



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01331
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on October 24, 2022. On June 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The CAS acted 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on July 10, 2023, and requested a hearing before an administrative judge. In her answer, she submitted copies of her U.S. and Colombian

passports, her parents' Colombian identification cards, her father's Colombian passport and green card, and receipts for money sent to her parents and grandmother.

Department Counsel was ready to proceed on September 13, 2023. On September 27, 2023, Applicant requested an expedited hearing. The case was assigned to me on October 3, 2023. On October 17, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 23, 2023. Applicant waived the 15-day notice requirement in the Directive, and I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any additional documentary evidence. After the hearing adjourned, she submitted a PowerPoint presentation summarizing her testimony. It is included in the record as Applicant's Exhibit A. DOHA received the transcript (Tr.) on November 1, 2023.

Amendment of SOR

Department Counsel amended paragraph 1 of the SOR, which was intended to allege concerns under Guideline B. However, paragraph 1 of the SOR erroneously set out the security concern for Guideline C instead of the security concern for Guideline B. Paragraph 2 of the SOR correctly recited the security concern under Guideline C. The proposed amendment corrected the error in SOR ¶ 1. I recessed the hearing to ensure that Applicant understood the meaning of the amendment and had sufficient time to respond to it. After conferring with Department Counsel, she did not object to the amendment and did not request additional time to respond to it. (Tr. 5-7) In addition to the amendment of the SOR by Department Counsel, I have *sua sponte* corrected the spelling of Colombia, which is misspelled "Columbia" in the SOR.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Colombia. The request and supporting documents are attached to the record as GX 2. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.g. Her admissions are incorporated in my findings of fact.

Applicant is a 28-year-old systems analyst employed by a defense contractor since August 2022. She was born in Colombia, entered the United States in August 2012, and became a U.S. citizen in March 2018. She was employed full time in private sector jobs in the United States from April 2013 until she was hired for her current position. She received an associate degree in May 2018 and a bachelor's degree in May 2021, both from educational institutions in the United States. She aspires to obtain a master's degree

in the United States and advance to greater responsibility with her current employer. (Tr. 39) She has never married and has no children. She has never held a security clearance.

Applicant is an only child. Her parents are citizens and residents of Colombia. Her father was a permanent resident of the United States from 1999 to 2017, when he moved back to Colombia, hoping to work as a truck driver. However, he has been unable to find work. Her mother has never worked outside the home.

Applicant's parents have never married. (Tr. 20) Her paternal grandmother is a citizen of Colombia and was a permanent resident of the United States until recently, when she became a U.S. citizen. (Tr. 23) Her maternal grandmother is deceased. (Tr. 23) Applicant's maternal aunts and cousins are citizens and residents of Colombia, except for one cousin, who is a permanent resident of the United States. Her paternal aunts and cousins are dual citizens of Colombia and the United States, and they currently live in the United States. Applicant lives with one of her paternal aunts. (Tr. 18) None of Applicant's relatives have worked for the Colombian government or military. (Tr. 28)

Applicant provides monthly support of about \$340 to her parents. She provides occasional money gifts to her grandmother totaling about \$200.

Applicant travels to Colombia every one or two years to visit her family. She carries her U.S. passport and her Colombian passport when she travels to and from Colombia. The Colombian immigration authorities require her to use her Colombian passport to enter and exit Colombia. She uses her U.S. passport to enter and exit the United States. She testified that when she reenters the United States, the immigration authorities scan her U.S. passport and stamp her Colombian passport.

Applicant voted in the last Colombian election in June 2022. She testified that she and her family did not like the candidate who won, and they all cast their votes for his opponent because she did not want Colombia to become like Venezuela. (Tr. 32) She testified that she did not think that voting in the Colombian election was a "big deal," because she is a dual citizen. (Tr. 32) She cast her vote at a Colombian consulate in the United States. (Tr. 33) She also voted in the last presidential election in the United States, as well as the local elections. (Tr. 38)

Applicant testified that if she had to choose between being a citizen of the United States or a citizen of Colombia, she would choose the United States. (Tr. 35) She does not envision returning to Colombia to live. She testified, "I always would say Colombia is awesome to go to visit, it is awesome to go for a few weeks, relax, but it is too messy, and I don't like that, and I prefer to feel safe." (Tr. 36)

Colombia is a constitutional, multiparty republic. The presidential and legislative elections held in 2022 were considered by observers to be the most free, fair, and peaceful in decades. Colombia has endured a decades-long conflict between government forces, paramilitaries, and antigovernment insurgent groups heavily funded by the drug trade, principally the Revolutionary Armed Forces of Colombia (FARC). The Colombian

government signed a peace accord with the FARC in 2016, which was ratified by the Colombian Congress.

In November 2021, the U.S. Secretary of State revoked the designation of FARC as a foreign terrorist organization and designated the *Segunda Marquetalia* and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) as foreign terrorist organizations. These organizations, along with the National Liberation Army (ELN), have been filling the void left by former FARC combatants.

The U.S. Department of State has issued a Level 3 Travel Advisory for Colombia ("Reconsider travel due to crime and terrorism; exercise increased caution due to civil unrest and kidnapping"). It has issued a Level 4 advisory ("Do not travel") for the Arauca, Cauca (excluding Popayan), and Norte de Santander departments and the Colombia-Venezuela border region due to crime, kidnapping, and risk of detention when crossing into Venezuela from Colombia. Applicant's parents live in the Cauca department. (AX A at 7)

Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR ¶ 1.a alleges that Applicant’s mother and father are citizens and residents of Colombia. It is established.

SOR ¶ 1.b alleges that Applicant’s grandmother is a citizen and resident of Colombia. This allegation is not fully established, because her grandmother is a dual U.S.-Colombian citizen and a resident of the United States.

SOR ¶ 1.c alleges that Applicant’s aunts and cousins are citizens and residents of Colombia. This allegation is not fully established, because her maternal aunts and cousins are dual U.S.-Colombian citizens.

SOR ¶ 1.d alleges that Applicant provides monthly financial support of about \$340 to her mother, a citizen and resident of Colombia. This allegation is established.

SOR ¶ 1.e alleges that Applicant provides monthly financial support of about \$200 to her grandmother, a citizen and resident of Colombia. This allegation is not established. Her grandmother is a dual U.S.-Colombian citizen and a resident of the United States.

She does not give her grandmother monthly financial support. She gives her grandmother occasional gifts on special occasions.

The security concern under this guideline is set out in AG ¶ 6:

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 maybe 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.

The following disqualifying conditions are potentially applicable:

AG ¶ 7(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; and

AG ¶ 7(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.

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).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon

the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. See, e.g., ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the Level 2 advisory (“exercise increased caution”) When family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The State Department’s Level 3 travel advisory for Colombia, (based on crime, terrorism; civil unrest, and kidnapping), and the Level 4 travel advisory (based on crime and kidnapping) for the region where Applicant’s parents live are sufficient to establish the heightened risk under AG ¶ 7(a) and a potential conflict of interest under AG ¶ 7(b).

The following mitigating conditions are potentially applicable:

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant has close ties to her parents, who live in a country rife with violence and lawlessness. She is cautious when she visits her parents in Colombia, because she knows the risks of violent crime and kidnapping.

AG ¶ 8(b) is established. Applicant entered the United States 11 years ago, was educated in the United States, lives with an aunt who is a U.S. citizen. All her paternal aunts and cousins are dual U.S.-Colombian citizens and live in the United States. Applicant aspires to continue her education and advance her professional career in the United States. While she has a cultural attachment to the country of her birth, she clearly

has no affection for the political climate, corrupt government, and lawless living conditions in Colombia. She is willing to renounce her Colombian citizenship if necessary.

Guideline C, Foreign Preference

The SOR ¶ 2.a alleges that Applicant used her Colombian passport to exit and enter the United States after becoming a U.S. citizen. This allegation is not established. Applicant traveled with her U.S. and Colombian passports and used her U.S. passport to enter and exit the United States and her Colombian passport to enter and exit Colombia.

SOR ¶ 2.a alleges that Applicant voted in a Colombian presidential election after becoming a U.S. citizen. This allegation is established.

The security concern under this guideline is set out in AG ¶ 9:

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.

The security concern under this guideline is not limited to countries hostile to the U.S. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 11(a): applying for and/or acquiring citizenship in any other country;

AG ¶ 11(b): failure to use a U.S. passport when entering or exiting the U.S.;
and

AG ¶ 11(d): participation in foreign activities, including but not limited to . . . otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

None of the above conditions are established. Applicant is a native-born citizen of Colombia. She has not sought citizenship in any country other than the United States. Although she holds passports from the United States and Colombia, she used her U.S. passport when entering and leaving the United States. Department Counsel submitted no evidence showing that Applicant's one-time voting in an election in Colombia conflicted with U.S. national security interests.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline B and C in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. She spoke enthusiastically about her career aspirations in the United States. She has no desire to live in Colombia. After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her family connections in Colombia and her participation in one Colombian presidential election.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline C, Foreign Preference:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge