

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. The balance of her arguments amount to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law.

CASE NO: 15-01024.a1

DATE: 02/24/2017

DATE: February 24, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-01024
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 27, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On November 30, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge

Thomas M. Crean denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 36 years old, has worked for a defense contractor since 2009. She was born in Colombia, came to the United States on a student visa in 2005, and became a U.S. citizen in 2014. She has received an associate's degree, bachelor's degree, and master's degree in the United States. She married a U.S. citizen in 2006 and has no children.

Applicant's mother, father, and brother are citizens and residents of Colombia. She has daily phone contact with her parents and has sent approximately \$400 a month to her father for the past five years. She has another brother who is a dual citizen of Colombia and Canada and resides in Canada. She possesses a Colombian passport that was issued in 2008 and expires in 2018. She has not taken any steps to renounce her Colombian citizenship.

Colombia is a democracy. It has experienced half a century of conflict with illegal armed groups, including Marxist guerillas and international criminal organizations involved in illegal drug trafficking. The U.S. has designated two Colombian groups, The Revolutionary Armed Forces of Colombia (FARC) and The National Liberation Army (ELN), as foreign terrorist organizations. In 2016, the Government of Colombia and FARC announced they reached a final peace accord after four years of negotiation. The ELN, however, continues to engage in terrorist activities and condemns any U.S. influence in Colombia. No one in Colombia is immune from kidnapping on the basis of occupation, nationality, or other factors. Colombia has a plan that seeks to re-establish state control and legitimacy in strategically important areas previously dominated by illegal armed groups. Colombia's human rights problems include an ineffective judiciary, extrajudicial and unlawful killings, corruption due to the availability of drug trafficking funds, and societal discrimination.

The Judge's Analysis

The Judge found that Applicant's contacts with her family members in Colombia raised security concerns under disqualifying conditions 7(a)¹ and 7(b),² noting the existence of Marxist guerillas, the influence of strong organized crime gangs involved in international drug trafficking, and a poor human rights record in Colombia places on Applicant a heightened risk of exploitation,

¹ Directive, Enclosure 2 ¶ 7(a) states, "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[.]"

² Directive, Enclosure 2 ¶ 7(b) states, "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[.]"

inducement, manipulation, pressure, or coercion. Applicant has close and continuing contacts with her immediate family members in Colombia. She did not present evidence that negated the heightened risk concerns and none of the mitigating conditions apply. Even though her family members appear to be ordinary citizens, the situation in Colombia is such that anyone living there is vulnerable to be exploited, pressured, or induced to provide protected information by guerillas and narco-terrorists.

Applicant possesses a Colombian passport that does not expire for a few more years. She has not mitigated the foreign preference security concerns. Her dual citizenship and possession of a current Colombian passport shows there is a preference for Colombia over the United States and a potential divided loyalty to Colombia and the United States.

Discussion

Applicant contends that the Judge did not consider all the evidence in the record. In arguing that her circumstances do not raise security concerns, she cites to, among other things, the location where her parents live in Colombia, their age, their occupations, her lack of property or professional affiliations in Colombia; her accomplishments in her career, and her value as a U.S. citizen. The Judge made findings about some of the evidence that Applicant has cited. She has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec 4, 2015). Contrary to Applicant's assertions, we also conclude that the Judge's whole person analysis satisfies the requirements of Directive in that the Judge evaluated Applicant's security-significant circumstances in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015). The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board