



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00635

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: Tokay T. Hackett, Esq.

01/12/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He mitigated the alleged foreign preference, the foreign influence, and the drug involvement and substance abuse. Accordingly, this case is decided for Applicant.

Statement of the Case

On September 6, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under Guideline C (foreign preference), Guideline B (foreign influence), and Guideline H (drug involvement and substance abuse).¹ Applicant answered the SOR on October 7, 2016, and requested a hearing to establish his eligibility for continued access to classified information.

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under

On November 20, 2017, a date mutually agreed to by the parties, a hearing was held. Applicant and a character witness testified, and the exhibits offered by the parties were admitted into the record without objection. (Government Exhibits (GE) 1 – 3; Applicant's Exhibits (AE) A – G.) The transcript of the hearing (Tr.) was received on November 30, 2017.

Findings of Fact

Applicant is 38 years old, was born in Turkey, and is a graduate from a Turkish university. He received his Green Card through the lottery in 2007, which is when he took up residence in the United States.² He has been married (2010) and divorced (2015). The primary reason for the divorce was that his then wife wanted to live in Norway, but Applicant wanted to live in the United States.³ He has no children. As mandated by Turkish law, he served in the Turkish military from December 2005 until May 2006. Applicant became a naturalized United States citizen on August 25, 2012. Since 2015, he has been employed by a defense contractor. In that position, Applicant is one of two developers responsible for an electronic document management system.⁴

Under Guideline C, the SOR alleged that Applicant has a current valid Turkish passport and that he used it to travel after he became a United States citizen. Applicant denied this allegation. Although Applicant did disclose in his security clearance application and in his interview that he possessed a valid Turkish passport, he did not use his Turkish passport after he was naturalized. He answered further that the last time he used his Turkish passport was on August 3, 2012, before he became a United States citizen, and for all travel thereafter he used his U.S. passport.⁵ Applicant no longer possesses a Turkish passport.⁶ Applicant renounced his Turkish citizenship in June 2017.⁷

Under Guideline B, the SOR alleged that Applicant's parents are citizens and residents of Turkey and that his sister is a citizen of Turkey. He admitted these allegations, with explanations.⁸ Applicant's parents are in their late 60's, and both are retired. His

Adjudicative Guidelines effective within the Defense Department on September 1, 2006. My decision and formal findings under the revised Guidelines C, B, and H would not be different under the 2006 Guidelines.

² GE 1.

³ GE 2.

⁴ GE 1 and 2. Tr. 20, 31-32.

⁵ SOR ¶ 1.a; Answer ¶ 1.a (and attached travel dates and relevant U.S. passport pages). Applicant first used his U.S. passport in December 2012. Tr. 39. AE G. GE 1 and 2.

⁶ Tr. 32-33.

⁷ Tr. 32-33. AE A.

⁸ SOR ¶¶ 2.a-2.c; Answer ¶¶ 2.a-2.c.

father taught Turkish literature in a government-sponsored high school. His mother was an administrative assistant for a city government. They both receive government pensions.⁹ Aside from their pensions, Applicant's parents have no ties to the Turkish military, security, defense industry, or intelligence service. Applicant visits his parents about every other year. He does not provide his parents with any financial support.¹⁰ When asked what he would do if his parents sought to induce him to compromise his security clearance, Applicant answered that he hoped that would never happen, but if it did, he would seek help from his Government supervisors.¹¹

Applicant's sister is married, lives in Belgium, and works for NATO. She holds Turkish and Belgium citizenships. His sister has never worked for the Turkish government. She has two children, whom Applicant sees when he and his sister visit their parents about every other year.¹²

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency from 2009 to 2012. Applicant admitted that he used marijuana from 2003 to 2012, but he has not used it after May 2012.¹³ At hearing, he testified that he used marijuana five to six times from 2003 to 2012, but never before 2003 and used no illegal drugs other than marijuana. His use was with friends either at their homes or his, but never in public. He never supplied the marijuana. He still remains friends with some of those who used marijuana with him.¹⁴ Applicant submitted a Statement of Intent Not To Abuse Any Drugs in the future, with an acknowledgement that any such use will be grounds for automatic revocation of his security clearance.¹⁵

Applicant was questioned about a driving while intoxicated (DWI) arrest in 2004 that he disclosed in his security clearance application.¹⁶ He was arrested for DWI but pled guilty to reckless driving. Applicant had not been using marijuana when he was stopped for the DWI.¹⁷

⁹ Tr. 34, 43-44.

¹⁰ Tr. 34-35.

¹¹ Tr. 37-38.

¹² Tr. 34-36, 44-45.

¹³ SOR ¶ 3.a; Answer ¶ 3.a. It should be noted that in his security clearance application, Applicant volunteered that he used marijuana "Very Random 5 or 6 times total in 9 years" beginning in 2003, that is, more than seven years before the date of the application. GE 1. Tr. 37. See also Tr 36-37, 50.

¹⁴ Tr. 36-37, 46-50, 53.

¹⁵ AE B.

¹⁶ Tr. 45-46; GE 1. Counsel for Applicant objected to this line of questioning on the grounds of relevance, since it was not alleged in the SOR. I overruled that objection on the grounds that it was relevant to the whole-person concept. Tr. 46.

¹⁷ Tr. 50.

Applicant called a character witness who works for Applicant's employer and manages the network infrastructure and customer service center. The witness has known Applicant for a little over four years and has worked closely with him on a day-to-day basis. In addition to working together, the witness occasionally socializes with Applicant. He characterized Applicant as "very trustworthy" and has no doubts about his "loyalty to the U.S. or his honesty and integrity."¹⁸ On cross-examination, the witness testified that it was during this hearing that he first heard about Applicant's prior use of marijuana.¹⁹ Because he knows other people who have experimented with marijuana, the witness testified that he was not surprised at learning that and that he has seen no evidence that Applicant has a substance abuse problem.²⁰

Applicant also submitted three character reference letters (one from his character witness). Each author has known Applicant in his professional capacity for three years. They praised Applicant as being a "highly professional, trustworthy individual."²¹

Administrative Notice (Republic of Turkey)

In response to the Government's request, to which Applicant did not object, I have taken administrative notice of the following relevant facts about the Republic of Turkey:

Applicant is from the Republic of Turkey, a constitutional republic with a multiparty parliamentary system and a president. The U.S.-Turkey friendship dates to 1831. Turkey is an important U.S. security partner and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952. Turkey is a leader in the Alliance's Resolute Support Mission in Afghanistan and is also a vital member of the Counter-ISIL Coalition. Turkey continues to face a significant terrorist threat from both external and home-grown sources. The current U.S. State Department travel warning for Turkey reflects an increased risk from terrorist groups and the potential for violence against U.S. citizens due to an increase in anti-American rhetoric. The U.S. State Department has also reported a number of significant human rights problems in Turkey, including inconsistent access to due process following the July 15, 2016, coup attempt.²²

¹⁸ Tr. 16-17, 20.

¹⁹ Tr. 22-23.

²⁰ Tr. 23-24. The witness, who is 57, participates in AA and NA meetings and has remained "clean and sober" for over 30 years. He knows the warning signs of substance and alcohol abuse. Tr. 24-26.

²¹ AE C-E. As noted, Applicant's character witness has known Applicant for a little over four years.

²² GE 3.

Law and Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” SEAD-4, Appendix A, ¶ 2(b). See also SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Discussion

Guideline C – Foreign Preference

Under AG C for foreign preference,²³ suitability of an applicant may be questioned or put into doubt because he or she acts in such a way as to indicate a preference for a foreign country over the United States:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

In analyzing the facts of this case, I considered the following potentially disqualifying and mitigating conditions:

AG ¶ 10(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;

AG ¶ 10(c) failure to use a U.S. passport when entering or exiting the U.S.;

AG ¶ 11(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests; and

AG ¶ (d) the exercise of rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen.

Under AG ¶ 10(b), mere possession of a foreign passport is not a disqualifying factor, as long as an applicant “report[s], or fully disclose[s] when required, to an appropriate security official, the possession of a [foreign] passport.” AG ¶ 10(b) does not specifically identify when such disclosure is “required” or who may be “an appropriate security official.” I conclude that Applicant’s security clearance application required him to disclose any current foreign passports, which he did by disclosing his then current Turkish passport. I further conclude that the Office of Personnel Management investigator assigned to Applicant’s case was, under these circumstances, “an appropriate security

²³ AG ¶¶ 9, 10, and 11 (setting forth the concern and the disqualifying and mitigating conditions).

official” to whom Applicant disclosed his Turkish passport. In any event, Applicant no longer holds a valid Turkish passport. Therefore, AG ¶ 10(b) does not apply.

The evidence shows that Applicant did not use his Turkish passport after he became a U.S. citizen. Instead, the evidence shows that he used his Turkish only before he became a U.S. citizen. AG ¶ 10(c) does not apply. AG ¶ 11(d) does apply.

Finally, not only did Applicant express a willingness to renounce his Turkish citizenship, he did so in June 2017. Therefore, AG ¶ 11(c) applies.

Guideline B – Foreign Influence

Under AG B for foreign influence,²⁴ suitability of an applicant may be questioned or put into doubt, because he or she has foreign contacts and interests, including but not limited to, business, financial, and property interests, that may result in divided allegiance:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

In analyzing the facts of this case, I considered the following potentially disqualifying and mitigating conditions:

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

²⁴ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities 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, organizations, or government and the interests of the United States; and

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

Although Turkey has historically been an ally of the United States, the recent political instability in that country and region has become a potential threat to U.S. interests operating there. Accordingly, Applicant's relationship with his parents, who are citizens and residents of Turkey, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Thus, AG ¶ 7(a) is implicated.

While Applicant's interactions with his parents may be infrequent, his relationship with his parents cannot be considered casual. Given Applicant's professional and personal history and the current status of his parents, it is unlikely that Applicant will be placed in a position of having to choose between Turkish interests and those of the United States. Applicant has resided in the United States since 2007, and he has been a naturalized citizen since 2012. He even elected to remain in this country, in spite of the desire of his then wife to move to Norway. Applicant is highly regarded by the professionals with whom he works. His parents are retired and other than receiving a government pension, they have no ties to the Turkish government or the Turkish defense industry. Applicant's relationship with his parents does not present a conflict of interest, because his professional and personal situations are so deeply intertwined with his own safety and self-interest, it is likely that he will resolve any potential conflict in favor of United States interests. Mitigating condition AG ¶ 8(b) applies.

Guideline H - Drug Involvement and Substance Abuse

Under AG H for drug use,²⁵ suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person's ability or willingness to with laws, rules and regulations:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their

²⁵ AG ¶¶ 24, 25 and 26 (setting forth the concern and the disqualifying and mitigating conditions).

intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance....

I have also considered all of the mitigating conditions under AG ¶ 26 pertaining to the illegal use of a controlled substance and found the following relevant:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and, (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant admitted his past marijuana use from 2003 until 2012. Facts admitted by an applicant in an answer to a Statement of Reasons require no further proof by the Government.²⁶ Marijuana is a Schedule I controlled substance, and its possession is regulated by the federal government under the Controlled Substances Act.²⁷ In an October 25, 2014, memorandum, the Director of National Intelligence reaffirmed that the use of marijuana is relevant to national security determinations, regardless of changes to

²⁶ ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings").

²⁷ 21 U.S.C. § 811 *et seq.*

state laws concerning marijuana use.²⁸ AG ¶¶ 25(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Applicant's last use of marijuana was in May 2012. He has been consistent on this point, and that he used it only five to six times at most from 2003 to 2012. As noted above, although Applicant was required to reach back only seven years to disclose his marijuana use, he instead looked back nine years. That candor redounds to Applicant's credit. His most recent use of marijuana was, therefore, over five years ago. In addition, Applicant has submitted a signed and notarized statement disavowing any intent to use any illegal drugs in the future, subject to an automatic revocation of his clearance if that vow is violated. I find that AG ¶¶ 26(a) and (b)(3) apply.

The record does not raise doubts about Applicant's current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²⁹ Accordingly, I conclude that Applicant satisfied his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline C	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B	For Applicant
Subparagraphs 2.a – 2.c:	For Applicant

²⁸ James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>.

²⁹ AG ¶ 2(a)(1)-(9).

Paragraph 3, Guideline H

For Applicant

Subparagraph 3.a:

For Applicant

Conclusion

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

Philip J. Katauskas
Administrative Judge