 8(f) is raised in mitigation.

Applicant came to the United States in 1989. He had previously lived in the United States with his family and attended high school and some college. His parents are deceased. He became a naturalized U.S. citizen. His wife is a naturalized U.S. citizen. He has a daughter who is a U.S. citizen. His brothers do not live in Turkey. One brother lives in the United States. His mother-in-law shares her time between the United States and Turkey, and she has permanent resident status in the United States. Applicant has significant professional and personal ties to the United States. There is no indication that Applicant’s relatives are in positions or are involved in activities that would place Applicant in a position of having to choose between his family living in Turkey and those of the United States. In light of Applicant’s close ties to the United States, it is unlikely that he would choose his relatives in Turkey over his life in the United States. His wealth and assets in the United States outweigh his inheritance assets in Turkey. His vacation home is in an international resort. I find mitigating conditions AG ¶ 8(a) (b) and (f) apply.

### **Foreign Preference**

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 decision that are harmful to the interests of the United States.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case NO. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

A disqualifying condition may arise from “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.” AG ¶ 10(a)(1). Applicant admitted that he renewed his Turkish passport after becoming a naturalized U.S. citizen because he did not have to get a visa to enter the country. He had no thought of the consequences for a future security clearance. Applicant’s Turkish passport expired in 2005.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(e) Applicant was born to Turkish parents. He receives mitigation under AG 11(e) “the



passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Under ¶ 10(a)(2) “military service or a willingness to bear arms for a foreign country” raises another security concern. Applicant was candid that in 2000, he opted to serve the mandatory service in Turkey by spending one month. He was credible in that this was a formality. His mother was alive at the time and encouraged him to compete this so that there would be no problems with visiting her. The military service occurred more than 12 years ago. He did not foresee that in the future there would be a problem for him. He told his then employer that he was going to Turkey to complete the mandatory requirement. He donated the money to an earthquake relief service. He has mitigated the foreign preference security concerns.

### **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 the applicant’s conduct and all relevant circumstances. An 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 have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant spent a considerable amount of time in the United States both as a child, receiving his high school education, and part of his college education. He is a naturalized U.S. citizen who has lived in the United States since 1989. He and his wife and daughter reside in the United States, and are U.S. citizens. He was articulate, candid, sincere, and credible at the hearing. Applicant’s home is in the United States. Applicant has been successful in his work. His current employer recommends him for his security clearance.

Applicant chose to leave his home and pursue his career in the United States. He is firmly established in the United States. The overwhelming majority of his assets are

located in the United States. His inheritance from his mother's estate does not outweigh his substantial financial ties to the United States. Although Applicant has some familial ties to Turkey, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His distant family members in Turkey do not know the specifics of his work.

Applicant and his wife purchased a vacation home in 2005. He visits as a tourist once a year for summer vacation. He no longer has the two bank accounts that he opened in 2005. He does have one account in Turkey for the proceeds of the rental income from his deceased mother's properties.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He has now only a U.S. passport. His Turkish passport expired in 2005. He has loyalty to the United States. His professional career has blossomed in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. His explanation about his mandatory military service in 2000 was credible. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns, as well as foreign preference concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

## **Conclusion**

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

Noreen A. Lynch  
Administrative Judge