



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-08400
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher Esq., Department Counsel
For Applicant: Donna Price, Esq.

09/23/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on November 13, 2013. On May 2, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on May 24, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 7, 2016, and the case was assigned to me on July 20, 2016. On July 28, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 18, 2016. I convened the hearing as scheduled. Government Exhibit (GX) 1 was admitted in evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until August 26, 2016, to enable Applicant to submit additional evidence. She timely submitted AX E. DOHA received the transcript (Tr.) on August 30, 2016.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Turkey. The request and supporting documents were not admitted in evidence but are attached to the record as Hearing Exhibit (HX) II.¹ I kept the record open to enable Department Counsel to submit additional supporting documents, and he timely submitted HX III. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Correction of Transcript

On September 5, 2016, Applicant requested that pages 3, 11, and 45 of the transcript be corrected. The transcript was corrected as requested. (HX IV.)

Findings of Fact²

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d and denied SOR ¶ 2.a. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old employee of a defense contractor. She was born in Turkey, came to the United States in 1996, and became a U.S. citizen in July 2011. She has never held a security clearance.

Applicant completed high school in Turkey. She attended a university in Turkey and received a degree in psychology in July 1994. (AX A-1.) She was highly regarded by her professors for her academic performance and interpersonal skills (AX B-4 and B-5.) Her Turkish degree has been recognized as the equivalent of a bachelor's degree in the United States. (AX A-1; Tr. 83.) She worked as a staff psychologist at an orphanage in Turkey from November 1992 to August 1995. (AX B-2.) Between August 1995 and

¹ HX I is the letter from Department Counsel transmitting copies of GX 1 and HX II to Applicant in accordance with Directive ¶ E3.1.13.

² Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

April 1996, the orphanage hosted 200 Bosnian widows and children as part of a humanitarian project, and Applicant was commended for her superior performance during this project. (AX B-3.) The orphanage was near a U.S. Air Force (USAF) base in Turkey, and she became acquainted with several USAF personnel and their families who volunteered their services at the orphanage. She was impressed with the attention and care the USAF families gave to disabled children, and her experience working with the USAF families made her want to come to the United States. (Tr. 84-85.)

While Applicant was in graduate school, working toward a master's degree in counseling, she married a Turkish classmate. Her husband received a scholarship to come to the United States and obtain a doctorate. She came to the United States with her husband in 1996. At first, she worked in a restaurant, because she was not fluent enough in English to work as a psychologist. During 2000, she completed several courses at an adult education center to improve her computer skills. (AX B-6 through B-10.) She worked in a grocery store from March 2001 to February 2013, where she progressed from being a night janitor to a managerial position and earned several awards. (Tr. 86; AX B-13 through B-18.)

Applicant divorced her first husband in February 2003, and she married a native-born U.S. citizen in April 2003. She divorced her second husband in August 2006.

Applicant first met her current (third) husband when they were friends and neighbors in a close-knit community and she was still married to her second husband. Her current husband was on active duty, married, and had two high-school-age children. His wife passed away in 2005 after suffering from cancer for several years.

Applicant and her current husband began dating in 2007, and they married in 2009. (Tr. 65.) Her current husband comes from a military family. His father retired from the USAF after 27 years of active duty. Applicant's husband enlisted in the Navy after graduating from high school and served as an aviation electronics technician. He applied for a commission, attended college for 30 months, received a degree in electrical engineering, received his commission, and selected Navy intelligence as his specialty. He retired as a lieutenant commander in 2006 after 23 years of service. (AX D.) He immediately began working as a civilian employee of the Navy. He obtained a master's degree and a doctorate in education and now works as an instructional designer for the Navy. (Tr. 57-63.)

Applicant attended a community college in the United States from the fall of 2013 to the spring of 2016. She was commended for academic excellence and received a certification in human resources management. (AX B-19, B-20, B-22, and B-23.) She also took graduate-level courses in special education at a local university, and she took courses in mathematics and computer skills to prepare herself for a possible teaching position. (AX A-1 through A-3; Tr. 88-89.)

In November 2013, Applicant was hired by a defense contractor providing general military training. She first worked in a data entry position and progressed to a

position as an instructional developer. In July 2015, she was laid off due to a reduction in force. She was hired as an instructional designer by her current employer in October 2015. (Tr. 29, 89-90.)

Applicant's second-line supervisor, a retired Navy senior master chief petty officer with a master's degree in education, has contact with Applicant two or three times a week. He testified that she has a reputation for being very reliable and trustworthy. He has no concerns about her vulnerability to foreign influence. (Tr. 26-32.)

Applicant's facility security officer has known Applicant since October 2015. She testified that Applicant has received "positive reviews" from her co-workers and supervisors. She has no concerns about granting Applicant a security clearance. (Tr. 36-41.)

One of Applicant's coworkers testified that Applicant is very trustworthy and a person of high integrity. She testified that she has no concerns about Applicant having access to classified information. She is confident that Applicant would resolve any conflict interest between the best interests of her family and the United States in favor of the United States. (Tr. 46-53.)

Applicant obtained and submitted numerous letters from her husband's children, her coworkers and supervisors and the grocery store, college professors, coworkers and supervisors from her previous job, and coworkers and supervisors from her current job. Her husband's two children, now adults, and their spouses describe her as loving, loyal, giving, ethical, and upright. (AX C-2 through C-5.) In her testimony at the hearing, Applicant spoke proudly of the fact that she has two stepchildren and two grandchildren. (Tr. 98.) Her friends, professional colleagues, and supervisors describe her as upbeat, positive, loving, loyal, generous, hard-working, intelligent, reliable, and trustworthy. They regard her as deeply loyal to the United States and recommend her for a security clearance without any reservations. (AX C-1 and C 6 through C-24.)

Applicant's mother, father, two brothers and her sister are citizens and residents of Turkey. She visited her family in Turkey in 2006, 2010, and 2012. (Tr. 92.) She maintains monthly telephonic contact with her parents and siblings. Their conversations are about their day-to-day activities. After the July 2016 coup attempt in Turkey, she contacted one of her brothers because she was concerned about the safety of her family. (Tr. 108-09.)

Applicant's mother was never employed outside the home. Her father was a musician employed by the Turkish parks and recreation authority. He has been retired for about 30 years. (Tr. 81.) Applicant's sister was married early and never worked outside the home. Her younger brother is an actor in theaters and television. Her older brother is a musician, and he teaches music at a private school. (Tr. 81-82.) Her parents do not know much about her current job, except that she works with computers. (Tr. 95.) Applicant's family members are a minority in Turkey and outside of the cultural mainstream, because they are not Muslim. (Tr. 99-100.)

When Applicant traveled to Turkey in 2012 to visit her family, she used her Turkish passport to enter Turkey to avoid the \$30 visa fee. She used her U.S. passport when she left Turkey. At the time, she did not understand the security significance of using a foreign passport. (Answer to SOR; Tr. 92-93.) She surrendered her Turkish passport to her assistant security manager in March 2014, and he destroyed it. At the same time, she declared her willingness to renounce her Turkish citizenship.³ (Answer to SOR, attachments 5 and 6.)

Turkey is a constitutional republic with a multiparty parliamentary system and a president with limited powers. Turkey joined NATO in 1952 and serves at the organization's vital Eastern anchor, controlling the straits connecting the Black Sea and the Mediterranean Sea and sharing borders with Syria, Iraq, and Iran. Turkish-American friendship dates back to 1831, when the United States established diplomatic relations with the Ottoman Empire. After the founding of the Turkish Republic, the United States established diplomatic relations in 1927, and relationships advanced further in 1947 with an agreement implementing the Truman Doctrine.

U.S. security assistance to Turkey seeks to maximize Turkish cooperation with other countries, especially Afghanistan, and enhance the interoperability of the Turkish military with other NATO forces. The official government documents presented by Department Counsel do not express any concerns about economic or military intelligence by Turkey against the United States.

Domestic and transnational terrorist groups have targeted Turkish citizens and foreigners in Turkey for more than 40 years. In March 2016, the U.S. State Department cautioned U.S. tourists about extremists targeting public venues where people congregate as well as religious sites and high-profile events. On July 26, 2016, it authorized the voluntary departure of family members of employees posted to the U.S. Embassy in Ankara and the U.S. Consulate General in Istanbul, following the attempted coup on July 15, 2016, and the subsequent declaration by the Turkish government of a 90-day state of emergency. The state of emergency has expanded the authority of Turkish security forces to detain individuals without charges from a maximum of four days to a maximum of 30 days. It also has expanded the authority for stopping, searching, and validating identification documents.

Recent human rights problems in Turkey included government interference with freedom of expression, impunity and weak administration of justice, and inadequate protection of civilians. Recently, prosecutors launched an investigation against 58 persons (including journalists, musicians, and actors) for criticizing a state-run news agency for biased coverage.

³ The oath taken by Applicant when she became a naturalized U.S. citizen in July 2011 included the following: "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly to Turkey, of which I have heretofore been a citizen" (AX E.)

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 § 2.

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 and 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 that 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.” 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 SOR alleges that Applicant’s mother, father, two brothers, and a sister are citizens and residents of Turkey (SOR ¶¶ 1.a-1.d). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant:

AG ¶ 7(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

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

AG ¶ 7(a) requires 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. When family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

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, we know 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 United States, 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 United States. 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).

Turkey and the United States have a long history of friendship and cooperation. Turkey does not target the United States for economic or military intelligence. The human rights abuses in Turkey have been actions to suppress dissent, not to gather intelligence. Nevertheless, the risk of violence against Turkish citizens by transnational and insurgent terrorists to undermine, disrupt, or otherwise compromise U.S. interests is sufficient to raise the “heightened risk” in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(a): 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(b): there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant feels affection for her parents and siblings and contacts them regularly. Her recent concern for their well-being after the coup attempt in July 2016 demonstrated the strength of her family ties. The relative obscurity of her parents and sisters is not a meaningful measure of Applicant's vulnerability to indirect coercion or duress exercised through her family members. See ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009). Her brothers' involvement in the arts does not spare them from coercion or duress, as demonstrated by recent investigations targeting musicians and actors who criticized a Turkish news agency.

AG ¶ 8(b) is established. Applicant began feeling affinity for U.S. values and lifestyle when she interacted with military families at the orphanage where she worked as a psychologist from 1992 to 1995. She came to the United States in 1996 and never left, except for three relatively short visits with her family in Turkey. After divorcing her second husband in 2006, she became a permanent U.S. resident, and she became a U.S. citizen in 2011, as soon as she was eligible. She has been married to a retired U.S. Navy officer with an intelligence background for seven years. She has endeared herself to her husband's two children, now adults, and their spouses. She is proud of having two stepchildren and two grandchildren. She has a reputation among friends, family members, supervisors, and coworkers for reliability, trustworthiness, and loyalty to the United States.

AG ¶ 8(c) is not established. Applicant has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline C, Foreign Preference

The SOR alleges that Applicant used her Turkish passport in lieu of her U.S. Passport for travel to Turkey in 2012 (SOR ¶ 2.a). The concern under this guideline 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." A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1).

The security concern under this guideline is not limited to countries hostile to the United States. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

Applicant's possession and use of a Turkish passport after becoming a U.S. citizen establishes AG ¶ 10(a)(1). She was unaware of the security significance of using a foreign passport until she became a contractor employee and submitted a security clearance application. She promptly surrendered the passport for destruction and renounced her Turkish citizenship. Two mitigating conditions are established by the evidence: AG ¶ 11(b) ("the individual has expressed a willingness to renounce dual citizenship"); and AG ¶ 11(e) ("the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated").

Whole-Person Concept

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. In applying 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.

I have incorporated my comments under Guideline B and C in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her foreign family ties and her use of a foreign passport after becoming a U.S. citizen. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Paragraph 2, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge