



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



In the matter of:)
)
-----) ISCR Case No. 12-09368
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: John M. Smith, Esquire

06/17/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On December 5, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On August 21, 2012, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on September 11, 2012.² The DOD issued a Statement of Reasons (SOR) to him on December 5, 2012, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to

¹ GE1 ((SF 86), dated December 5, 2011).

² GE 4 (Applicant's Answer to Interrogatories, dated September 11, 2012).

all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on December 19, 2012. In a sworn statement, dated January 3, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed March 18, 2013. The case was assigned to me on March 30, 2013. A Notice of Hearing was issued on May 7, 2013,³ and I convened the hearing as scheduled on May 30, 2013.

During the hearing, nine Government exhibits (GE 1 through GE 9) and seven Applicant exhibits (AE A through AE G) were admitted into evidence without objection.⁴ The transcript (Tr.) was received on June 13, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted one additional document for which he had requested that I take administrative notice, and that document was accepted without objection. The record was closed on June 13, 2013.

Rulings on Procedure

At the commencement of the hearing, Department Counsel moved to amend the SOR by withdrawing the allegations pertaining to Guideline C (Foreign Preference) set forth in ¶¶ 2.a. and 2.b., as well as one allegation pertaining to Guideline B (Foreign Influence) set forth in ¶ 1.c. There being no objection, the motion was granted.

Department Counsel also requested that I take administrative notice of certain enumerated facts pertaining to the Republic of Colombia (Colombia) appearing in seven U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Colombia in publications of the U.S. Department of State,⁵ and the Congressional Research

³ Because of travel limitations associated with the sequestration, Applicant's lack of access to a local military facility, and the absence of any availability of a video teleconference facility, scheduling for the hearing was delayed until it was decided that Applicant would travel from his home state to Arlington, VA, for the hearing.

⁴ Two additional AE were offered but subsequently withdrawn.

⁵ U.S. Department of State, Bureau of Western Hemisphere Affairs, *U.S. Relations With Colombia*, dated October 23, 2012; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2011 - Colombia*, undated; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011, Chapter 2*, dated July 31, 2012; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Colombia*, dated October 3, 2012; U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations*, dated September 28, 2012; U.S. Department of State, *Colombia - Country Specific Information*, dated January 31, 2012.

Service.⁶ Applicant also requested that I take administrative notice of certain enumerated facts pertaining to Colombia appearing in three U.S. Government publications, two of which were updated versions of the publications identified by Department Counsel. Those publications were, likewise, from the U.S. Department of State.⁷

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by both the Government and Applicant, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁸ as set forth below under the Colombia subsection.

Findings of Fact⁹

In his Answer to the SOR, Applicant admitted both of the factual allegations pertaining to foreign influence (¶¶ 1.a. and 1.b.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old president of a defense contractor, a company he founded in 1989.¹⁰ Applicant has never served in the U.S. military,¹¹ and he has never held a security clearance.¹²

⁶ Congressional Research Service (CRS), *CRS Report for Congress, Latin America: Terrorism Issues*, dated March 2, 2012.

⁷ U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Colombia*, dated April 11, 2013 (an updated version of the publication identified by Department Counsel); U.S. Department of State, Office of the Spokesperson, Media Note, *Certification of the Colombian Government with Respect to Human Rights Related Conditions*, dated August 30, 2012; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2012 - Colombia*, undated.

⁸ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

⁹ Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

¹⁰ GE 1, *supra* note 1, at 12.

¹¹ GE 1, *supra* note 1, at 13; Tr. at 95.

¹² GE 1, *supra* note 1, at 59.

Foreign Influence

Applicant was born in Colombia.¹³ Both of his parents (his father was self-employed; and his mother, was in retail sales)¹⁴ were born in Colombia, and they still reside there.¹⁵ Neither parent has had any relationship with the Colombian government or its military or intelligence services.¹⁶ His parents have never been approached or threatened by anyone.¹⁷ Applicant was raised in Colombia. He was educated at an American school in Colombia, with the intention of obtaining a college education in the United States. Upon his high school graduation, he was drafted into the Colombian Army for one year.¹⁸ After being released from military service, Applicant came to the United States where he enrolled in a local community college.¹⁹ He received an associate's degree in 1984.²⁰ He subsequently enrolled in a local university, and in 1986, he received a bachelor's degree in business administration.²¹ He became a naturalized U.S. citizen in 1991.²²

Applicant was married in the United States to a native-born U.S. citizen in 1986.²³ He and his wife have three sons, born in the United States in 1991, 1994, and 1998.²⁴ Applicant has two brothers, both of whom were born in Colombia and became naturalized U.S. citizens.²⁵ They are both professional engineers residing in the United States for over 30 years with their respective native-born U.S. citizen wives.²⁶ Applicant also has one sister who was born in Colombia.²⁷ While she is still a Colombian citizen,²⁸

¹³ GE 1, *supra* note 1, at 5.

¹⁴ Tr. at 66-67, 125-126.

¹⁵ GE 1, *supra* note 1, at 17-19; GE 4 (Personal Subject Interview, dated February 8, 2012), at 1-2. Applicant's mother attended high school in the United States.

¹⁶ GE 1, *supra* note 1, at 17-19; Tr. at 70, 125-126.

¹⁷ Applicant's Answer to the SOR, at 3.

¹⁸ GE 1, *supra* note 1, at 13-14; GE 4 (Personal Subject Interview), *supra* note 15, at 1.

¹⁹ GE 1, *supra* note 1, at 10-11.

²⁰ GE 1, *supra* note 1, at 10-11.

²¹ GE 1, *supra* note 1, at 11.

²² GE 1, *supra* note 1, at 7; GE 4 (Personal Subject Interview), *supra* note 15, at 1.

²³ GE 1, *supra* note 1, at 16.

²⁴ GE 1, *supra* note 1, at 22-23.

²⁵ GE 1, *supra* note 1, at 21-22; GE 4 (Personal Subject Interview), *supra* note 15, at 2.

²⁶ GE 4 (Applicant's Answer to Interrogatories), *supra* note 2, at 8; Tr. at 91-92.

²⁷ GE 1, *supra* note 1, at 19-20.

²⁸ GE 1, *supra* note 1, at 20.

she has been a permanent resident of the United States for about eight years, and is in the final stages of the U.S. naturalization process.²⁹ She was a linguistic manager teaching English, and is the human resources manager for Applicant's company.³⁰ One of Applicant's brothers served in the Colombian Army, and his sister worked briefly for the Colombian government.³¹

Applicant maintains substantial financial interests in Colombia. He owns an apartment in which his parents reside, has an investment interest in a hotel, and has a bank account.³² He estimated his total Colombian financial interests to be about \$700,000.³³ He has been providing financial support for his parents, including their medical and living expenses, for over 20 years.³⁴ Although the amount varies from month to month, he estimated he furnishes them about \$50,000 per year.³⁵ He keeps in weekly contact by telephone with his parents.³⁶ Applicant takes fairly frequent trips to Colombia, lasting between one and ten days, generally to see and care for his parents.³⁷ His brothers visit their parents less frequently, and his sister sees them up to two times per year.³⁸ Neither he nor his sister has ever experienced any problems with Colombian police, customs, or foreign individuals while on any of their respective visits to Colombia.³⁹

Upon being questioned about his respective affiliations with the United States and Colombia, Applicant responded:⁴⁰

I love this country. I'd give my life to this country. I have never had a desire of going in living in Colombia. Great country; great people. But my life is here in the United States. This is where, it's where I'll be buried, here in the United States, not in Colombia. . . So I have no affiliation of any kind to anybody in Colombia other than my parents.

²⁹ GE 4 (Personal Subject Interview), *supra* note 15, at 2.

³⁰ Tr. at 126-128.

³¹ Tr. at 127-129.

³² GE 1, *supra* note 1, at 31-33; GE 4, *supra* note 15, at 3.

³³ Tr. at 130-131; GE 4 (Personal Subject Interview), *supra* note 15, at 3.

³⁴ GE 4 (Applicant's Answer to Interrogatories), *supra* note 2, at 32.

³⁵ GE 1, *supra* note 1, at 33-34; GE 4, *supra* note 15, at 3.

³⁶ GE 1, *supra* note 1, at 17-19.

³⁷ GE 4 (Personal Subject Interview), *supra* note 15, at 4.

³⁸ Tr. at 103.

³⁹ GE 4 (Personal Subject Interview), *supra* note 15, at 4; Applicant's Answer to the SOR, at 3.

⁴⁰ Tr. at 72.

He added: "I have the absolute utmost love for this country. You know, we're in the business of saving lives, and I will do everything in my power to protect that, to preserve that and to protect that."⁴¹

When Applicant first started working, he was employed in his brother's father-in-law's machine shop in the United States earning about \$4 per hour. Applicant started his own business, continuing to use the machine shop, but soon his business was generating more income than he was making in salary. Applicant's company has grown into a thriving business with over 600,000 square feet of manufacturing space.⁴² It has had between 10 and 400 employees, and generates an annual revenue of between \$1,000,000 and \$5,000,000.⁴³ Applicant is also the sole or joint owner of a substantial number of closely held diverse corporations, limited liability companies, and other business entities, and he and his wife have considerable real estate and financial holdings in the United States.⁴⁴

Eleemosynary Activities

Applicant's financial success not only benefits him and his immediate family, but because of his generosity and compassion, as a patron, contributor, and philanthropist, he has shared his bounty with others as well. He made a \$2,000,000 gift to a local university;⁴⁵ gave \$21,066 to a family to avoid a foreclosure;⁴⁶ and has given over \$5,000,000 to his local church, which has grown from 40 members to 4,000 members, for church relocation, outreach services to repair homes, food distribution, and addressing pockets of poverty, much of it contributed anonymously.⁴⁷

Colombia

Formerly under the control of Spain, Colombia's independence was recognized in 1822. It has common borders with Venezuela and Brazil on the east, Ecuador and Peru on the south, and Panama and the North Pacific Ocean on the west, with the Caribbean Sea on the north. It is a middle-income country and one of the oldest democracies in Latin America. For the past 50 years, Colombia has been engaged in intense armed conflict with insurgent and paramilitary groups perpetuated by their

⁴¹ Tr. at 87.

⁴² GE 9 (Company Brochure, undated).

⁴³ GE 6 (Company Profile, dated May 28, 2013); Tr. at 121-122.

⁴⁴ GE 3 (Personal Financial Statement, dated June 30, 2011). Applicant estimated that his Colombian financial interests are less than five per cent of his net worth. See, GE 4 (Applicant's Answer to Interrogatories), *supra* note 2, at 32.

⁴⁵ GE 7 (Press Release, undated). Applicant claimed he tried to make the gift anonymously, but the university wanted it to be attributed to him. See, Tr. at 120-121.

⁴⁶ GE 2 (Affidavit, dated May 9, 2012), at 2.

⁴⁷ Tr. at 33-37.

involvement in widespread illegal drug production and trafficking, along with criminal and narcotics trafficking organizations. Peace talks between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC) began in October 2012. Long-term U.S. interests in the region include promoting security, stability, and prosperity in Colombia, and according to the U.S. Department of State, Colombia has made progress in addressing its security, development, and governance challenges.

The Secretary of State has designated three organizations operating within Colombia as foreign terrorist organizations: the leftist FARC, the leftist National Liberation Army (ELN), and the demobilized rightist paramilitary United Self Defense Forces of Colombia (AUC). Colombia has experienced a number of terrorist attacks by the FARC and the ELN, with the most notable 2011 incidents directed primarily at Colombian National Police and the Colombian Army, with a number of civilians also killed or wounded. The AUC membership dwindled, and while it remained inactive as a formal organization, some former members continued to engage in criminal activities, mostly drug trafficking, in newly emerging criminal organizations known as BACRIM. The ELN has a dwindling membership with diminished resources and reduced offensive capability, but has continued to inflict casualties through the use of land mines and ambushes, and continues to fund its operations through drug trafficking. The FARC has been weakened significantly by the government's military campaign against it. Nevertheless, FARC remains responsible for terrorist attacks, extortion, and kidnappings. The incidence of kidnapping in Colombia has diminished significantly from its peak at the beginning of the decade, but kidnappings and holding civilians for ransom or as political bargaining chips continues. No one is immune from kidnapping on the basis of occupation, nationality, or other factors.

Overall law enforcement cooperation between Colombia and the United States has been outstanding, and Colombia has extradited more people to the United States than any other country. Although the Colombian Government has continued to address human rights abuses, significant problems remain. Extrajudicial killings, insubordinate military collaboration with members of illegal armed groups, forced disappearances, overcrowded and insecure prisons, harassment of human rights groups and activists, violence against women, trafficking in persons, illegal child labor, societal discrimination against indigenous persons, corruption, and an overburdened and inefficient judiciary, are but a few of the continuing issues. On August 20, 2012, the Department of State certified to Congress that the Colombian Government and armed forces are meeting statutory criteria related to human rights.

Tens of thousands of U.S. citizens safely visit Colombia each year for tourism, business, university studies and volunteer work. Security in Colombia has improved significantly in recent years, but violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. There have been no reports of U.S. citizens being targeted because of their nationality.

Character References

The President of a local university has known Applicant for several years as both a personal friend and a professional colleague. He noted that Applicant currently serves as vice chair of the board of trustees of the university, and that Applicant is “highly respected throughout this region as a business, civic and church leader and as a generous philanthropist who supports many worthy causes.”⁴⁸ He added that Applicant has a reputation for the highest standards of morality and ethics, and is respected and trustworthy.

A county commissioner and the vice chairman of another county have both known Applicant for many years, and they have described Applicant as an upstanding citizen, an active member of the community, as a supporter of charitable events, and as a principal in economic development.⁴⁹ The sheriffs of two different counties and a city chief of police also commented on Applicant’s importance to their respective communities. Applicant is known for his excellent reputation for his honesty, hard work and commitment to making the communities a better place, not only on an economic level, but through personal involvement as well.⁵⁰

A retired lieutenant general who knows Applicant personally and professionally, characterized Applicant’s “impeccable ethical standards, integrity and patriotism,” and would trust Applicant “in any circumstance.”⁵¹ Applicant’s pastor, a man he has known for over 20 years, described Applicant as a trustworthy confidant, model citizen, Sunday School teacher, church elder, major contributor, and a community leader.⁵²

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.”⁵³ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁴

⁴⁸ AE F (Character Reference, dated May 22, 2013).

⁴⁹ AE A (Character Reference, dated May 22, 2013); AE D (Character Reference, undated).

⁵⁰ AE B (Character Reference, dated May 22, 2013); AE C (Character Reference, dated May 22, 2013); AE E (Character Reference, dated May 23, 2013).

⁵¹ AE G (Character Reference, dated May 28, 2013).

⁵² Tr. at 39-40.

⁵³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁵⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁶

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁵⁷

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."⁵⁸ Thus, nothing

⁵⁵ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

⁵⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁷ *Egan*, 484 U.S. at 531.

⁵⁸ See Exec. Or. 10865 § 7.

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 as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

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.⁵⁹ Applicant's close relationships with his parents, both of whom are citizens and residents of Colombia; and with his sister, a citizen of Colombia, but a permanent resident of the United States, are current security concerns for the Government. In addition, Department Counsel contends:

The issue that brings us before Your Honor this morning is the fact that [Applicant's] success is a two-edged sword. It has brought him great riches in the US, and it has also raised his exposure and vulnerability in his home country of Colombia, where his parents presently live. . . It's the result of that situation, in addition to the domestic situation in Colombia with the domestic terrorism and criminal elements and insurgencies that exist in that country, the extensive history of kidnappings for ransom and the like, that combined with [Applicant's] visibility as a wealthy individual, makes him particularly vulnerable and creates a heightened risk under

⁵⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

[AG ¶¶ 7(a) and, when traveling there to Colombia, [AG ¶¶ 7(i) of the Adjudicative Guidelines.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is *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*. Similarly, under AG ¶ 7(e), security concerns may be raised when there is *a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*. In addition, it is potentially disqualifying under AG ¶ 7(i) where there is *conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*.

AG ¶¶ 7(a), 7(e), and 7(i) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his parents and his sister, as well as an examination of Applicant's "conduct" while in Colombia, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

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.

In addition, AG ¶ 8(c) may apply where *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*. Also, if *the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*, AG ¶ 8(f) may apply,

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁶⁰ In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁶¹

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, the United States and Colombia share a strong relationship and cooperate on numerous matters. The evidence does not indicate that the Colombian government targets U.S. classified information. To the contrary, it appears that Department Counsel's main concern is not the actions of the Colombian government, but rather the actions of criminals, terrorists, and narco-terrorists in conducting illegal terrorist attacks, extortion, and kidnappings. Applicant maintains a close and continuing contact and relationship with his parents. They maintain a low profile in Colombia. His father worked in private industry and his mother is now a homemaker; neither have connections to the Colombian government or military. His parents have never experienced violence in over a half-century they have lived there. It is unlikely that Applicant would have to choose between the interests of his parents and the interests of the United States.

Tens of thousands of U.S. citizens safely visit Colombia each year for a variety of reasons, including tourism, business, university studies, and volunteer work. Security in Colombia has improved significantly in recent years. Nevertheless, violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. In some ways, the risk of residing in Colombia is somewhat similar to the risks of residing in Boston, New York City, Chicago, Detroit, Washington, D.C., Oklahoma City, or other metropolitan areas in the United States that have experienced substantial criminal or terrorist-related incidents. There is always the possibility of kidnappings, drug-related violence, or terrorist attacks, against otherwise innocent individuals. Moreover, there have been no reports of U.S. citizens being targeted in Colombia because of their nationality.

⁶⁰ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁶¹ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

Applicant's parents still reside in Colombia and there is some risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance because of his close and continuing relationship with his parents. Because of his sister's permanent residence in the United States, that heightened risk regarding his relationship with her is considerably diminished and there is little continuing substantial risk of any kind of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

As to Applicant's “conduct” while visiting Colombia, there is no evidence that he engages in any risky or questionable conduct while in Colombia: he simply visits and cares for his parents' needs. Department Counsel argued that Applicant “raised his exposure and vulnerability in his home country of Colombia,” largely because of his substantial contribution to a university in the United States and the fact that his name may be located on the Internet. There is little, if any, evidence to support that contention. Applicant may be financially successful, and his name may be recognizable in certain sectors of the United States, but simply because an individual is successful in the United States and privately travels to another country is insufficient to conclude that his level of success has raised his exposure in that other country. In Colombia, Applicant is merely someone who is visiting the country for any number of reasons. He is not someone flashing his wealth to raise his exposure and vulnerability. As noted above, while there is always the possibility of kidnappings, drug-related violence, or terrorist attacks, against otherwise innocent individuals such as Applicant, there have been no reports of U.S. citizens – such as Applicant – being targeted in Colombia simply because of their nationality.

By normal standards, Applicant's financial and property interests in Colombia might be considered as “substantial.” But considering his overall net worth, those Colombian financial interests are less than five per cent of his net worth, thereby minimizing the significance of his financial and property interests in Colombia.

Applicant has significant connections to the United States, having lived in the United States for over three decades. He was educated in an American school in Colombia and at two universities in the United States. His wife and children are native-born U.S. citizens; his brothers have resided in the United States for over three decades as well, and are both naturalized U.S. citizens married to native-born U.S. citizens; and his sister, while still a Colombian citizen, has been a permanent U.S. resident for eight years, and is in the final stages of the U.S. naturalization process. Applicant is the sole or joint owner of a substantial number of closely held U.S. corporations, limited liability companies, and other business entities. He and his wife have considerable real estate and financial holdings in the United States. It is significant when he declares “I love this country. I'd give my life to this country.” I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has “such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶¶ 8(a), 8(b), and 8(f) apply, but 8(c) does not apply.

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 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) 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(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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶²

There is some evidence against mitigating Applicant's situation, because his parents remain Colombian citizen-residents, he periodically travels to Colombia to visit and assist them, and he maintains a close and continuing contact and relationship with his parents. Everyone, including residents and visitors, could possibly be the intended or unintended victims of kidnappings, drug-related violence, or terrorist attacks. In addition, he maintains substantial financial and property interests in Colombia.

The mitigating evidence under the whole-person concept is much more substantial. Throughout his life, Applicant has exhibited a sense of responsibility and loyalty to his family, his church, his community, and his country. While it is true that Applicant has been financially successful, and is considered a patron, contributor, and philanthropist, this is not about his financial success. He has an excellent reputation for the highest standards of morality, ethics, and honesty, and is respected and trustworthy. He is known for his hard work and commitment to making the communities a better place, not only on an economic level, but through personal involvement as well. He is someone special when a retired lieutenant general characterizes Applicant's "impeccable ethical standards, integrity and patriotism," and would trust Applicant "in any circumstance."

Applicant declared that his life is here in the United States, and that he loves this country and would die for it. Applicant is fully aware of the risks to himself and his parents in Colombia to the possibility of kidnappings, drug-related violence, or terrorist

⁶² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

attacks. These risks increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.⁶³ Moreover, while the “heightened risk” of terrorist activities occurring in Colombia is of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a substantial risk here as well. With the vast majority of his family members residing in the United States, there is a reduced risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant’s reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Withdrawn
Paragraph 2, Guideline C:	WITHDRAWN
Subparagraph 2.a:	Withdrawn
Subparagraph 2.b:	Withdrawn

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge

⁶³ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).