

On April 23, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, with revised Adjudicative Guidelines implemented on September 1, 2006, issued a Statement of Reasons (SOR) based on the foreign influence guideline (Guideline B) and the foreign preference guideline (Guideline C) indicating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On May 2, 2007, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on July 20, 2007. On August 20, 2007, this case was set for hearing on September 12, 2007. The Government submitted two exhibits (GE 1-2), and requested me to take official notice of government documents. Those documents have been identified on pages 15 through 17 of the transcript (Tr.). Applicant submitted 3 exhibits (AE A-C)¹ Testimony was taken from Applicant. The transcript was received on September 26, 2005.

FINDINGS OF FACT

The SOR raises a security concern under foreign influence (Guideline B) based on the fact that Applicant's 64-year-old brother, employed as a sound engineer for a private firm, is a resident citizen of Turkey. The SOR also raises a security concern under foreign preference (Guideline C) based on Applicant's exercise of dual citizenship, his use of his Turkish passport, his renewal and use of his Turkish passport, and his voting in a Turkish election in 2002 after he became a naturalized citizen and resident of the United States (U.S.).

Applicant is a 51-year-old software developer who was born in Turkey, and immigrated to the U.S. in 1980 on a green card and student permit. He has been employed as a software developer by his current employer since February 2005.

Applicant was born in Turkey in August 1956. His father, who died when Applicant was 15 years old, was a mathematics professor for a Turkish technical university. When Applicant was 24 years old, he immigrated to the U.S. for graduate studies in engineering. Two years later while in a U.S. graduate school in 1982, he met his wife, a student in the same field. Applicant received a Masters of Science degree in September 1984 and a Ph.D computer engineering in May 1989. During the time he was studying for both degrees, he taught undergraduate and graduate courses. He also conducted research for a large corporation, and worked as a research and teaching assistant.

After deciding to leave the teaching profession in 1993, Applicant worked for several international or U.S. companies as a software engineer or systems engineer. He received his U.S. citizenship in July 2000, and his wife received her citizenship in August of the same year. He obtained a U.S. passport in August 2000.

¹ AE A (program manager's character statement) was admitted in evidence and turned over to Applicant so he could make copies of the exhibit for the parties. Applicant faxed the exhibit to Department Counsel shortly after the hearing. Department Counsel provided the exhibit to me on September 13, 2007.

When he completed his security clearance application (SCA) in February 2005, Applicant disclosed his dual citizenship and possession of a Turkish passport that was issued to him in July 2001, with an expiration date of January 2006. Applicant explained on his SCA that use of the Turkish passport to visit his family enabled him to avoid fees and bureaucracy.

Applicant was interviewed about his dual citizenship by an investigator in May 2006. His chief reason for retaining the passport was to see his elderly mother and his brother with high-blood pressure. Applicant also noted his close, personal relationship with his mother and his brother. While his mother passed away in May 2007, Applicant still maintains a close relationship with his brother, calling him about once a month. As noted in the previous paragraph, Applicant used his Turkish passport to save time, fees, and lengthy steps through the customs division. He also mentioned that it was easier for citizens, as opposed to non-citizens to receive everyday services in Turkey. As an example, Applicant explained that if his mother had to be placed in a nursing home, the appropriate Turkish officials would be more amenable to making arrangements with citizens of Turkey than non-citizens. Applicant extended his Turkish passport in June 2006, and indicated he intends to keep his Turkish passport due to his family situation. Applicant told the investigator he had traveled to Turkey on several occasions to visit his mother and brother. The dates of travel were 1997, twice in 2000, 2001, 2002, and 2004. Applicant made two additional trips in 2006, and May 2007, when his mother passed. He stated he would be willing to give up his dual citizenship as of a condition of receiving a security clearance. Later in the interview, Applicant stated he would renounce his passport if it was a condition to receiving a security clearance.

The circumstances under which Applicant voted in a Turkish election in 2002 occurred when he was about to exit Turkey through the airport. The Turkish government set up voting booths in locations at the airport where individuals passed on their way out of the country. Applicant thought there was a law where all Turkish citizens had to vote. While he acknowledged poor judgment by voting, he was not working at a job requiring a security clearance.

The corporate security officer for Applicant's employer testified that her review of the human resource records reflects Applicant is trustworthy, dependable, and very conscientious about security, even though he does not have a security clearance. He has always advised her about his trips to foreign countries, and taken the requisite security briefings addressing travel abroad.

Applicant's program manager has known Applicant professionally since February 2005. He wrote a character statement indicating that he considers Applicant a model employee based on his technical competence and willingness to assist other employees in completing projects in a timely fashion.

Applicant and his wife are naturalized citizens, and both have pledged allegiance to the U.S. They love to travel and enjoy the cultural activities the U.S. has to offer. He and his wife are socially conscious while showing concern for the less fortunate. He is the typical naturalized citizen who has family members abroad that he goes to visit. None of his family members have ever been employed by the Turkish government. Applicant opines that after reviewing his contributions to the U.S. over the last 25 years in the context of the whole person model, he should receive access to classified information.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Foreign Influence (FI)

Foreign contacts and interests may be a security concern if the individual has divided loyalties or interests, or is vulnerable to pressure by any foreign interest. The identity of the foreign country should be considered to determine whether it is known to target American citizens or is associated with terrorism.

Foreign Preference (FP)

When an individual acts in a way that indicates a preference for a foreign country over the U.S., then he or she may make decisions that are harmful to the U.S.

CONCLUSIONS

Foreign Influence (FI)

A security concern is raised under the foreign influence guideline when the individual’s foreign contacts, ties and/or financial interests may be manipulated to help a foreign entity in a way that is not in U.S. interests, or is vulnerable to pressure by any foreign interest. Applicant’s brother

is a resident citizen of Turkey. Applicant has traveled to Turkey in 1997 or 1998, twice in 2000, 2001, 2002, 2004, and/or 2006.² FI disqualifying condition (DC) 7.a. (*contact 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*) applies. Applicant has close contacts with his brother as he had with his mother before she passed away in May 2007. Applicant maintains that relationship through monthly telephone calls because he is concerned about his brother's health.

The impending legal matters that Applicant and his brother must address should also be considered a reason for the close relationship. When their mother died in May 2007, she left two houses (the house where she lived and also a summer house) to both sons. Applicant indicated he is entitled to half of that real estate or approximately \$150,000.00. I conclude the monetary value of the real estate to be a substantial financial interest, and even though the inheritance is unalleged in the SOR. FI DC 7.e. (*a substantial business, financial, or property interest in a foreign country, or in a foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign exploitation*) applies. The government has met its burden of establishing Applicant's heightened risk for foreign influence.

Once the government's initial burden is established by substantial evidence, the burden shifts to the applicant to establish through extenuation, mitigation, or changed circumstances that he or qualifies for security clearance access. The heightened risk of foreign influence also depends on the nature of the country involved. The Constitution of Turkey defines a parliamentary form of government that recognizes human rights and prohibits torture or ill treatment. In 1947, Turkey's close relationship with the U.S. was enhanced by the Truman doctrine to assist the country regain its footing economically and militarily after World War II. Between 1950 and about 1978, the country was unstable politically and saw weak coalition governments come and go. Turkey joined the North Atlantic Treaty Organization (NATO) in 1952. Turkey is not a sponsor of terrorism and has consistently supported counterterrorism and reconstruction efforts in the region. However, a terrorist group located in southern Turkey continues to terrorize certain locations in the northern part of the country with the objective of destabilizing the government. There is no indication the terror group uses terrorism to gain access to U.S. information.

Applicant's evidence in mitigation and explanation is sufficient to meet FI mitigating condition (MC) 8.a. (*the nature of the relationships with foreign persons, the country in which those 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 U.S.*) The record shows no connection between Applicant's brother and a foreign government, and it is unlikely that pressure could be placed on him or through him to Applicant. Further, Turkey is a friend not foe of the U.S., as demonstrated by the country's unwavering action against terrorism. Turkey is closely aligned with the U.S. in joint political and economic objectives. While I recognize that friendly nations can still engage in collection of economic and intelligence information through coercive and non-coercive means, Turkey is not an active collector of U.S. economic or intelligence information.

² As noted in Findings of Fact, Applicant also traveled to the country in May 2007 for the funeral of his 85-year-old mother.

Though Applicant is subject to a heightened risk of foreign influence under FI DC 7.e., he has dramatically reduced the risk to a reasonably safe level through the testimony of his corporate security officer who lauded Applicant's continuing compliance with all security rules and regulations. Applicant's security vigilance persuades me to conclude his inheritance will not lead to a conflict of his security responsibilities or be used effectively to manipulate or pressure him. FI MC 8.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*) applies to overcome FI DC 7.e. While Applicant has taken numerous trips to Turkey since the late 1990s, he has fully advised his corporate security officer of the trips since he has been employed with his current employer, and has always undergone the appropriate briefings before and after his trips. I find for Applicant under subparagraph 1.b. Under the specific guidelines and the whole person model, Applicant has met his burden of persuasion under the FI guideline.

Foreign Preference (FP)

A security concern is raised by Applicant's exercise of dual citizenship. He used his Turkish passport instead of his U.S. passport in 2001 and 2007 after becoming a U.S. citizen and receiving his U.S. passport in 2000 because it enables him to save time and circumvent bureaucracy in Turkey. In his background investigation and at the hearing, he stated he used his Turkish passport because of the health situation of his mother and brother. Though he also stated he would renounce his Turkish citizenship and his passport if it were a condition of obtaining a security clearance, he persuaded me at the hearing that he intended to keep his passport. When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interest of the U.S. FP DC 10.a. (*exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member*) 1. (*possession of a current foreign passport*) applies. Because Applicant voted in a Turkish election in 2002 after becoming a U.S. citizen in 2000, FP DC 10a.7. (*voting in a foreign election*) also applies.

To assuage the concerns raised by his dual citizenship, Applicant has repeatedly stated his allegiance is unequivocally with the U.S. Favorable consideration has been given to his 27-year residence in the U.S., to his completion of two post-graduate degrees, to his expressed allegiance for the U.S., and to his faithful compliance with security rules and regulations. However, Applicant's possession and use of his Turkish passport (that does not expire until January 2011) after he received his U.S citizenship and passport in 2000 removes FP MC 11.a (*dual citizenship is based on parents' citizenship or birth in a foreign country*) from consideration. Though Applicant has stated he would give up his dual citizenship, the conditional terms of his relinquishment carry no probative weight under FP MC 11.b. (*the individual has expressed a willingness to renounce dual citizenship*) because he would not be giving up his dual citizenship under his own volition. In addition, Applicant has since decided he wants to retain his Turkish passport.

FP MC 11.c. (*exercise of the rights, privileges or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor*) does not apply as Applicant used his Turkish passport in 2006 and May 2007, at least six years after he received his American citizenship. FP MC 11.d. (*use of a foreign passport is approved by the competent security authority*) does not apply as no entity has approved Applicant's possession and use of his foreign passport. FC MC 11.f. (*the vote in a foreign election was encouraged by the U.S. government*) is also

inapplicable as there is no evidence Applicant's voting in 2002 was encouraged by the U.S. Though Applicant notes that the vote occurred before he applied for a security clearance, the action constituted the exercise of a privilege of a foreign country in direct conflict with terms and conditions of Applicant's American citizenship.

FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) was added to the Foreign Preference guideline as a part of the revised Guidelines in September 2006. The mitigating condition is a codification of the 'Money Memorandum' issued by the Assistant Secretary of Defense for Command, Control, Communication, and Intelligence in August 2000 addressing the consequences of possessing a foreign passport. Applicant's favorable indicators of preference for the U.S. cannot excuse the requirement imposed by 'Money Memorandum' indicating that "consistent application of the guideline requires that any [security] clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States government." Subparagraphs 2.a. through 2.e. are found against Applicant. The FP guideline is found against Applicant.

Having addressed the specific disqualifying and mitigating conditions, the circumstances of this case, including the favorable evidence outlining Applicant's security vigilance and his job performance, shall now be examined in the context of the whole person concept of the Directive. The foreign influence guideline is found for Applicant as it is apparent through Applicant's statements that he is generally committed to the interests of the U.S. against other countries. Conversely, his current possession of and intention to use his Turkish passport has not been mitigated under whole person concept due to the likelihood he will continue to use a benefit of a foreign citizenship that American citizens are not entitled to. The FP guideline is found against Applicant.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B): FOR THE APPLICANT.

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| Subparagraph 1.a. | For the Applicant. |
| Subparagraph 1.b. | For the Applicant. |

Paragraph 2 (Foreign Preference, Guideline C): AGAINST THE APPLICANT.

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| Subparagraph 1.a. | Against the Applicant. |
| Subparagraph 1.b. | Against the Applicant. |
| Subparagraph 1.c. | Against the Applicant. |
| Subparagraph 1.d. | Against the Applicant. |
| Subparagraph 1.e. | Against the Applicant. |

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Paul J. Mason
Administrative Judge