



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



In the matter of:

ISCR Case No. 15-02788

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

July 27, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Under the guideline for Foreign Preference, it was alleged that Applicant possessed a valid passport issued by the United Kingdom (U.K.) after becoming a U. S. citizen. However, he surrendered his U.K. passport to his facility security officer (FSO) in July 2014. He did not use his U.K. passport after becoming a U.S. citizen. Security concerns were also raised under the guideline for Foreign Influence because his mother-in-law and father-in-law are resident citizens of Turkey. Security concerns raised under Foreign Preference and Foreign Influence are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On November 23, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference and Foreign Influence. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on December 23, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 16, 2016, scheduling the hearing for May 18, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. The Government also offered documents pertaining to Turkey, marked Hearing Exhibit (HE) I, for administrative notice. Applicant had no objection to Department Counsel's exhibits, and they were admitted. Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 31, 2016.

Findings of Fact

Applicant denied SOR allegations 1.a and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He has worked as an employee of a government contractor since April 2014. He was born in the U.K. and immigrated to the United States in 2000. He was naturalized as a U.S. citizen in August 2010. Since his naturalization, he considers himself to be solely a U.S. citizen. He pledged in his naturalization oath to renounce all prior citizenship or allegiance to another country. He is willing to formally renounce his U.K citizenship through further action. (GE 1; Tr. 17-19, 21.)

Applicant was issued a U.K passport in April 2007. It was set to expire in April 2017. Applicant used that passport for travels to the U.K. in 2007 through 2010. However, he did not use his U.K. passport after becoming a U.S. citizen. He surrendered his U.K. passport to his facility security officer (FSO) in July 2014. (GE 1; GE 2; AE B; Tr. 18, 23.)

Applicant is married, pending a final divorce decree. (AE C.) He met his wife in 1995 in the U.K. She was raised by her deceased grandmother. Applicant's wife was never close to her parents, who are divorced and reside in Turkey. His parents-in-law were not invited to their wedding. Neither Applicant nor his wife have talked to or seen the father-in-law in the past four years, or the mother-in-law in the past 17 years, due to disagreements. Applicant has never been to Turkey. Applicant's wife has not been to Turkey since prior to their marriage in 1995. Applicant has "absolutely no loyalty to Turkey, the people of Turkey, or [his] parents-in-law." (Tr. 19-20, 25.)

Applicant presented two letters of recommendation: one from his facility security officer, and one from the president of his company. His facility security officer opined that Applicant is a "socially responsible person" who is a valued employee. (AE E.) The president of his company indicated that Applicant is an "integral and well respected employee." (AE F.)

Turkey is a NATO ally that controls the straits linking the Black Sea with the Mediterranean, and it borders Iran, Iraq, and Syria. There have been violent terrorist attacks in Turkey, and the possibility of future terrorist attacks against U.S. citizens and interests there remains high. Additionally, significant human rights problems in Turkey have been identified including interference with freedom of expression and assembly. Authorities have used excessive force to disperse protests and detained demonstrators, and have been alleged to have participated in unlawful killings. (HE I.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a), describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable 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:

(1) possession of a current foreign passport.

Applicant was a citizen of the U.K. He was naturalized as a U.S. citizen in 2010. He used his U.K. passport, issued in 2007, prior to becoming a U.S. citizen in 2010. He retained that valid U.K. passport after becoming a U.S. citizen in 2010. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Two are applicable:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

When Applicant applied for a security clearance and learned of the DoD policies regarding foreign passports, he immediately surrendered his U.K. passport to his facility security officer. He is willing to renounce his U.K. citizenship. AG ¶¶ 11(b) and 11(e) provide mitigation for the security concerns raised by his former exercise of his U.K. citizenship rights.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) 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; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents-in-law are citizens and residents of Turkey. While he and his wife are in the process of divorcing, they were still married and residing together as of the close of the record. The familial relationships with Applicant's parents-in-law could potentially create a risk of foreign inducement, manipulation, pressure, or coercion. Additionally, AG ¶¶ 7(a) and 7(d) require substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups operate within Turkey. Further, the government of Turkey has been identified as committing human rights violations. In this instance, a potential for heightened risk is present. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 8. Two are applicable:

- (a) the nature of the relationship 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.; and

(c) 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.

Applicant demonstrated that there is neither potential for conflict of interest, nor risk of foreign influence or exploitation, because his sense of loyalty or obligation to Turkey and his in-laws is virtually nonexistent. He has not spoken to his father-in-law in more than 4 years, or to his mother-in-law in 17 years. He feels no sense of familial ties or obligation to them. His wife does not communicate with them either. Further, he and his wife are divorcing, so there is little likelihood that his extremely limited ties to his parents-in-law could create a risk for foreign influence or exploitation. He plans to remain in the United States permanently and is proud to be an American. He can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8(a) and 8(c) 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 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. 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 those guidelines, but some warrant additional comment.

Applicant is a mature individual who voluntarily immigrated and chose to become a U.S. citizen. He is respected by his facility security officer and the president of his company. His ties to the U.K are limited and his ties to Turkey are essentially nonexistent. His circumstances create little, if any, potential for pressure, coercion,

exploitation, or duress. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Preference and Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record 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.

Jennifer I. Goldstein
Administrative Judge