



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



In the matter of: )  
)  
)  
)  
Applicant for Security Clearance )

ISCR Case No. 13-00397

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: William F. Savarino, Esq.

02/20/2014

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has not mitigated the security concerns related to foreign influence. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

On August 28, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline B (foreign influence) of the Adjudicative Guidelines (AG).<sup>1</sup> In his Answer to the SOR, Applicant admitted the single allegation. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On November 4, 2013, DOHA issued a Notice of Hearing, and I convened the hearing on November 19, 2013. I admitted 16 Government exhibits (GE 1-16) and 11 Applicant exhibits (AE A-K). DOHA received the transcript on November 27, 2013.

---

<sup>1</sup> Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all security clearance adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

## **Procedural Ruling**

I take administrative notice of facts related to Peru, included in six U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Applicant objected to the internet documents offered by the Government as Exhibits 5 through 11, 13, and 14.<sup>2</sup> In the interest of developing a full and complete record, I overruled the objection and admitted them into evidence, with the caveat that I would determine the appropriate weight to assign them. I find GE 8, a document from a government organization, is reliable. However, upon review of the internet printout admitted as GE 5 through 7, 9 through 11, 13 and 14, I assign them little weight because I am unable to determine the reliability of their sources. On the same basis, I assign little weight to GE 12 and AE D, which are duplicate printouts from an internet "encyclopedia."

## **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant, 40 years old, was born and educated in the United States. He earned a bachelor's degree in computer science in 1999. He has not served in the military. In 2008, Applicant married a Peruvian citizen. They have a three-year-old son and they were expecting a daughter at the time of the hearing. Applicant worked as a software engineer from 2001 to 2011. In October 2011, he joined his current employer as a senior systems engineer. His wife does not work outside the home currently; previously, she held sales and administrative positions. (GE 1-4; Tr. 53, 64, 68-69)

Applicant was granted a top secret security clearance in 2006. Following his 2010 periodic reinvestigation, DOHA issued Applicant an SOR dated December 2011. It cited seven Guideline B allegations, including his wife's foreign citizenship, and his contacts with several in-laws, a nephew, and four foreign acquaintances. Applicant failed to timely answer the SOR, and his top secret security clearance was revoked in March 2012. He re-applied for a security clearance in early 2013, and DOHA issued the current SOR. (GE 1, 2, 15; AE E, K; Tr. 61, 96-100, 108-110, 139-141, 148-151)

Applicant listed his wife as a dual Peruvian-U.S. citizen in his 2013 security clearance application. She was educated in Peru. Applicant estimated she has lived in the United States since 2005. They married in the United States in 2008, and in 2009, they held a second ceremony in Peru for his wife's family. Applicant held a security

---

<sup>2</sup> Applicant withdrew his objection to GE 12 because it is a duplicate of one of his exhibits, AE D. The two documents discuss the agency where it appears Applicant's brother-in-law is currently employed. (GE 12; AE D)

clearance at the time he met his wife, while they dated, and after their marriage. She is aware that he holds a security clearance. Between 2008 and 2012, Applicant informed his employers' facility security officers (FSO) of his foreign travel, and that he had married a foreign citizen. His wife became a naturalized U.S. citizen in August 2012, and holds a U.S. passport. Their son was born in the United States, and their daughter will also be born in the United States. Applicant testified that his son is a dual Peruvian-United States citizen, and has a Peruvian passport. He testified that his wife made the arrangements to register their son with the Peruvian embassy to obtain his Peruvian passport because, although their son had a U.S. passport, they felt travel would be easier if he used a Peruvian passport. Applicant testified that he thought his daughter would not be a dual citizen. (GE 3; AE G, I, J, K; Tr. 61-65, 76, 87, 100-103, 107, 110-111, 144-145)

While visiting Peru in about January 2008, Applicant met his brother-in-law, who is married to his wife's sister. Applicant's brother-in-law served in the Peruvian military. For approximately three years, he was a high-level officer (Officer A). He retired about two years ago and became a Peruvian government employee. In his 2013 security clearance application, Applicant described his brother-in-law's current job as a "high-level executive position." Applicant stated his brother-in-law also teaches at a college. (GE 1, 3, 16; AE A; Tr. 70, 82, 123-126, 141, 147)

Applicant testified that he had in-person interactions with his brother-in-law about 15 times since they met. He usually sees Officer A when he visits family in Peru. They were in touch in 2010, when Officer A visited a U.S. army post in his professional military capacity.<sup>3</sup> At that time, Officer A asked Applicant to reserve a hotel room for him, which Applicant did. Officer A is aware that Applicant works with computers. When he asked, Applicant gave him assistance with his computer. Applicant helped his mother-in-law select clothes for Officer A when she was visiting Applicant's family in the United States. Applicant's last interaction with Officer A was about May 2012, when he visited Applicant and Applicant's wife in the United States. During that visit, Officer A stayed at the home of Applicant's sister, and Applicant stayed there as well. Applicant testified he has not discussed his work with Officer A, and characterized his contacts with Officer A as "very infrequent." They do not contact each other by email. In his 2010 security clearance application, he reported telephone contact three to seven times per year. In his 2013 security clearance application, he reported quarterly contacts on special occasions. In his 2013 re-application letter, he stated he talks with Officer A five times per year. (GE 16; AE A-C; Tr. 74-75, 69-85, 124-128, 146)

Applicant stated his wife is in touch with her sister, Officer A's wife, who is a Peruvian citizen and resident. In his 2013 security clearance application, he stated they talk daily. At the hearing, he testified it was a few times per week. She is his son's godmother. She comes to the United States to see her sister, Applicant's wife. In his security clearance application, Applicant stated that ". . . she tries to visit us when she

---

<sup>3</sup> Applicant submitted an article about the visit, published in a military newspaper. (AE B)

can.” Applicant's relationship with his sister-in-law is not alleged in the SOR. (GE 1, 16; Tr. 128-130)

Applicant's mother-in-law and father-in-law are deceased. His father-in-law was a general in the Peruvian Army. In the early to mid-1980s, Applicant's wife and her family lived in the United States when Applicant's father-in-law served as Peru's military attaché. In October 2009, Officer A's wife and several friends visited the United States. The current Peruvian military attaché met them at a U.S. airport, and invited them to dinner at his home, along with Applicant and his wife. Applicant contacted his FSO, and was told he could attend, but would be required to complete paperwork afterward. (Tr. 121-123, 137)

Applicant traveled to Peru about seven times<sup>4</sup> between December 2007 and December 2011 for family events, including his second wedding ceremony, his brother-in-law's wedding vow renewal, and his son's baptism. He and his wife stayed with his mother-in-law. They visited frequently because his mother-in-law was ill. Applicant received security training from his employers regarding foreign travel and informed his company when he traveled to Peru. He testified that he did not disclose his security clearance status during his travels. He submitted a partial copy of a foreign contact notification form<sup>5</sup> he submitted to one of his employers. He completed it when his wife's sister, Officer A's spouse, along with three friends, visited Applicant and his wife in the United States. (GE 1; AE F; Tr. 76-78, 87, 89-94, 130-137)

Applicant testified that he had limited contact with Officer A during six of his seven trips to Peru. Applicant and his family visited Peru while Officer A held his military position. He testified that generally, his sister-in-law, Officer A's wife, would pick them up at the airport with a two-car security detail to provide protection for Officer A's wife, and Applicant and his family. (Tr. 135-139)

Neither Applicant nor his wife own real estate or financial assets in Peru, and do not provide financial support to any of their Peruvian relatives. They have about \$40,000 in equity in their house in the United States. They have approximately \$90,000 in savings, checking, and retirement accounts in the United States. (Tr. 78-79, 85-87)

### **Administrative Notice: Peru**

Military coups have repeatedly interrupted civilian constitutional rule in Peru. In 1968, General Juan Velasco Alvarado overthrew Peru's elected president and ushered in a period of military rule that lasted until 1980. A period of extreme inflation and

---

<sup>4</sup> Applicant listed six visits in his 2013 security clearance application, but at the hearing testified that he inadvertently omitted an additional trip in 2006. (Tr. 132)

<sup>5</sup> AE F is one page of a three-page foreign contact notification form. It contains Applicant's identifying information and discloses his contact with a foreign citizen between October 15, 2009 and October 18, 2009. It does not indicate the names of the person with whom Applicant had contact, or provide answers to questions 6e through 23. It is not signed or dated.

economic chaos followed, and terrorist groups emerged, including the Shining Path, which is financed in part by narcotics trafficking. The Shining Path has been designated a foreign terrorist organization by the U.S. Department of State.

In 2001, the Peruvian government established a Truth Commission to “. . . investigate assassinations, torture, disappearances, displacement, employment of terrorist methods and other violations attributable to the State, the Shining Path and the Tupac Amaru Revolutionary Movement between May 1980 and November 2000 . . . ” The commission concluded that the Shining Path was the principal perpetrator of crimes, human rights violations, and deaths. (GE 8) Although Shining Path had been weakened in the 1990s, it “. . . remained a threat to Peru’s internal security.” In 2012, the State Department reported that Peru’s primary counterterrorism concern continued to be the Shining Path. It engaged in at least 87 attacks in 2012, and kidnapped both Peruvians and foreign workers. In the past, it expressed an intent to target U.S. interests.

In 2012, local police units and Peruvian special forces cooperated in counterterrorism and counter-narcotics efforts with some success. The government also worked with neighboring countries to strengthen counterterrorism efforts.

The United States enjoys a strong and cooperative relationship with Peru, and seeks to promote strong democratic institutions there. The United States is Peru’s largest foreign investor and remains its number one trade partner. The two countries cooperate in efforts to interdict drug traffic into the United States. The United States also funds an aggressive effort to establish an alternative for coca farmers to reduce or eliminate coca production.

Serious crime is a concern in large Peruvian cities, and U.S. citizens have been victims. Crimes include carjacking, kidnapping, assault, armed robbery, and rape, both during the day and at night. Human rights abuses in Peru include killing of protestors by security forces, intimidation of the media, lengthy pretrial detention and trial delays, and incomplete registration of internally displaced persons. Public officials engage in corrupt practices with impunity. The government has taken steps to investigate, and sometimes punish, such officials. The State Department reports that violence against women and children, as well as trafficking in persons, are among the most serious abuses. The Shining Path also engaged in human rights abuses including killings, recruitment of child soldiers, extortion, and hostage taking.

## **Policies**

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>6</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly

---

<sup>6</sup> Directive. 6.3.

referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline B.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>9</sup>

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern under Guideline B:

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

---

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

States citizens to obtain protected information and/or is associated with a risk of terrorism.

Under AG ¶ 7 of Guideline B, I have considered all the disqualifying conditions, especially the following:

(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.

Family ties to residents or citizens of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. The country in question also must be considered.<sup>10</sup> The United States and Peru are allies, and cooperate in counterterrorism and counter-narcotics efforts. However, security concerns under Guideline B are not limited to countries that are hostile to the United States. The Appeal Board has held,

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.<sup>11</sup>

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 coercion. The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon the government. An administrative judge must also consider any terrorist activity in the country at issue.<sup>12</sup>

---

<sup>10</sup> See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

<sup>11</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>12</sup> ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Peru's primary counterterrorism target is the Shining Path terrorist group. The U.S. State Department has designated it as a foreign terrorist organization. It engages in human rights abuses including killings, recruitment of child soldiers, extortion, kidnappings, and hostage taking. It has expressed an intent to target U.S. interests.

Applicant is related to Officer A, who has past and present ties to the Peruvian government. He is not only a citizen and resident of Peru, but a former high-ranking officer in the Peruvian Army, and is currently an executive in a Peruvian government agency. The risk of coercion, persuasion, or duress is significantly greater if a family member is dependent upon the government of a foreign country, or the foreign country is associated with a risk of terrorism. Applicant's ties to his brother-in-law create a heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7(a) and (b) apply.

Applicant shares a home with his wife. She has been a U.S. citizen since 2012, but she maintains dual citizenship with Peru. Applicant's son is also a dual Peruvian-U.S. citizen. Through his close relationship with his wife, Applicant maintains a relationship with his brother-in-law, which constitutes a heightened risk of foreign influence or exploitation. AG ¶ 7(d) applies.

I have considered the mitigating conditions under 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 U.S.;

(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;

(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; and,

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant has contacts with his brother-in-law, a Peruvian citizen-resident, a former high-ranking member of the Peruvian Army, and a current high-level employee of the Peruvian government. The Shining Path terrorist group operates in Peru. The State



Department has designated the Shining Path as a foreign terrorist organization. In the past, it expressed an intent to target U.S. interests. The Shining Path has engaged in killings, extortion, and hostage-taking. Given these facts, I cannot confidently conclude that Applicant could not be placed in a position of having to choose between the interests of a foreign individual or government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant's U.S. birth, citizenship, education, and employment represent long-standing ties to the United States. However, on balance, these facts do not outweigh his relationship to a foreign family member who held a key position in the Peruvian military, and who continues to hold a position in the Peruvian government. Applicant receives partial mitigation under AG ¶ 8(b).

Applicant has been in touch with his brother-in-law, Officer A, approximately 15 times over the past five years, and Applicant talks with him intermittently on the telephone. They shared a residence during one of Officer A's visits to the United States. They were in touch during six of Applicant's visits to his wife's family in Peru. He has assisted Officer A with favors such as making hotel reservations, purchasing clothing, and working on his computer. While in the Peruvian Army, Officer A provided Applicant and his family with security protection when they visited Peru. Applicant's contacts with Officer A are not so casual that they fail to raise a concern of foreign influence or coercion. AG ¶ 8(c) does not apply.

Applicant reported his foreign contacts and foreign travel to the appropriate security officials, as required. AG ¶ 8(e) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered

the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”<sup>13</sup> Here, Applicant’s loyalty is not in question. In evaluating the facts in light of the whole-person concept, I considered Applicant's U.S. ties: his birth and education in the United States, his service to the government through federal defense contractors, and his economic ties through property ownership. However, Applicant’s family ties to Officer A, a Peruvian citizen and resident who held a high position in the Peruvian military, raise serious security concerns. Through his wife, Applicant will continue to have ties to Officer A, a government official in a country that suffers the ongoing threat of a designated foreign terrorist organization.

For all these reasons, I conclude Applicant has not mitigated the cited security concern. A fair and commonsense assessment of the available information bearing on Applicant’s suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant’s request for a security clearance is denied.

---

RITA C. O'BRIEN  
Administrative Judge

---

<sup>13</sup> See Exec. Or. 10865 §7.