



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



In the matter of:)
)
) ISCR Case No. 16-03990
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign influence security concerns raised by his girlfriend's Turkish citizenship and her family in Turkey, including her mother's and sister's employment with the Turkish government. Eligibility for access to classified information is granted.

Statement of the Case

On February 15, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 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, 2006.¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on March 3, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 24, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and responded on May 20, 2017, with documents that I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on October 1, 2017.

The Government exhibits identified as Items 1 through 4 and AE A are admitted in evidence without objection. Department Counsel requested that I take administrative notice of certain facts about Turkey. The request was included in the record as Item 5. The request is not admitted in evidence but I have taken administrative notice of the facts contained in Item 5, as summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the SOR allegations. He is a 67-year-old, native-born U.S. citizen and resident. He obtained a high school diploma in 1968, a bachelor's degree in 1975, and a master's degree in 1997. He worked for a defense contractor for 40 years from 1984 until he retired in 2012. He was first granted a DOD security clearance in the early 1980s. In January 2013, he returned to work as a part-time engineer when his current defense contractor contacted him for an employment opportunity. As of May 2017, he had never been married and did not have any children. He has owned his home in state A in the United States since 1984.²

Applicant's girlfriend, age 37, is a native-born citizen of Turkey residing in the United States. Applicant met her in May 2007 when he taught dancing lessons as a hobby to university students in state A. They maintained social contact once yearly. By the summer of 2008, they became close friends and began dating. After she obtained her doctorate degree from the university in 2009, she moved to state B where she worked for another university until 2012, then a museum until August 2016. They maintained a long-distance relationship, and from 2009 through August 2016, they telephoned each other daily and visited each other two to three times monthly. She then moved to state C. As of May 2017, she worked as a professor for another university.³

She remains in the United States on a work visa that her employer renews biannually to annually. She hopes to become a tenured professor and thereby eligible for a green card. Applicant stated in July 2016 that he planned to remain a bachelor as he did not fully trust his girlfriend, but he enjoys ballroom dancing and spending time

² Response to the SOR; Items 3, 4; AE A.

³ Response to the SOR; Items 3, 4; AE A.

with her. He did not discuss his personal finances with her. In May 2017, Applicant stated that he had seen her in person only five times since August 2016.⁴

Applicant stated that while his girlfriend knows he designs jet engines, she has not inquired, nor has he volunteered, specific details about his work. She is neither aware that he has held a security clearance, nor has she ever asked him related questions. She has never attempted to recruit him to work as a foreign agent or asked him to commit espionage. He would immediately report any type of inappropriate questioning or request for classified information by her to his security personnel.⁵

Applicant's girlfriend's parents and sister are citizens and residents of Turkey. Her father, in his mid-sixties, is a teacher at a private high school. Her mother, in her early sixties, and her sister, in her early thirties, both work in economics for the Turkish government. Applicant has vacationed in the United States with his girlfriend and her family, during which times they split the expenses equally. He has never offered or been asked to provide any financial support to them. They have neither inquired nor has he volunteered information to them about his work. He had not traveled to Turkey as of May 2017, and he had no future intention to do so. He otherwise has no direct contact with them, so he does not consider them to be close foreign national contacts and he is not bound to them by obligation or affection.⁶

Applicant stated that he has deep and longstanding relationships and loyalties in the United States. While his parents are deceased, he has four brothers, three sisters, extended family members, and close friends who are native-born U.S. citizens and residents. In addition to the home that he has owned since 1984, he also owns a second property in the United States that he purchased to prevent a close friend from losing it to foreclosure. He has never occupied that property, and his friend is repaying him. During his retirement, he financially supported himself with retirement income and savings. He is currently financially supported by retirement income, social security benefits, and \$1.5 million in stocks. He enjoys skiing, ballroom dancing, completing home projects, participating in church activities, and performing community service. He stated that he has complied with all reporting requirements, to include reporting his girlfriend and her family on his February 2016 security clearance application and discussing them during his July 2016 interview. He stated that he would resolve any conflict of interest in favor of the United States.⁷

⁴ Response to the SOR; Items 3, 4; AE A.

⁵ Response to the SOR; Items 3, 4; AE A.

⁶ Response to the SOR; Items 3, 4; AE A.

⁷ Response to the SOR; Items 3, 4; AE A.

Turkey

There have been violent, terrorist attacks in Turkey, and the possibility of terrorist attacks against U.S. citizens and interests remains high. The U.S. Department of State updated its travel warning in January 2017 to warn U.S. citizens to carefully consider the need to travel to Turkey and to avoid travel to southeast Turkey due to the persistent threat of terrorism in that area; it also placed restrictions on official travel by U.S. Government personnel to Istanbul and certain areas in southeast Turkey. By virtue of its location, the presence of international transport hubs on its territory, and its long border with Syria and Iraq, Turkey is the main transit route for foreign terrorist fighters into Syria and Iraq.

The most significant human rights problems in Turkey in 2016 included inconsistent access to due process, government interference with freedom of expression, and inadequate protection of civilians. Other human rights problems included overcrowding and substandard conditions in prisons. The government fired more than 3,000 members of the judiciary, creating an atmosphere of fear that further limited judicial independence and complicated or delayed court proceedings. The government did not effectively protect women, children, members of ethnic and religious minorities, and lesbian, gay, bisexual, transgender, and intersex persons from threats, discrimination, and violence.

In 2015, the U.S. Department of State also noted abuses of religious freedom by the Turkish government. These included its refusal to recognize the places of worship of Alevi Muslims and to exempt Alevi children from compulsory Sunni Islamic instruction; its failure to recognize the right to conscientious objection to military service; its continued prosecution of individuals for openly disrespecting Islamic beliefs; and its continued limitation on the rights of non-Muslim minorities.

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 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, these guidelines are applied in conjunction with the factors listed in 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 Executive Order 10865 provides that 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 B, Foreign Influence

The security concern 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. The following 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
- (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.

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).

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.

Applicant's girlfriend is a Turkish citizen, and her parents and sister are citizens and residents of Turkey. Her mother and sister work for the Turkish government. Her family in Turkey creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). While Applicant saw his girlfriend in person only five times between August 2016 and May 2017, he has nonetheless maintained his relationship with her. Though his contact with his girlfriend's family is limited, he vacations with them in the United States. AG ¶ 8(c) is not established.

Applicant complied with reporting requirements, to include reporting his girlfriend and her family on his February 2016 security clearance application and discussing them during his July 2016 interview. AG ¶ 8(e) applies.

Applicant is a native-born U.S. citizen and resident. His immediate and extended family and close friends are also native-born U.S. citizens and residents. He owns two properties in the United States, including the home he has lived in since 1984. He is currently financially supported by retirement income, social security benefits, and \$1.5 million in stocks. As of May 2017, he had never traveled to Turkey and he had no future intention to do so. In July 2016, he stated that he planned to remain a bachelor as he did not fully trust his girlfriend, but he enjoys ballroom dancing and spending time with her. Applicant met his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

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 have incorporated my comments under Guideline B in my whole-person analysis. Applicant's ties to Turkey are outweighed by his more substantial ties in the United States. I am confident that he will resolve any conflict of interest in favor of the United States.

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

Formal Findings

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

Paragraph 1, Guideline B:	For Applicant
---------------------------	---------------

Subparagraphs 1.a-1.b:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge