



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-11697

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2016

Decision

HOWE, Philip S., Administrative Judge:

On May 18, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On June 5, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 25, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 3, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1-4,

was provided to the Applicant on September 15, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 25, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on October 25, 2015.

I received the case assignment on November 9, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the allegations in Paragraph 1 concerning foreign influence and admitted the allegation in Paragraph 2 concerning foreign preference. (Items 2-6)

Applicant is 53 years old. He is married and has two adult children who were born in the United States. His wife is a dual citizen of Colombia and the United States. They were married in 1988. Applicant was born in Colombia in 1962. He came to the United States in May 1985. He became a naturalized U.S. citizen in September 1996. From 1999 to the present he has worked as a hazmat technician for a private company, a laborer, a handyman, and a cleaner supervisor for a custodial company. Applicant's e-QIP states he has been investigated for a security clearance but does not disclose when the background investigation was done. (Items 1-4)

Applicant applied for a Colombian passport in January 2011. He used that passport to exit Colombia in 2011. He surrendered this passport to his Facility Security Officer in 2012. He has a U.S. passport that expired August 8, 2014. Applicant voted in the Colombian presidential election in May 2010 at the Colombian Embassy in Washington, D.C. In his June 24, 2015 Answer Applicant stated he renounced his Colombian citizenship in December 2012. He submitted a copy of his renunciation document. (Items 2, 3)

Applicant's parents live in Colombia and are citizens of that country. Their ages make them senior citizens of Colombia and they do not have jobs according to the e-QIP. His three sisters are citizens of Colombia and work there. Applicant maintains contact with his parents weekly by telephone, as he does with his sisters. One of his sisters is an attorney, another is an economist, and the third is not employed. The employers of either of his sisters are not identified. (Items 1-3)

Applicant's father and mother-in-law are citizens of Colombia. They live there. They both do not work at the present time. Applicant has weekly telephone contact with them. (Items 1-3)

Department Counsel submitted Item 4, which is the Administrative Notice about Colombia. The Notice includes references to the U.S. Department of State documents

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

Colombia's government has been engaged for nearly 50 years with insurgent and paramilitary groups involved with illegal drug production and trafficking. The U.S. State Department designated three Colombian groups as terrorist organizations. They are the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Columbia (AUC). The Colombian government started peace talks with FARC in late 2012. A travel warning was issued U.S. citizens in November 2014 about the dangers of traveling in Colombia. It also referred to violence perpetrated by terrorist's games and armed criminal gangs.

Human rights abuses continue in Colombia. Unlawful and extrajudicial killings continue, forced disappearances, insubordinate military collaboration with new illegal armed groups, violence against women, and human trafficking. Anyone born in Columbia is considered a Colombian citizen. Dual Colombian and U.S. citizens are required to present a Colombian passport to enter and exit Colombia.

Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing. His Answer does state his two sons were born and raised in the U.S. and he has been married for 25 years. The sons work and attend college in the U.S. Applicant states his "life, priorities, and loyalty reside in this country." (Statement with his Answer) He means the United States.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 the applicant may deliberately or inadvertently fail to protect or 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes nine conditions that could raise a security concern and may be disqualifying. Three conditions may apply:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant has constant contact with his family and his wife's parents, all of whom live in Colombia. The contact is weekly by telephone. This contact and familial connection create the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7 (a) applies.

The same contact with these relatives creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and Applicant's desire to help a foreign person by providing that information. AG ¶ 7 (b) applies.

Applicant is married to a woman who is a dual Colombian and U.S. citizen. Her parents live in Colombia. They live together and that could create a heightened risk of foreign inducement, manipulation, pressure, or coercion. AG ¶ 7 (d) applies.

AG ¶ 8 provides six conditions that could mitigate security concerns. Two conditions may apply:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

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

Applicant's relatives in Colombia are either retired because they are old or not working for some other reason, except for one sister who is an attorney and another is an economist. Their employers were not stated anywhere in the documents Applicant submitted. The familial relationships are close but maintained at a distance. None of Applicant's relatives are described as having any employment or relationships that would place Applicant in a position of having to choose between the interests of his relatives in Colombia and the interests of the United States. The internal turmoil of Colombia is far removed from Applicant and his relatives. There is no evidence that the family in Colombia is connected or threatened in any way with the groups fighting the government. AG ¶ 8 (a) is established.

Applicant immigrated to the United States in 1985 when he was about 23 years old. He became a U.S. citizen in 1996. He raised two sons in the U.S. and worked in various jobs for the past 31 years. His Answer stated his strong connections are to the United States where he has made a life for himself. He has been married for 25 years to his wife who is a U.S. citizen. His strongest connections are to the United States, not Colombia. AG ¶ 8 (b) is established.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes four conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(7) voting in a foreign election.

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed a Colombian passport that he applied to receive in January 2011. He used it to travel from the United States to Colombia in 2011. Applicant also voted in a 2010 Colombian presidential election. AG ¶ 10 (a) applies.

Applicant's actions in obtaining a Colombian passport and voting in the Colombian presidential election is the type of action a person takes to obtain recognition of a foreign citizenship while holding U.S. citizenship. AG ¶ 10 (b) applies.

AG ¶ 11 provides six conditions that could mitigate security concerns. Three conditions may apply:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant was born in Colombia and that is how he obtained dual citizenship. AG ¶ 11 (a) applies.

Applicant renounced his Colombian citizenship in a written document in 2012 that was included in the Applicant's Answer. AG ¶ 11 (b) applies.

Applicant surrendered his Colombian passport in 2012 to his facility security officer. It is no longer valid because of the surrender and his renunciation of his Colombian citizenship in 2012. AG ¶ 11(e) applies.

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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when he applied for a Colombian passport and used it to travel to Colombia. He voted in the 2010 Colombian presidential election. He only committed these actions once. Now he understands that he cannot maintain the dual citizenship he had and has renounced it in writing. He places his emphasis in the U.S. because he has his immediate family in the U.S. and his assets. He has changed his behavior. There is no likelihood he will repeat this past course of conduct because he realizes he must place his full emphasis on the U.S. and Colombia holds no benefit for him now after he immigrated and became a U.S. citizen.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under the guidelines for Foreign Influence and Foreign Preference.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a to 1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

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.

PHILIP S. HOWE
Administrative Judge