



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



In the matter of:)
)
) ISCR Case No. 17-00219
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

March 2, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Statement of the Case

On March 13, 2017, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raised security concerns under Guidelines B and C.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on April 20, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

August 14, 2017, scheduling the hearing for September 27, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection (Tr. 16, 54.), and Hearing Exhibit (HE) 1 for Administrative Notice. Applicant testified on his own behalf and called one witness. Applicant presented Applicant Exhibits (AE) A through V, all of which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 12, 2017.

Procedural Rulings

At the hearing, Department Counsel 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, identified as HE 1. The documents provide elaboration and context for the summary. Applicant did not object to the Government's request. Hence, I take administrative notice of the facts included in the Government administrative notice request. They are limited to matters of general knowledge, not subject to reasonable dispute and are set out in the Findings of Fact.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b., and 2.a. He denied SOR allegations ¶¶ 1.a., 1.c, and 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 36-year-old employee of a defense contractor. He has worked for his employer for two years. He holds a master's degree from a U.S. university. (GE 1; GE 2; AE C; AE L; Tr. 56.)

Applicant was born in Turkey and immigrated to the United States in 2003. He was naturalized as a U.S. citizen in 2011. He has been married to his wife for six years. They met in the United States, and she is a naturalized U.S. citizen. They have one daughter, who was born in the United States and is a U.S. citizen. He has raised his daughter as an American and she only speaks English. Applicant's sister-in-law and brother-in-law are also U.S. citizens. (GE 1; GE 2; AE B; Tr. 32-35, 57-58.) Applicant and his wife have visited Turkey four times since their marriage. On their visits, they avoid eastern Turkey, which has been involved in political turmoil and insurgent uprisings. (Tr. 41-44.)

Applicant and his wife own real estate in the United States valued at approximately one and a half million dollars. (AE F; Tr. 29.) It consists of a home and two rental properties. (AE F; Tr. 60-63.) They have over 1 million dollars in savings and retirement accounts. They own no property or any other assets in Turkey. (AE P; AE Q; Tr. 29.) Applicant testified:

[E]verything we have and also the emotional bonds that we have are -- everything is in the United States. We don't have any bonds or any properties, any assets in Turkey. My wife and I are proud to be American

citizens and we are preparing our child's future here in the United States. I'm thankful for living and working in the United States because this country has provided a lot for me and for my family. Thus, I have undivided loyalty to the United States. I recognize the privileges and, more importantly, the liabilities of having secret clearance. Throughout my life, I have never had issues with the law. I have always had great achievements in my career. There is nothing in my mind that would impact my principles, make me disloyal to the United States. (Tr. 51-52.)

Applicant's friends, coworkers, and manager wrote letters on Applicant's behalf. They describe Applicant as a high performing and dependable employee. He is known as thoughtful, discrete, loyal, fair, honest, and trustworthy. (AE A.) He has received monetary awards for his excellent performance. (AE N.) His performance appraisals reflect that he successfully completes his goals. (AE N.) He holds two patents for innovations he created. (AE I.) He is also active in his community and supports the local YMCA program. (AE J.)

Guideline B - Foreign Influence

Applicant's mother and father are citizens and residents of Turkey. They reside in both the United States and Turkey, traveling frequently between the two nations. His mother is 67 years old and his father is 71 years old. His father is retired from a private company. His mother is a retired teacher. Both parents get a small pension from the Turkish government. Applicant communicates with his mother once or twice a week and his father once or twice per month. Neither are affiliated with the Government or military in Turkey. Applicant's father travels to Turkey for health care treatments and stays approximately three months on those trips. Applicant's father has a tourist visa to visit the United States, and his mother is a permanent resident green card holder. Applicant testified that his father will be applying for a green card within the next year. (GE 2; Tr. 24-25, 38-40, 63-69, 74.)

Applicant's sister is a citizen and resident of Turkey. She is 39 years old and is a homemaker. Her husband owns a private textile company. Applicant communicates with his sister once or twice per year. (GE 1; GE 2; Tr. 26, 69.)

Applicant's mother-in-law and father-in-law are citizens of Turkey. They permanently reside in the United States as green card holders, and have no plans to return to Turkey. They own no property in Turkey. They intend to become U.S. citizens as soon as they are eligible. His mother-in-law resides near-by, with his sister-in-law. His father-in-law resides out of state with his brother-in-law. Applicant communicates with them once or twice per year. Applicant's wife frequently communicates with her mother by phone or through internet calls. (GE 1; GE 2; Tr. 27-28, 36-39, 46-48.)

Guideline C – Foreign Preference

After becoming a naturalized U.S. citizen in August 2011, Applicant exercised his Turkish citizenship by voting in Turkish elections in June 2015. He did so because he

believed that Turkey was leaning in a political direction that was contrary to U.S. democratic principles and interests. It was a “one-time act,” as Applicant had never voted in a Turkish election before. (Tr. 31, 72-73.) They wanted to support free speech and freedom of belief. (Tr. 44.) He and his wife have no plans to vote in future Turkish elections. (Tr. 31, 73.) They now only vote in U.S. elections. (Tr. 45.)

Applicant surrendered his expired Turkish passport to his facility security officer. (AE G.) He promised that he would not obtain another foreign passport. (AE D; Tr. 74-75.) Applicant is also willing to surrender his Turkish citizenship. He has not completed his compulsory military service in Turkey and he has no intent to do so. He believes that if he does not complete that service before he turns 40, he automatically forfeits his Turkish citizenship. (Tr. 75-76.) He has registered with the selective service system in the United States. (AE H.)

Notice

I take administrative notice of the following facts regarding the Republic of Turkey. Turkey is a constitutional republic with a multiparty parliamentary system and a president. (HE 1 at enclosure 6.) President Obama noted Turkey is a “strong NATO ally, a critical member of the coalition against ISIL.” (HE 1 at enclosure 5.) However, there have been violent terrorist attacks in Turkey, and the possibility of terrorist attacks against U.S. citizens remains high. The U.S. State Department has issued a travel warning advising citizens to avoid traveling to southeast Turkey due to the persistent threat of terrorism. A 2016 coup attempt led Turkish authorities to declare a state of emergency and permitted suspension of due process protections. It also permitted security forces to detain individuals without charge. Further, significant human rights problems exist. (HE 1; AE T; AE U; AE V.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

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. Three 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;
- (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; and
- (e) shared 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has ongoing and commendable familial connections with his parents, parents-in-law, and sister who are citizens of Turkey. His sister resides in Turkey and his parents reside in both Turkey and the United States. Further, his wife is close to her parents. While his parents and sister do not live in southeastern Turkey, which is an area where terrorism and violence are prevalent, there is still a potential heightened risk associated with these family members relating to those threats and the human rights abuses pervasive 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; and
- (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.

It is unlikely that Applicant's relationship with his parents, parents-in-law, or sister would cause him to 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. His sister and parents do not reside in southeastern Turkey, where the risks of terrorism are high. His parents-in-law are permanent residents of the United States. Further, Applicant expressed deep longstanding ties to his chosen country, the United States. All of Applicant's assets are located in the United States and he does not plan to return to Turkey. He and his wife are active in their community and are proud to be raising their daughter as a U.S. citizen. They have extended family in the United States. Applicant can be expected to resolve any conflict of interest in favor of the U.S. interests. The above two conditions fully apply.

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:

(d) participation in foreign activities, including but not limited to:

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Applicant voted in a Turkish election in 2015. However, he did not take that action in an attempt to serve the Turkish government's interests, but rather to promote the U.S. national security interests. The evidence is insufficient to raise the above disqualifying condition, or any security concerns under this guideline.

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

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

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

Applicant has surrendered his expired Turkish passport to his FSO. He has no intention of obtaining another Turkish passport or of voting in a Turkish election again. He is willing to renounce his Turkish citizenship and has not completed the required compulsory military service needed to retain it. Further, his vote in the Turkish election did not present a national security concern. Any potential concern under this guideline has been mitigated by the evidence.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent 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(d) were addressed under those guidelines. Applicant has the unqualified support of those who know him and have observed his work performance. Furthermore, he can be expected to resolve any conflict of interest in favor of the United States due to his longstanding emotional and financial ties here. 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 Influence and Foreign Preference 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 the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline C:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge