DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 15-00419
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guidelines C (foreign preference) and B (foreign influence). Clearance is granted.

Statement of the Case

On July 28, 2014, Applicant submitted a Questionnaire for National Security Positions (SF 86). On June 12, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines C and B. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended

that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied.

On July 7, 2015, Applicant responded to the SOR. On September 9, 2015, Department Counsel was ready to proceed. On September 28, 2015, DOHA assigned Applicant's case to me. On October 30, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for November 16, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibit (GE) 1, which was received into evidence without objection.

Applicant called one witness, testified, and offered Applicant Exhibits (AE) A through D, which were received into evidence without objection. I held the record open until December 1, 2015 to afford the Applicant an opportunity to submit additional evidence. Applicant did not submit any additional evidence post-hearing. On November 24, 2015, DOHA received the hearing transcript (Tr.).

Procedural Rulings

Amendment to SOR

Department Counsel, after consulting with the Applicant, moved to correct Applicant's name on the SOR. Without objection, I granted Department Counsel's motion and made a pen and ink change correcting his name on the SOR. (Tr. 9)

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice (Exhibit (EX) I)), requesting that I take administrative notice of the summary of facts contained in EX I as well as six source documents pertaining to Colombia contained in website addresses listed in EX I. Without objection, I took administrative notice of the documents offered by Department Counsel, which pertained to Colombia. (Tr. 17-20)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from Government reports. *See* Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Colombia were derived from EX I and source documents contained in EX I that are summarized *infra* under the subheading "Colombia" of this decision.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 33-year-old service mechanic employed by a defense contractor since February 2010. He seeks a security clearance to enhance his position within his company. (GE1; Tr. 21-24)

Applicant was born in Colombia in 1982. As a result of ongoing civil unrest and violence, Applicant and his mother left Colombia in 1995 and settled in Germany. At the encouragement of Applicant's brother, already residing in the United States, Applicant and his mother left Germany in 1996 and immigrated to the United States. Applicant was 13-years-old at the time he arrived in the United States. (GE 1; Tr. 24-26)

Applicant graduated from high school in the United States in 2000. He was awarded an associate of science degree in aviation maintenance management and also received his airframe and powerplant license from the Federal Aviation Administration in 2007. Applicant received a master technician maintenance certificate in 2008. (GE 1; Tr. 26-29)

Applicant was previously married from 2003 to 2008, and that marriage ended by divorce. He married his current wife, a Colombian citizen and college graduate with a bachelor of accounting and business management degree, in 2012. They have an eight-month-old son. Before their son was born, Applicant's wife was employed by a large hotel chain in the accounts payable department. Since their son was born, Applicant's wife has not been employed outside their home. (GE 1; 29-31)

Applicant has a six-year-old daughter from a previous relationship and pays his daughter's mother $942 in monthly child support. Although Applicant does not live near his daughter, he sees her approximately once a year and speaks to her frequently on the telephone. (GE 1; Tr. 31-33)

Since immigrating to the United States in 1996, Applicant has remained continuously in the United States. He became a naturalized U.S. citizen in February 2008, and was issued his U.S. passport in April 2008. (GE 1)

Foreign Preference

The SOR alleged that Applicant held a valid Colombian passport that was issued in September 2013 expiring in September 2023. By letter dated October 28, 2015, Applicant's facility security officer (FSO) stated that Applicant surrendered his Colombian passport to him on October 20, 2015. Applicant understands that in the unlikely event he requested the return of his Colombian passport, his FSO would be required to notify DOD. (Tr. 58-62; AE A) Applicant stated that he renewed his Colombian passport for ease of travel and has no intention of using it for future travel to Colombia. He also expressed a willingness to renounce his Colombian citizenship. (Tr. 67-70)

Foreign Influence

Applicant's wife is a Colombian citizen and resident of the United States. She immigrated to the United States on a temporary visa in September 2012, and was granted permanent resident alien status "green card" in December 2014. Applicant's wife stated that she intends to become a U.S. citizen after she has met the five-year waiting period. (Tr. 34-36)

In such cases, it is not unusual for someone like the Applicant or his spouse to have close relatives in their country of origin. In Colombia, Applicant's family members consist of his in-laws and one brother. His mother-in-law and father-in-law are resident citizens of Colombia and are owners and operators of a private clothing retail and textile company. Additionally, Applicant has two sisters-in-law in Colombia. One sister-in-law, age 21, is in medical school and lives at home and the other sister-in-law, age 33, is married and works for a private occupational safety company. Her husband is the owner and operator or a textile company. Applicant's brother, age 43, is a contractor for a major petroleum company in Colombia. Applicant's contact with his brother is primarily limited to exchanging e-mails and holiday greetings. He last saw his brother, who lives in Colombia, "about five years" ago. (Tr. 36-41)

In the United States, Applicant's family members consist of his wife, his son, one daughter, discussed *supra,* his mother, and one brother. Applicant's brother in the United States, age 41, is employed as a contractor. Applicant sees this brother, who lives nearby, "every other day." Lastly, Applicant's mother, age 62, lives in the United States and is employed as a babysitter. Applicant sees his mother, who also lives nearby, frequently. (Tr. 41-47)

All of Applicant's assets are in the United States to include his family home valued at $364,000, the home that his mother lives in valued at $175,000, his 401k and IRA Roth accounts with a combined value of $80,000, checking and savings accounts with a combined value of $19,000, and three automobiles worth a combined value of $50,000. Applicant estimates his U.S. net worth to be in the vicinity of $500,000. In contrast, he has no assets in Colombia. (Tr. 47-51) Applicant registered to vote "immediately" after he became a U.S. citizen and exercises his right to vote. Applicant and his wife are actively involved in adult soccer leagues. He is also an automobile enthusiast, and holds leadership positions in two automobile clubs and is a member of a national helicopter club. (Tr. 51-55)

Character Evidence

Applicant submitted two reference letters. His first letter is from a retired naval officer, who is the Government flight representative overseeing the contract and project Applicant is working on. He has worked directly with the Applicant for the past two-and-one-half years and lauded his work ethic, technical capabilities, moral character, and trustworthiness. He is familiar with Applicant's situation and recommended that he be given a security clearance. (AE B) Applicant's second letter is from a customer-client complimenting Applicant's team for their professionalism. (AE C) Applicant also

submitted a photograph of an aircraft he worked on as an example of the contribution he is making to the national defense. (AE D)

Colombia

For nearly 50 years, Colombia experienced conflict with illegal armed groups, including Marxist guerillas and transnational criminal and narcotics trafficking organizations.

The Secretary of State has designated two Colombian groups – the Revolutionary Armed Forces of Colombia (FARC), and the National Liberation Army (ELN) as Foreign Terrorist Organizations. Peace talks between the Government of Columbia and FARC began in the fall of 2012, and are ongoing. However, in 2014, FARC and ELN continued to engage in terrorist attacks, extortion, and kidnapping, and both groups continue to condemn any U.S. influence in Colombia.

In its most recent Travel Warning for Colombia, issued on June 5, 2015, the U.S. Department of State warns U.S. citizens about the dangers of travel to Colombia, and specifically the potential for violence by terrorist groups and armed criminal gangs called "BACRIMs" in all parts of the country. BACRIMs are heavily involved in narco-trafficing, extortion, kidnapping, and robbery, and violence associated with their activities has spilled over into many major metropolitan areas.

Terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for ransom. No one is immune form kidnapping on the basis of occupation, nationality, or other factors.

According to the U.S. Department of State's 2014 Human Rights Report, the Colombian government continued efforts to prosecute and punish perpetrators who commit abuses, including members of the security services. The most serious human rights problems include impunity, an inefficient judiciary, forced displacement, corruption due to the availability of drug trafficking revenue, and societal discrimination. Other problems included extrajudicial and unlawful killings, military collaboration with members of illegal armed groups, forced disappearances, overcrowding and insecure prisons, harassment of and death threats against human rights groups and activists, violence against women, and trafficking in persons. Illegal arms groups, including FARC and ELN, committed numerous abuses, including political killings, killings of security forces and local officials, use of landmines and improvised explosive devices, kidnappings and forced disappearances.

Any person born in Colombia may be considered a Colombian citizen, even if never documented as such, and dual U.S. – Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Foreign Preference

AG ¶ 9 explains the Government's concern:

> 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 be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 sets out one condition that could raise a security concern and may be disqualifying in this case:

> (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. This includes but is not limited to:
>
> (1) possession of a current foreign passport.

At the time the SOR was issued, Applicant held dual citizenship with Colombia and the U.S., and held a valid Colombian passport for ease of travel. AG ¶ 10(a)(1) has been raised by the evidence.

Three foreign preference mitigating conditions under AG ¶ 11 are potentially mitigating to this disqualifying condition:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship; and
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship was derived from his parents and birth in Colombia. Applicant not only expressed a willingness to renounce his Colombian citizenship, he also surrendered his Colombian passport to his FSO. Applicant did so with the

understanding that his FSO would be required to notify DoD in the unlikely event he requested the return of his Colombian passport. AG ¶¶ 11(a), 11(b), and 11(e) apply.

Foreign Influence

AG ¶ 6 explains the Government's concern:

> [I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out three conditions that could raise a security concern and may be disqualifying in this case:

> (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;
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
>
> (d) sharing 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, 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). Applicant has in-laws as well as a brother in Colombia. These relationships create a potential risk of foreign exploitation, inducement, manipulation, pressure, or coercion meriting a close examination of all circumstances.

The Government produced substantial evidence of these the three disqualifying conditions under AGs ¶¶ 7(a), 7(b) and 7(d) as a result of Applicant's admissions and evidence presented. The Government established Applicant's in-laws and brother are

resident citizens of Colombia, and that Applicant maintains contact with them either directly or through his wife. Applicant's wife is a Colombian citizen and lives with the Applicant. She has frequent, non-casual contact with her family in Colombia. The burden shifted to Applicant to produce evidence and prove mitigating condition(s). The burden of disproving a mitigating condition never shifts to the Government.

Two foreign influence mitigating conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

> (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 U.S.; and
>
> (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applying commonsense and life experience, there is a rebuttable presumption that a person has ties of affection for, and or obligation to his immediate family. ISCR Case No. 04-07766 at 4 (App. Bd. Sept. 26, 2006); ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002). Applicant has demonstrated the indicia of ties of affection for and or obligation to his in-laws and brother.

Applicant's in-laws and brother are not employed by or associated with the Colombian government. The record does not identify what influence, if any, the Colombian government could exert on Applicant's in-laws or brother as a result of their being resident citizens of Colombia. However, their presence in Colombia creates concerns under this Guideline. As such, the burden shifted to Applicant to show his relatives in Colombia do not create security risks.

"[T]he nature of the foreign government involved in the case, and the intelligence-gathering history of that government are important evidence that provides context for all the other evidence of the record . . ." *See, e.g.,* ISCR Case No. 04-0776 at 3 (App. Bd. Sept. 26, 2006); *see also* ISCR Case No. 02-07772 at 7 (App. Bd. Aug. 28, 2003). As noted *supra* under the subheading "Colombia," the U.S. Secretary of State has designated two Colombian groups, FARC and ELN as Foreign Terrorist Organizations. Although the Colombian government's respect for human rights continues to improve, terrorist groups operating within Colombia have committed the majority of human rights violations to include political killings and kidnapping, forced disappearances, torture, and other serious human rights abuses.

Applicant denies having "divided loyalties" between the United States and any foreign country. It should be noted Applicant's allegiance to the United States was not challenged in this proceeding. The issue is rather a positional one. Guideline B hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that Applicant should not be placed in a position where he is forced to make such a choice. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

On balance, Applicant has not met his burden of showing there is little likelihood that his relationship with his family members in Colombia could create a risk for foreign influence or exploitation. Applicant's continued and ongoing relationship with his Colombian relatives and nature of unlawful activities in Colombia by terrorist organizations places Applicant in just this position, given his relationship with his family and their continued presence and connection with Colombia.

However, Applicant is able to receive partial credit under AG ¶ 8(a). Applicant's in-laws and brother maintain non-political low key positions in Colombia. Applicant is able to receive full credit under AG ¶ 8(b). His relationship with his Colombian relatives is minimal when compared and contrasted with his immediate relatives in the United States. Applicant has "such deep and longstanding relationships and loyalties in the U.S., [h]e can be expected to resolve any conflict of interest in favor of the U.S. interest."

Applicant's daughter and son are U.S.-born citizens and reside in the United States. Applicant has lived in the United States since 1996, and received the majority of his education in the United States. He has worked for a defense contractor with dedication and distinction since 2010. Applicant has substantial property and investments in the United States, and no property or investments in Colombia. He has many friends and colleagues in the U.S. He is a loyal, dedicated U.S. citizen. Applicant's work-related references document his contribution to the national defense and corroborate his loyalty and trustworthiness.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors (APF) 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) 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. The discussion in the Analysis section under Guidelines C and B is incorporated in this whole-person section. However further comments are warranted.

Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[1] In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant's family connections and personal connections to Colombia, discussed *supra,* which gave rise to foreign preference and foreign influence concerns.

There is significant mitigating evidence that weighs towards granting Applicant's security clearance. Applicant immigrated to the U.S. when he was 13 years old, and completed his high school education and associate's degree in the United States. Applicant has lived in the United States for the past 19 years, his wife, two U.S.-born children, mother, and brother live in the United States. His assets consisting of approximately one-half million dollars in the United States are substantial in contrast to having no assets in Colombia. Applicant became a U.S. citizen in 2008, has a U.S. passport, and exercises his right to vote in the United States.

Applicant maintains much more frequent contact with his U.S.-based family members than he does with his family members residing in Colombia. His ties to the United States are stronger than his ties to his in-laws and brother in Colombia. There is no evidence Applicant has ever taken any action which could cause potential harm to the United States. He takes his loyalty to the United States very seriously, and he has worked diligently contributing to the national defense since November 2010. The evidence contains no derogatory record evidence about the Applicant.

[1] *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

I considered the totality of Applicant's family ties to Colombia. Colombia and the United States enjoy a friendly relationship. Apart from the internal problems within Colombia, which are not endorsed by the Colombian government, Colombia is a multiparty democracy, whose government's respect for human rights continues to improve. There is no compelling evidence in the record to support the notion that the Colombian government engages in an adversarial and hostile relationship with the United States

In the unlikely event that Applicant's family in Colombia was subjected to coercion or duress from a terrorist group within Colombia, I find that because of his deep and longstanding relationships and loyalties in the United States, that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that Applicant may have divided loyalties or act in a way adverse to U.S. interests or some attempt may be made to exploit Applicant's family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the United States and those family members. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole-person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence and foreign preference.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole-person factors" and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section 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 – 2.c:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge