



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



In the matter of:

ISCR Case No. 17-03749

Applicant for Security Clearance

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

11/01/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the foreign preference security concerns related to his use of a foreign passport. He did not mitigate the foreign influence security concerns arising from his family connections in Turkey. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

**History of Case**

On March 21, 2016, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). On November 15, 2017, 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). 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 effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 22, 2017, and requested his case be decided by an administrative judge on the written record without a hearing. (Item 2) On April 24, 2018, 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 and received by him on May 14, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant did not submit material in refutation or file objections to the Department's evidence. Items 1 through 5 are admitted into evidence. On July 30, 2018, the Defense Office of Hearings and Appeals assigned the case to me.

I took administrative notice of the facts concerning Turkey that are set forth in the Government's Request for Administrative Notice, which is marked as Item 6 and included in the record.

### **Findings of Fact**

Applicant admitted all allegations in the SOR. Those admissions are incorporated into the following findings of fact:

Applicant was born in Turkey in 1983. He immigrated to the United States in 1998, at age 15, and lived with his parents, who previously immigrated here from Turkey. He graduated from high school in 2007 and became a U.S. citizen in 2008. He subsequently worked for his father's business and owned two restaurants in the United States. (Item 3, Item 4)

In 2011, Applicant married his wife in Turkey. She is a citizen and resident of Turkey. After their marriage, he brought his wife to the United States. She had difficulty adjusting to life in the United States, and they returned to Turkey in 2012. In 2013, his daughter was born in Turkey. She is a dual citizen of Turkey and the United States. Applicant subsequently returned to the United States without his wife or daughter. He and his wife divorced in 2015 through the Turkish court.<sup>1</sup>

Upon his divorce, the Turkish court ordered Applicant to pay \$500 a month for alimony and child support. In order to facilitate those payments, Applicant opened a bank account in Turkey. He maintains about \$500 in it. Applicant travels to Turkey every six months to see his daughter. (Item 2)

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<sup>1</sup> Appellant's Answer, e-QIP, and Counterintelligence-Focused Security Screening Questionnaire contain inconsistencies regarding the following dates: the date of Applicant's marriage in Turkey; the date he and his wife returned to the United States after their marriage; the date on which they went back to Turkey after the marriage; and the length of time he remained in Turkey with his wife and child before he returned to the United States alone.

After moving back to Turkey in 2012, Applicant provided consulting services to a relative's restaurant business in Turkey until 2017. While working there, he paid into the Turkish social security agency and a health insurance plan. Appellant remained on his relative's payroll after he returned to the United States for a year or two, although he provided minimal services. Applicant wanted to continue contributing into social security and an insurance health plan for his wife and daughter in Turkey. (Item 2)

Applicant has retained Turkish citizenship since becoming a U.S. citizen in 2008. He renewed his Turkish passport in 2013, and it will expire in 2019. He said that each time he enters or exits "Turkey or the United States . . . I hand both of my passports to the officials to be on the safe side." (Item 2) He traveled to Turkey 16 times subsequent to becoming a U.S. citizen. He used his Turkish passport to avoid travel fees in and out of Turkey. (Item 2, Item 3) During a May 2017 interview, he said he relinquished his Turkish passport to his employer. (Item 5) In his November 2017 Answer he said he would relinquish his Turkish citizenship and passport, if it prevents him from obtaining a security clearance. (Item 2)

Applicant's parents were born in Turkey. They are dual citizens of Turkey and the United States. They resided in the United States from at least 1998 until 2017, when they returned to Turkey to retire. There is no information regarding how often Applicant is in contact with them. (Item 2, Item 4) Applicant has two siblings who were born in Turkey. Both his sister and brother are U.S. citizens and residents. (Item 3)

Applicant's maternal grandparents are citizens and residents of Turkey. (Item 2) His uncle is a citizen and resident of Turkey. He was conscripted into military service and served until he retired. Applicant has annual contact with these relatives. The last time he had contact with his uncle was in-person in 2017. (Item 3, Item 4)

## **Turkey**

I take administrative notice of the following facts: Turkey is a constitutional republic with a multiparty parliamentary system. The president's powers are not precisely defined and his influence depends on his personality and political weight. Its citizens and foreigners have been targeted by domestic and transnational terrorist groups for many years. There have been terrorist bombings in the past five years resulting in deaths. The targets have been religious, government, political, tourist, and business locations throughout the country. In addition, leftist and Islamic terrorist groups have targeted U.S. and Western interests. The potential for future terrorist attacks remains high. Its judiciary is declared to be independent, but is in need of reform. There are significant human rights abuses with respect to detainees and personal freedoms. The U.S. State Department warns citizens to reconsider travel to Turkey due to the presence of terrorism. (Item 1)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory

explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's national security 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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 eligibility for access to classified information or assignment in sensitive duties. 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, "Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case. Three are potentially applicable:

- (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;<sup>2</sup>
- (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
- (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.

Although Turkey is a constitutional republic with a multiparty parliamentary system, it engages in human rights violations and there is a substantial risk of injury due to the activities of terrorists. U.S. citizens are warned about traveling there. These facts place a significant burden of persuasion on Applicant to demonstrate that his ongoing connections and relationships with family members, who are resident citizens of Turkey, do not create a heightened risk of foreign influence or pose a security risk. Applicant offered insufficient evidence to the contrary with respect to those relationships. Applicant owns a bank account in Turkey that generally has a \$500 balance in it. From

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<sup>2</sup>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, this 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).

approximately 2012 to 2017, Applicant provided professional services to a relative in Turkey. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a), 7(b), and 7(f) shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (a) the nature of the relationship 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 did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government, and those of the United States as a consequence of ongoing and long-term relationships with his daughter, parents, grandparents, and uncle, who are citizens and residents of Turkey. In fact, he has frequently traveled to Turkey since becoming a U.S. citizen in 2008. After the birth of his daughter in 2013, he visits her every six months, further indicating his close and ongoing connections to his family. He also maintains some contact with his uncle, a retired member of the Turkish military. There is insufficient evidence demonstrating that Applicant has deep and longstanding relationships and loyalties in the United States, such that if any conflict of interest arose involving his family members in Turkey, especially his daughter, Applicant could be expected to resolve it in favor of U.S. interests. Accordingly, Applicant failed to establish mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

Applicant maintains a small amount of money in a bank account in order to facilitate child support and alimony payments. As of 2017, he no longer contributes into the Turkish government's benefit programs through his relative's business. He established mitigation under AG ¶ 8(f) as to the allegations in SOR ¶¶ 2.d and 2.e.

## **Guideline C: Foreign Preference**

AG ¶ 9 sets out the foreign preference security concerns:

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.

AG ¶ 10 lists the conditions that could raise a security concern under this guideline. One may be disqualifying in this case:

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

Since becoming a U.S. citizen in 2008, Applicant presented both his Turkish and U.S. passports to officials when exiting and entering the United States and Turkey. In May 2017, he relinquished his Turkish passport to his employer. There is insufficient evidence to establish the above disqualifying condition. This guideline is found in Applicant's favor. A discussion of mitigating conditions is not necessary.

## **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.

According to 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 facts and circumstances surrounding this case. Applicant has been a naturalized U.S. citizen since 2008 and maintains strong connections to Turkey. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. However, his ongoing relationships with close relatives, especially his young daughter, who are resident citizens of Turkey, create significant and ongoing potential for pressure, coercion, exploitation or duress.

After weighing the disqualifying and mitigating conditions, and all other facts and circumstances in the context of the whole-person, I conclude Applicant did not meet his burden to mitigate the foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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:	AGAINST APPLICANT
Subparagraphs 2.a to 2.c:	Against Applicant
Subparagraphs 2.d and 2.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility is denied.



SHARI DAM  
Administrative Judge