



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



In the matter of:)
)
) ISCR Case No. 19-00515
)
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

01/09/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns about his connections to Colombia under Guideline B, foreign influence and about his finances under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 6, 2017. On March 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued him a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline F, financial considerations. DOD CAF took this action under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on April 16, 2019, and requested a hearing. The case was assigned to me on June 14, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 19, 2019, scheduling the hearing for September 11, 2019.

The hearing convened as scheduled. Government Exhibits (GE) 1-6 were marked and admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A-I, which were marked and admitted without objection. (He provided AE A-F with his Answer). I held the record open until September 25, 2019, to enable him the opportunity to submit additional information. He timely submitted several documents, which are marked as AE J-M and admitted without objection. DOHA received the hearing transcript (Tr.) on September 20, 2019.

Administrative Notice

Department Counsel requested that I take administrative notice (AN) of certain facts about Colombia. The supporting documentation is marked as AN I. The relevant facts are addressed in the Findings of Fact, below.

Findings of Fact

Applicant admitted all the SOR allegations (SOR ¶¶ 1.a – 1.e and SOR ¶¶ 2.a – 2.c), with narrative explanations. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 57 years old. He and his wife, a naturalized U.S. citizen from Colombia, have been married for 14 years. He has an adult son from a prior marriage. After graduating from college in 1983, he spent 28 years in the U.S. Air Force, retiring in 2011 as a lieutenant colonel. In the Air Force, he attended postgraduate school and extensive language training, and had a clearance. Since May 2019, Applicant has worked for a private company chartered by a state government to provide assistance to the state in veterans' and defense issues. He earns a \$78,000 annual salary. (Tr. 41, 87-89, 107, 118-119; AE J-M) He has been sponsored for a clearance by a prospective employer in the defense industry. (Tr. 37-42, 50-51; GE 1)

The Guideline B allegations concern Applicant's in-laws. They include his wife's parents (SOR ¶ 2.c), two brothers-in-law (one of whom is an officer in the Colombian Army) (SOR ¶ 2.a), and a sister-in-law (who is employed by the Colombian military as a civilian psychologist). (SOR ¶ 2.b) (Tr. 122-123)

Applicant met his wife in 2003, while he was assigned in Colombia as a foreign area officer. Her father was the pastor of the church he attended there. Applicant married his wife in 2005. She became a permanent U.S. resident in 2006, and a U.S. citizen in 2010. (Tr. 10, 41, 62-64, 122-124) Applicant and his wife also lived in Colombia, with her parents, from May 2017 to May 2019, as discussed further below.

Now that Applicant and his wife have returned to the United States, he has about monthly contact with her family members. (Tr. 117)

Applicant disclosed his wife's family during his prior background investigation, in 2008. (GE 2; Tr. 67) Subsequently, in 2012, his sister-in-law married a Colombian Army officer. Applicant and his wife attended their wedding and his promotion ceremony. They had frequent contact when they all lived in the same city in Colombia, but had less contact once the brother-in-law was transferred elsewhere in the country. (Tr. 113-116) Applicant's other brother-in-law (his wife's brother) is a businessman in Colombia. (Tr. 122)

The record also reflects that, when he was a foreign area officer assigned in Colombia, Applicant had assignments in which he would have had regular, professional contact with officers in the Colombian military. (GE 6)

Applicant faced mandatory retirement from the Air Force in late 2011. (Tr. 72-74) He had difficulty finding civilian employment after he retired. He testified that this was due, in part, to the economic recession and the impact of the 2012-2013 budget sequestration, furlough, and government shutdown, upon employment in the defense industry. (Tr. 41-43, 98-100)

Applicant testified that he earned about \$100,000 base pay in the Air Force. He receives 70% in retirement income (\$70,000), but 50% of that goes to his former wife, so he saw a significant drop in income after he retired. Beginning in 2012, he also earned \$650 a month (now \$685) in disability pay. (Tr. 71-72)

Applicant was briefly employed in 2012 at a \$95,000 annual salary but was laid off in August 2012 when the contract ended. (Tr. 78-79, 104) He eventually found work at a start-up company, but his monthly income varied and was significantly less than what he earned as an Air Force officer.

Applicant was initially a "1099" (contractor) employee with the start-up company. For several years, this led him to incur a larger tax burden than he expected. He took steps to address the issue, and completed a repayment plan with the IRS in 2017. He has no other tax issues, and there is no allegation relating to past-due taxes in the SOR. (Tr. 57-60, 100-102; AE D)

As a result of Applicant's loss of income, he also fell behind on monthly debts, including his mortgage. He used credit cards to pay for necessary expenses, such as food, gas, and medical expenses. (Tr. 43) Facing foreclosure in 2015, he was able to stabilize his mortgage and bring it current through a state-run mortgage assistance program. (Tr. 43-48, 80-82, 124-126; GE 5)

Applicant was laid off from the start-up company in April 2017. Despite his efforts, he was unable to find stable employment. He sold the family home, and relocated with his wife to Colombia. They moved in with her parents. He did this to lower

expenses and to take advantage of a beneficial currency exchange rate while he continued to seek full-time employment in the United States. (Tr. 46-49, 83-84; GE 5)

Applicant had \$90,000 in proceeds from the sale of the family home. He used \$60,000 to begin to pay his debts, starting with his IRS debt and his other accounts. He testified that (along with his tax debt) he had as many as 17 past-due debts, of which 12 are now paid off. (AE A, AE B, AE C, AE E; Tr. 54-59, 82-87) He testified that he settled most of those debts between June and November 2017. He received 1099 forms from the IRS for several accounts, and claimed the forgiven amounts as income. (Tr. 96-97, 124-126; AE C)

While in Colombia, Applicant did volunteer work at his wife's family's church, but he did not seek paid employment. He said he did not want to establish concrete ties there because he intended to return to the U.S. Since he was not working, he lived off of his military retirement and VA disability income. (Tr. 48-53, 82-87, 106-107; AE A)

Applicant and his wife lived in Colombia for two years, from May 2017 to May 2019. He returned to the U.S. occasionally, such as for medical appointments and his background interview. He testified that, without full-time employment, there was little he could do to address the remaining debts, as he wanted to save money to finance his eventual return to the U.S. He pursued credit counseling, and was advised either to file bankruptcy, or to pursue his current course of action. (Tr. 105-111, 120)

The five debts alleged in the SOR total about \$48,000. They are listed on Applicant's credit bureau reports from September 2017 and February 2019. (GE 3, GE 4) He testified that the SOR debts are what remains from his original debt load of 17 consumer debts and his debt to the IRS.

SOR ¶ 1.a (\$20,085) is a charged-off credit card account. Shortly before the hearing, Applicant arranged to settle the debt for \$8,500, paying \$250 a month from September 2019 until June 2022. He had made two prior payments earlier in 2019, lowering the balance to \$19,585. (AE G; Tr. 90-92)

SOR ¶¶ 1.b (\$14,812) and 1.c (\$7,686) are charged-off credit card accounts, and SOR ¶ 1.d (\$4,807) is a credit card debt in collection. Applicant said he used the accounts to pay living expenses like food, gas, and medical bills. He contacted the creditors in 2017 but could not work out repayment plans that left him enough money in savings to relocate back to the U.S. He has not contacted them to arrange a payment plan since beginning his new job, but intends to do so. (Tr. 93-94)

SOR ¶ 1.e (\$706) is a credit-card account in collection. Applicant intends to resolve this debt next, given its relatively small size. (Tr. 94-95)

Applicant's accounts and his wife's accounts are otherwise current, and he has incurred no new debts. (Tr. 60-61, AE F; GE 3) Applicant plans on addressing the SOR debts one at a time. (Answer; AE A; Tr. 54-57) He expects to be able to do so more

aggressively once he identifies his monthly expenses and income stream after his recent transition back to employment in the U.S. (Tr. 126)

Applicant testified that he always intended to return from Colombia once he found a job in the U.S. He never intended to live there as long as he did, and does not intend to return to live there permanently in the future. (Tr. 121)

The chief executive officer of Applicant's sponsor for a clearance provided a recommendation letter. He is a retired Navy captain who had a high-level intelligence position at U.S. Central Command. The reference has known Applicant since 2004, when Applicant served under him in highly classified roles. Applicant has his utmost trust and confidence, and highest recommendation for a clearance. (AE H; Tr. 69)

Another reference has known Applicant since 2013, when they began working together. He asserted that Applicant has demonstrated unwavering commitment and loyalty to the nation, and still upholds the oath Applicant took years ago upon entering the Air Force. (AE I; Tr. 69)

Colombia

With its Administrative Notice filing (AN I), the Government included information from the U.S. Department of State as of August 2018 about the United States' relations with Colombia. The information in that document is substantially similar to more recent information, available on the State Department website.

I take administrative notice of the updated facts, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.") The information is detailed as follows:

With the support of the United States, Colombia has transformed itself over the past 20 years from a fragile state to a vibrant democracy with a growing, market-oriented economy.

In 2016, the Government of Colombia signed a peace accord with the Revolutionary Armed Forces of Colombia (FARC), ending more than half a century of conflict.

The United States is committed to cooperating with Colombia to undermine the transnational criminal organizations whose activities, especially narcotrafficking, are devastating to the citizens of Colombia and of the United States.

In addition, the State Department advises on its website that U.S. citizens considering travel to Colombia should exercise increased caution, given the risk of crime, terrorism, and kidnapping.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters 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 access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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 classified information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following 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;

(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 classified 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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding [classified] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶¶ 7(a) and 7(e) require evidence of a "heightened risk." The "heightened risk" required to raise these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of

Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant's family connections to Colombia include his wife's parents, two brothers-in-law, and a sister-in-law. The sister-in-law and one brother-in-law are employed by the Colombian military. These connections raise a "potential conflict of interest between the individual's obligation to protect classified or classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology" under AG ¶ 7(b). A heightened risk is also established, given the administrative notice facts about Colombia and the State Department's travel advisory. AG ¶¶ 7(a) and 7(e) therefore apply.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(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;

(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; and

(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.

Applicant and his wife lived with her parents in Colombia for two years, from May 2017 to May 2019, while Applicant was unemployed. They are clearly close to her family, even if their contact has lessened now that they have returned to the U.S. AG ¶ 8(c) does not apply.

However, I conclude that AG ¶¶ 8(a) and 8(b) do apply, and mitigate the Guideline B security concerns arising from Applicant's family connections to Colombia. Perhaps most importantly in this regard, I give significant weight to Applicant's long experience not only as an Air Force officer in general, but as an intelligence officer and foreign area officer in particular. Someone with Applicant's professional background is particularly attuned to the possibility of foreign influence, coercive or otherwise, thus lessening the risk of any such susceptibility.

Colombia is also undergoing transformation. This creates an atmosphere that is not without risk. However, there is no indication in the record that either Applicant or his wife's family have been adversely affected by the ongoing security risks in Colombia as noted by the State Department. Indeed, Applicant lived in Colombia for two years, without incident. He also served there during his Air Force career and had professional contact with the Colombian military. While some elements of heightened risk exist, Applicant's personal circumstances significantly lessen the chances that he might be subject to exploitation, coercion, or duress through his relationship with his Colombian in-laws. AG ¶ 8(a) therefore applies.

While Applicant and his wife have understandably strong connections to her parents and family members in Colombia, this is outweighed by Applicant's long career in the Air Force, as an intelligence officer and foreign area officer, with a clearance. With that background, Applicant can be expected to resolve any conflict of interest in favor of the best interests of the United States. Applicant met his burden of persuasion in establishing that AG ¶ 8(b) applies to mitigate the foreign influence security concerns arising in this case.

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, security, and ability to protect classified or classified information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.¹

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns under the financial considerations guideline. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred numerous financial delinquencies after retiring from the Air Force, a period in which he had extended difficulty finding steady employment. The five delinquent debts alleged in the SOR are established, and AG ¶¶ 19(a) and (c) apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, security, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

After Applicant retired from the Air Force in 2011, he had significant difficulty finding gainful employment. In 2012, he worked briefly on a short-term contract. He then joined a start-up company and had sporadic income for several years. He was initially a 1099 contractor employee, which led to unforeseen tax implications. He fell behind on numerous financial obligations including his federal taxes, his mortgage, and a large number of consumer debts. He also began using credit cards to pay necessary expenses.

Applicant was facing foreclosure, but refinanced his mortgage through a state-run assistance program. When he was laid off in 2017, he sold the home, realizing \$90,000 in proceeds. Without imminent job prospects in the United States, he decided to relocate temporarily to Colombia with his wife, and move in with her parents. He did this to cut expenses. He used about \$60,000 of the home sale proceeds to resolve his federal tax debt and several of his other delinquencies. He did this in 2017, keeping some of the proceeds in reserve.

Applicant testified, and documented, that he had as many as 17 delinquent debts (as well as the tax debt), of which 5 debts remain in the SOR. The Government took issue in closing argument with the fact that Applicant did not seek employment in Colombia, and thus was not able to address his debts during that time. However, as

Applicant noted, he did not expect to remain there as long as he did, and he did not want to establish any more ties there than necessary. Indeed, as he also noted in his closing argument, to do so might have expanded the potential for foreign influence beyond Applicant's ties to his family in Colombia which already existed.

Applicant, in short, made a judgment call about how to best address his financial situation. His decision process, while not without risks and consequences, was not unreasonable. The Appeal Board has held that it is not necessary to pay off all the debts alleged in the SOR, nor is it required that they be paid off in any particular way. What is required is only that an Applicant have a reasonable plan to pay off his debts, and have taken some steps towards execution of that plan. See, e.g., ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011). I find that the record evidence supports this conclusion here.

In doing so, I consider that the SOR is essentially a "snapshot" of Applicant's debts, and I must also consider the whole picture, not only of the debts alleged, but also the debts that were previously resolved, such as the 12 other debts Applicant resolved, when he was able to do so, his tax debt, and his mortgage. AG ¶¶ 20(b) and (d) therefore apply.

Applicant's debts are ongoing, so AG ¶ 20(a) does not fully apply. But given Applicant's overall record of addressing his debts when he has been able to do so, I consider it likely that, having reestablished life in the United States, with gainful employment, Applicant will continue to address his delinquencies in a responsible way. The ongoing nature of the debts therefore does not cast doubt on his current judgment, reliability, and trustworthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security determination by considering the totality of the applicant's conduct and all the 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(a), the ultimate determination of whether to grant eligibility for a determination of public trust 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis.

Applicant presented a credible case in mitigation and in support of his application for access to classified information. I observed Applicant's demeanor, and I found him to be a credible witness. As noted above, I give significant weight in this case to Applicant's long career in the Air Force as an officer with an intelligence background in finding the security concerns in this case mitigated under both guidelines alleged, and under the whole-person concept. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), I find that Applicant mitigated the security concerns raised by his family connections to Colombia, and by his financial issues. The record evidence leaves me without questions or doubts as to his eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising in this case.

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 F:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 1, Guideline 2:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge