



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



In the matter of:)
)
-----) ISCR Case No. 14-02803
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

03/25/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) in April, 2013. (Government Ex. 1). On December 12, 2014, the Department of Defense (DOD), pursuant to Executive Order 10865 (as amended); and DOD Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant. It detailed the reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on January 23, 2015, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on April 23, 2015. A notice of hearing was issued on May 13, 2015, scheduling the hearing for June 2, 2015. The Government offered five exhibits (Exs.). Four were received without objection as its (Exs.) 1-4. The fifth was a request for administrative notice regarding certain facts related to the country of Cuba. Without objection, it was accepted as Hearing Exhibit (HE) 1. The Applicant presented 14 exhibits, referred to as Applicant's Exhibits A-N, which were admitted into evidence without objection. She also testified on her own behalf. The record remained open until

July 16, 2015, to allow the Applicant to submit additional documentation. With no additional materials forthcoming, the record was closed on July 16, 2015. In the interim, the transcript of the hearing (Tr.) was received on June 11, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted Requests for Administrative Notice regarding certain facts about the island nation of Cuba. It consisted of the official request plus seven attachments (I-VII). They were offered to aid in the analysis of security clearance issues related to foreign influence.¹ 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. Various facts pertaining to this nation were derived from the offered request and its attachments.

I have considered the information provided by the Government on the island nation of Cuba. Cuba is a totalitarian, communist state governed by a one-party system, the Cuban Communist Party (PCC). The PCC is the only legal political party in the country. It is an authoritarian state that routinely employs repressive methods against internal dissent and monitors and responds to perceived threats to authority. These methods may include physical and electronic surveillance, as well as detention and interrogation of both Cuban citizens and foreign visitors. Human rights conditions in Cuba remain poor, as the Cuban government limits fundamental freedoms, including freedom of expression and peaceful assembly.

In recent years, the Cuban government has detained U.S. citizens it suspects of engaging in activities perceived to undermine state security. Official crime statistics are not published by the Cuban Government, however U.S. citizens have reported non-violent theft-related crimes such as pickpocketing, purse snatching or taking of unattended or valuable items. There is also evidence that violent crime has increased in Cuba, and is generally associated with assaults committed during a burglary or robbery. Harsh prison conditions, arbitrary arrests, selective prosecution, and denial of fair trials continue.

FINDINGS OF FACT

Applicant is a 65-year-old wife and mother of two grown children. She is a lead technical manager who has been employed by the same defense contractor for the majority of the past 30 years. (Tr. 16) She has earned a bachelor's degree in computer science with a minor in mathematics. Applicant has reported all of her travel to Cuba to her supervisor and security officer, as well as her occasional direct and indirect contact with two younger foreign cousins. (Tr. 65, 85) She has successfully maintained a

¹ No independent request for administrative notice was submitted with regard to the country of Spain.

security clearance without incident since 1978. (Tr. 69) Her Cuban heritage has never been cited or raised as an issue by a foreign country against her or her family. She is highly recommended by her superiors and colleagues as a committed and accomplished professional. (Tr. 70; Ex. A) She has been cited on multiple occasions for her work and regularly received highly complementary performance evaluations. (Exs. B-D)

Born in Cuba, Applicant moved to Spain as a teenager with her immediate family, consisting of her parents and two sisters. In her youth, she had seen her grandfather's substantial holdings redistributed for public use by the evolving Cuban government. (Tr. 61) The family left Cuba quietly, with no money and no prestige, but had evaded attention that might otherwise have warranted inquiry or their incarceration. (Tr. 86) They planned to move to Spain, which had an open relationship with Cuba. In 1972, after several years in Spain, Applicant then came to the United States, where she completed college.²

Applicant eventually married a boyfriend she had left behind in Cuba.³ He, too, had seen his family's wealth subdivided and redistributed by the Cuban government. (Tr. 62) With no emotional, familial, or pecuniary tethers to Cuba, he joined his young wife in the United States. Throughout this time, Applicant saw Cuba endure further change and decline. (Tr. 19) Five years later, in 1977, she was granted naturalized citizen status in the United States, as was her husband. Since that time, she has considered herself a United States citizen and only traveled on a United States passport. (Tr. 65)

In 1978, Applicant began working for her present employer. In 1981, Applicant became a mother for the first time; her other child would be born about eight years later. In the interim, between 1985 and 1989, Applicant took a break from her current employer. She returned and remained with that employer from 1989 to 2000. (Tr. 23). Another break from employment lasted until 2003, when Applicant returned to her present job. (Tr. 23)

In 2004, Applicant purchased her current home in the United States, a house consisting of two apartments. (Tr. 25) She initially rented the whole parcel as an investment property. She eventually moved into one of the apartments with her husband in the spring of 2015, after selling their previous home. (Tr. 26). The \$400,000 proceeds from that property were invested in one of her investment brokerage accounts. (Tr. 27) Meanwhile, the other apartment at her current address remains rented. Her present residence is valued at about \$600,000, in which Applicant has about \$300,000 in equity. (Tr. 28) Her annual salary is approximately \$170,000. (Tr. 29)

In the interim, in 2009, Applicant made a claim of inheritance for Spanish property of her late-grandfather that was left behind by her aunt, who had recently died intestate in that country. Applicant's mother died before her claim to that property could attach

² Applicant's parents are both deceased. She does not know what her status was growing up in Spain.

³ Applicant's husband has no family remaining in Cuba. (Tr. 22). Like Applicant's his family members are in the United States. (Tr. 22-23).

under the laws of Spain. (Tr. 30, 34-38) Before she passed away, Applicant's mother asked Applicant to pursue the matter on her behalf for the family. (see, e.g., Tr. 30) Applicant promised her mother to care for the property until it could be suitably distributed. Her mother had hoped that one day her heirs could benefit from their family's heritage. (Tr. 86) At heart, Applicant's interest is limited to one structure, although her grandfather's estate involved multiple properties, most of which were claimed by tenants or other kin.

Applicant checked with her security officer, who told her there should be no problem in her pursuing a claim for foreign citizenship for her purposes "as long as [she was] not going to use that citizenship to get a passport or for any other reason." (Tr. 45) To that end, she utilized her right to become a Spanish citizen based on her grandfather's lineage and her former residency.⁴ (Tr. 45) She did so only to facilitate her temporary acquisition of the property in question, as a way to perpetuate a familial legacy. (Tr. 46) She then received her 20% of the \$240,000 income rental, giving her a share of the property worth at the time to be around \$48,000. (Tr. 53-54)

The small rental property structure in Spain has since depreciated in value. (Tr. 30). Income generated from the building rental goes into a Spanish bank account exclusively set up and used to cover expenses related to that property. (Tr. 31) This account has a minor balance of about € 2,400 Euros.⁵ (Tr. 60) Applicant does not use the building or otherwise benefit from either its rental or the maintenance account. It generates no profit and is not appreciating in value. She is willing to relinquish the bank balance and account to her sisters, if necessary. (Tr. 87) She cannot dispose of the property or her limited percentage claim to it, however, until 2039, the time limit through which any other potential heirs have to make a claim to the property. (Tr. 52-53) Applicant's 20% claim on this property is her only foreign holding. (Tr. 32)

Applicant is not alone in having an interest in the property. Shares are distributed between Applicant, her two sisters, and two cousins in Cuba. Up to at least 15 relatives potentially could someday assert some degree of claim to the property. (Tr. 32-33).⁶ Applicant has no desire to maintain any interest in the property, only to facilitate its smooth transition to a further generation of her grandfather's genealogical line.

Of Applicant's two cousins in Cuba, both are educated, male engineers. Applicant does not actively keep in touch with them. (Tr. 54) One cousin is several years younger than Applicant and a dual citizen of Cuba and Spain. His mother is Applicant's aunt who recently died. His family never left Cuba because they felt things would eventually reverse or get better. (Tr. 63) That cousin is married and works in the private sector fixing computers. (Tr. 37, 64) He has two adult children - one is a United States citizen living in the United States, the other is still in Cuba. (Tr. 37-38). None of these individuals served in the Cuban military beyond compulsory periods of service and none are associated with the Cuban Government. (Tr. 38).

⁴ Applicant does not consider herself to be a dual citizen. She has not pursued acquisition of a passport or voted in an election. Applicant discussed her situation with her security officer at the time. (Tr. 47-48).

⁵ At the time of the hearing, the U.S. Dollar and the Euro were close to the same in value. (Tr. 87)

⁶ A second property is also technically at issue, although that structure is essentially worthless and consists of scaffolding. (Tr. 34).

Applicant's other cousin is also a citizen of Cuban and Spain living in Cuba. He is over 20 years younger than Applicant. He owns a truck and works as a private cabbie and mover. He is married with two adult children, both of whom live and work in the United States. This cousin has not served in a foreign military beyond a compulsory period.

Applicant's two cousins can leave Cuba because they are citizens of Spain. Currently applicable law lets them travel from Cuba on their Spanish passport. They both have recently visited their children in the United States. Applicant does not keep in touch with her two cousins because their lives are "completely different." (Tr. 54-56) News of their respective families comes erratically through their children. (Tr. 54) They only have personal contact with Applicant when their paths cross in the United States. Applicant has no other cousins, and her husband has no contact with any cousins or relations in Cuba. (Tr. 56-57)

Applicant's two sisters are also in the United States, dual Spanish and United States citizens. One does not need be a citizen of Spain to necessarily inherit property, but the law is complex. To date, only the five relatives have placed a claim on the property: Applicant, her two sisters, and the two cousins, - in their own right and as the forbearers of their respective children.

Applicant has never sent money to Cuba for her relations. (Tr. 41) She has, however, bought them things such as meals during their visits to the United States. In addition, in 2001, when one cousin went to Spain to help his own child emigrate from Spain to the United States, she gave them \$3,000.

In the United States, Applicant has voted in every U.S. election since becoming a citizen. (Tr. 57) At work, she is active with many social and job-related groups, such as a woman's forum and a mentoring program for younger individuals. She has been awarded by the company for her many extraneous efforts, and won an award for being a leading woman in her industry. Applicant is very active with her church and its activities within her community. She has never been suspended or cited for violating a security rule or corporate policy. (Tr. 58) Applicant maintains and is building on a 401k account with a balance of at least \$200,000 which, together with her husband's retirement account, was closer in amount to about \$600,000. (Tr. 59, 73-75) These complement her pension and personal investments. In sum, she has at least \$2 million in domestic holdings and interests, aside from her regular income. (Tr. 75-76; Exs. E-K) She is willing to relinquish her partial interest in the foreign property and control over the related minor maintenance bank account to one of her sisters if the holdings remain "an issue." (Tr. 60, 85) Noting that her life and family are here, she states that she has no desire to move to or live in any country but the United States. (Tr. 60-61)

Despite loosened restrictions for visiting Cuba today, Applicant last visited Cuba in 2004, when her aunt died. Applicant "basically, at this point, has no reason to" revisit the island. (Tr. 43) The property at issue is Applicant's only foreign holding. (Tr. 32). It is her intent to retire and spend the rest of her life with her immediate family in the United States.

POLICIES

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b).

Analysis

Guideline C - Foreign Preference

AG ¶ 9 sets out the security concern relating to Foreign Preference:

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 be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant was born in Cuba and raised by her parents in Spain. She then moved to the United States in the 1970s. She became a naturalized United States citizen in 1977, then applied for Spanish citizenship in 2009 in order to help her mother receive rights to some family property owned by her grandfather, who had died intestate. She is unsure of the basis for her Spanish citizenship status. These facts are sufficient to raise Disqualifying Condition AG ¶ 10(b): Action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant fled Cuba with her parents in her youth. She was then raised in Spain until coming to the United States to seek professional opportunities. She is unsure of her actual status at the time she grew up there, and no relatives remain who can explain the matter. She did, however, go through some paperwork steps to acquire Spanish citizenship in 2009, after becoming a United States citizen in 1977. She did so in order to honor a promise to her mother to lay claim on her behalf to some family property left by her grandfather, who had died intestate, so that the property could be kept in the family. Her sole reason and benefit of seeking Spanish citizenship was for this purpose. She discussed this course with her security officer beforehand, and the officer saw nothing objectionable to her seeking citizenship under those limited reasons. She has not sought any other benefit or right of Spanish citizenship since that time. She does not consider herself to be a dual national. She is willing to relinquish both her Spanish citizenship and her 20% percent rights to the property she share with other kin that is at issue. These facts are sufficient to raise Mitigating Condition AG ¶11(b) the individual has expressed a willingness to renounce dual citizenship.⁷

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence 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

⁷ Based on the limited facts and Applicant's limited knowledge, AG ¶11(a) (dual citizenship is based solely on parent's citizenship or birth in a foreign country) cannot be discerned.

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.

While not close, not members of Applicant's immediate family, and despite their irregular contact, ties of the sort Applicant maintains with her two Cuban cousins could be considered the type generally determined to constitute ties of affection under Guideline B.⁸ Applicant's grant of a 20% share of an inheritance on part of a modest Spanish home and a nominal bank account of under \$2,500 maintained in Spain are also a concern under Guideline B. Given these facts, disqualifying conditions AG ¶¶ 7(a), (b), and (e) apply:

AG ¶ 7(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;

AG ¶ 7(b) connection 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

AG ¶ 7(e) 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.

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of Cuba with the United States places the burden of persuasion on Applicant to demonstrate that neither her relationships with family members living in Cuba, nor her maintenance of assets in that island nation pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist relatives living in foreign countries.

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

⁸ Applicant's possession of family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See Generally ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99- 0424 (App. Bd. Feb. 8, 2001).

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at 15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or her relatives living in a foreign country, nevertheless, it is not possible to rule out such a possibility in the future. Applicant’s relationships with family members living in foreign countries create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about her desire to assist relatives in foreign countries by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s cousins in Cuba. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation; AG ¶¶ 7(a), 7(b), and 7(e) are established; and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including: (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; and (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows: Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. While there is no evidence Applicant has provided financial support to her cousins toward their lives in Cuba, she

has periodic contact with her Cuban contacts and knows something of their activities through her children. Applicant's interest in her family is a positive character trait. However, for security clearance purposes, such concern and interest negates the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet her burden of showing there is little likelihood that her relationships with her Cuban relatives, albeit relatively casual, could create a risk for foreign influence or exploitation. Given case precedent, this could be true no matter how erratic and distant their contact may be.

In contrast, AG ¶ 8(b) fully applies. A key factor in an AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in foreign countries.

Since becoming a naturalized United States citizen nearly 40 years ago, Applicant has voted in every election and traveled on her U.S. passport. She has maintained her marriage and successfully raised her children. She has become part of her neighborhood, as well as part of her church and professional community. Applicant last visited Cuba in 2004, when her aunt died. Applicant "basically, at this point, has no reason to" revisit the island.

Applicant has worked for her present employer for most of those 40 years. She has reported all Cuban travel to her supervisor and security officer, as well as her contact with her two younger foreign cousins. She has successfully maintained a security clearance without incident since 1978. Her Cuban heritage or family has never been cited or raised as an issue by a foreign country against her or her relations. She is highly recommended by her superiors and colleagues as a committed and accomplished professional. She has been cited on multiple occasions for her work and regularly received highly complementary performance evaluations. She is committed to, and enjoys, her work, where she earns about \$170,000 a year.

Applicant has invested the \$400,000 proceeds from her 2014 house sold and now has a \$600,000 property, in which she has about \$300,000 in equity. Her annual salary is approximately \$170,000. (Tr. 29) Her income and savings are complemented by her husband. The couple has assets valued at about \$2 million. They plan on retiring in the United States and spending time with their immediate family members.

Abroad, Applicant has a 20% interest worth about \$48,000 in a rental property received through her aunt and mother from her grandfather's estate. She is involved in the property solely as a spiritual substitute for her mother, who wished that the shares of the property remain within the family. Attached to that property, which is declining in condition and value, is a small bank account with a balance of about \$2,800. It is used to cover costs related to the property. Applicant derives no financial interest from either the property, its rental, or the bank account. She is willing to divest herself of her interest to one of her sisters if required.

In Cuba, Applicant has two cousins. They are younger than she, with one being over two decades her junior. They have little in common with Applicant. Applicant does

not actively maintain contact with them. She hears of them through her children, who are closer to them in age. She has occasional contact with them should their visits to the United States to see their own children occur when she is available. Both cousins served compulsory military service in Cuba, but nothing more. Neither has a nexus to the government of Cuba or Spain. Both live low profiles lives in Cuba, while their heirs live in the United States. Applicant's two cousins can leave Cuba because they are citizens of Spain. Currently applicable law lets them travel from Cuba on their Spanish passport. From there, they are free to travel around the world.

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). 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 the facts and circumstances surrounding this case. I incorporated my comments under the three guidelines at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guidelines, but some warrant additional comment.

Applicant is a 65-year-old lead technical manager who has worked for the same defense contractor for the better part of 40 years. She has a bachelor's degree in computer science. She has maintained a security clearance during the majority of her employment history without incident. During that time, she has reported all of her travel to Cuba to her supervisor and security officer, as well as her occasional contact with two younger foreign cousins. Her Cuban heritage has never been the cause of incident by a foreign country against her or her family. She is highly recommended by her superiors and colleagues as a committed and accomplished professional, and has received excellent performance evaluations.

Applicant was a young child when she went with her family from Cuba to Spain. With her parents gone, it would be unnecessarily difficult for her to now figure out under what category immigration status she lived while in Spain. What is clear, however, is that she took action to secure Spanish citizenship after becoming a United States citizen. She did so at the behest of her late mother – to help preserve some family property her mother would not live to preserve herself. With her security officer's blessing, she obtained the Spanish citizenship necessary to claim a 20% interest on a \$280,000 foreign property. Applicant now understands that this partial ownership may jeopardize her maintenance of a security clearance. She is willing to relinquish both the property and her control of a small bank account associated with the property if required.

As for foreign influence concerns, Applicant became a naturalized United States citizen and received a United States passport in 1997. It is her intent to raise her

children in the United States and to retire with her husband in this country. Her husband is here, as are her children. She has a lucrative job, retirement, and positive working protections here in the United States. She has extensive investments in the United States. Applicant and her husband have their own home. She and her husband have assets amounting to over \$2 million. Such possessions clearly outweigh her 20% interest worth about \$48,000 in a declining property in Spain. As for her foreign relations, Applicant has two foreign relationships with younger cousins Cuba. Even after attributing to them the warmest of relationships with Applicant, they do not come close to the relations Applicant enjoys with her husband, spouse, and children.

When disqualifying conditions are raised, the burden is placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about herself, her family, her foreign holdings, and the country at issue to mitigate foreign influence security concerns. There is nothing about her indicating a preference for anything but her life, family, and job in the United States. Clearance is granted

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge