



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



In the matter of:)
)
) ISCR Case: 16-02875
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

September 6, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of Case

On October 25, 2015, Applicant submitted a security clearance application (SF-86). On November 24, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines C, Foreign Preference, and B, Foreign Influence. (Item 1.) The action was taken under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information*, dated September 1, 2006.

Applicant answered the SOR on December 7, 2016. He admitted all the SOR allegations of the SOR with a comment as to his alleged Foreign Preference. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On July 25, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM),

containing six Items, was mailed to Applicant on July 25, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM on August 11, 2017, received by DOHA on August 16, 2017. He did not object to Items 1 through 6. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on December 18, 2017. Items 1 through 6 are admitted into evidence. Applicant's response to the FORM is marked as exhibit (AppX) A and is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Rulings

In the FORM, the Government requested I take administrative notice of certain facts relating to the Republic of Turkey (Turkey). Department Counsel provided a five-page summary of the facts, supported by seven Government documents pertaining to Turkey, identified as Item 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 53 years old, and is married. (Item 4 at pages 5 and 20.) He has worked for his employer as a "Manufacturing Engineer" since July of 2014. (Item 4 at page 13.)

Guideline C – Foreign Influence

1.a. Applicant admits that after becoming a U.S. citizen in October of 2011, he retained a valid Turkish passport. On August 7, 2017, Applicant "relinquished" this passport to his employer's "Security Service," as evidence by a letter from said Service

(AppX A.) Furthermore, Applicant has been informed that any future request from him to reclaim this passport will be reported to the government. (*Id.*)

Guideline B – Foreign Influence

2.a. Applicant admits that his 80-year-old mother is a citizen and resident of Turkey. (GX 4 at page 22.) “She is a retired teacher.” (GX 5 at page 2.) He contacts his mother about four times a year. (GX 4 at page 23.) In light of Applicant’s limited contact with his elderly retired mother, I find no Foreign Influence here.

2.b. Applicant admits that his 54-year-old brother is a citizen and resident of Turkey. (GX 4 at page 24.) “He is retired from an environmental disposal career.” (GX 5 at page 4.) He contacts his brother about once a year. (GX 4 at page 25.) In light of Applicant’s limited contact with his retired brother, I find no Foreign Influence here.

2.c. Applicant admits that his 71-year-old mother-in-law, and his 68 year old father-in-law, are a citizens and residents of Turkey. (GX 4 at pages 26~27.) “She is a homemaker,” and “he is a retired teacher.” (GX 5 at page 5.) He contacts his in-laws on a monthly basis. (GX 4 at pages 26~27.) In light of Applicant’s fairly limited contact with his elderly homemaker mother-in-law, and his elderly retired father-in-law, I find no Foreign Influence here.

2.d. Applicant admits that he co-owns “inheritance” real estate in Turkey with a total value of about \$10,000. I find that Applicant’s \$5,000 Turkish property interest is far outweighed by his connections in the United States. He has owned a U.S. residence since 2001. (GX 4 at page 10.)

Notice

I take administrative notice of the following facts: There have been violent, terrorist attacks in Turkey, and the possibility of terrorist attacks against U.S. citizens and interests remains high. The most significant human rights problems in Turkey included inconsistent access to due process, governmental interference with freedom of expression, and inadequate protection of civilians.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(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.

Applicant retained a Turkish passport after becoming a U.S. citizen. The evidence is sufficient to raise the above disqualifying condition.

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

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

Applicant obtained a Turkish passport before becoming a U.S. citizen. He has relinquished that passport to his employer's security office. AG ¶ 11(d) provides mitigation with respect to this guideline.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 may be 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.

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

- (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; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

Applicant's mother, brother, and in-laws are citizens of and reside in Turkey. He also has a \$5,000 property interest in Turkey. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (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 United States;

(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;

(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; and

(f) 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.

Applicant's Turkish relatives are either retired, elderly or both. His contact with his retired elderly in-laws is only on a casual monthly basis. Furthermore, his foreign property interest is minimal, at best. I find no Foreign Influence, here.

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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising under the guidelines for Foreign Preference and Foreign Influence.

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

Subparagraphs 2.a. through 2.d.: 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 national security eligibility and a security clearance. National security eligibility is granted.

Richard A. Cefola
Administrative Judge