



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00547
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on November 5, 2013. On March 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 2, 2014, Applicant answered the SOR and requested a hearing before an Administrative Judge. The case was assigned to me on May 12, 2014. On May 14, 2014, a Notice of Hearing was issued scheduling the hearing for June 10, 2014. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 – 4, which were admitted without objection. The Government requested that administrative notice be taken of one document with attachments. The document was marked as GOV 3. Applicant testified, and submitted one exhibit binder which was

admitted as Applicant Exhibit (AE) A-DD without objection. DOHA received the transcript of hearing on June 19, 2014. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant admits all of the SOR allegations under Guideline B (Foreign Influence) concerning extended family in Colombia. She also admits use of a Colombian passport issued in 2013.

Applicant is a 33-year-old senior engineer employed with a Department of Defense contractor. She has worked for her current employer since 2009. The highest degree awarded to her is a Masters of Science in Electrical Engineering. She has never married, but has a partner, who is a U.S. citizen, with whom she lives. Applicant has held a security clearance since February 2004. (Tr. 62) Subsequent investigations for security clearances have been adjudicated favorably. (AE DD)

Applicant was born in Colombia. In 1983, at the age of two, she came to the United States with her parents. By virtue of her birth, she is a dual citizen of Colombia and the United States. In 1993, Applicant became a naturalized U.S. citizen; however, in 1997 she received her certificate of citizenship. In 1997, Applicant travelled to Colombia with her mother and used her Colombian passport. At that time she did not have a U.S. passport. She received her first U.S. passport in 2002. (GOV 1) For any travel outside the United States, except September 2013, Applicant used her U.S. passport exclusively. (Tr. 22) Since receiving her U.S. passport, Applicant has travelled to Colombia three times. In 2004 and in 2007, she used her U.S. passport. However, she was told by the Colombian authorities that she would need a Colombian passport if she intended to return. In June 2013, Applicant obtained a Colombian passport which she used to exit and enter Colombia to visit her ailing grandmother. (Tr. 37) The Colombian passport had an expiration date of June 2023. (Gov 2) She maintained her Colombian passport because she understood the Colombian government requires Colombian citizens to travel on their Colombian passport, not because she had a preference for Colombia. She had been stopped on previous occasions by authorities and told that failure to use a Colombian passport on the next trip could result in fines or detention. (Tr. 36) Applicant has been willing to renounce her Colombian citizenship since 2003. (Tr. 27) Applicant reported that she relinquished her Colombian passport to her security officer on September 5, 2013. (AE A) However, she retrieved it on September 20, 2013. After her trip to visit her 87-year-old terminally ill grandmother, she surrendered the passport to the security office on October 7, 2013. Upon learning of the significant security concern related to possessing a foreign passport, Applicant has no intention of obtaining another Colombian passport. (Tr. 33) She read the foreign retention policy and believed that given a good cause there would not be a problem regarding her security clearance. Applicant stated that when she returned the 2013 Colombian passport to the security office, she was in compliance with security procedures. (AE B)

Applicant's parents are naturalized U.S. citizens. They live in the United States. Her mother works and plans to retire in the United States. Applicant has had no contact with her father since 2007. (Tr.51) Applicant's closest extended family relationships are with her retired, naturalized aunt and uncle, and her three cousins who live in the United States. (Tr. 51)

Applicant admits that she has extended family who are citizens and residents of Colombia. Applicant has two maternal aunts, cousins, and her grandmother. Applicant communicates with her aunts when they visit the United States every two to three years. She also calls them for Christmas and New Year. Applicant has reported her extended family on previous security clearance applications in 2009 and 2013. She consistently provided complete information about the foreign national relatives and the information has not changed over the years.

Applicant reported that her extended family does not know the nature of her work. They do not know that she has a security clearance. Her relatives have not worked for the Colombian government or the military. They have never expressed any interest in her work.

Applicant is active in her community. She plays in a local community orchestra. She is also a board member of the non-profit group. (AE U) She works with schools and businesses to raise musical awareness for children.

Applicant uses her bilingual skills to help with the Meals on Wheels Program in the community. She mentors others as part of her work in a diversity forum for Latin Americans sponsored by her employer. (Tr. 61)

Applicant considers the U.S. her home. The U.S. is where she wants to raise her family. It is where she wants to retire. (Tr. 94) Applicant has no business or property connections to Colombia. She has never voted in Colombian elections. She is active in the community, and votes in U.S. elections.

Applicant submitted affidavits and letters of recommendations from her employer, coworkers, friends, and former college associates. All attest to her honesty, trustworthiness, and dedication to her work. (AE H-X) She has abided by all security policies and has never had a security infraction. Applicant's performance evaluations rate her as "exceed" overall. Her case manager describes her as "intelligent, motivated, hard-working, insightful and a good person." He has known Applicant since 2011. (AE X)

An engineer who works at the company where Applicant previously worked has known her since 2009. He states that Applicant is a person of quality and character. She has had access to classified or sensitive information for years, and has never given one pause about her ability to safeguard information. (AE L)

## **Administrative Notice**

Columbia is a constitutional, multiparty democracy with a population of approximately 44.8 million. Dual U.S. – Colombian citizens must present a Colombian passport to enter and exit Colombia.

The U.S. State Department warns U.S. citizens of the dangers of travel to Columbia because violence by narco-terrorist groups continues to affect some rural areas and cities. While security in Colombia has improved significantly in recent years, terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for use as bargaining chips. The incidences of kidnapping in Colombia have diminished significantly from its peak at the beginning of this decade.

The U.S. Secretary of State has designated three Colombian groups – the Revolutionary Armed Forces of Columbia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) as Foreign Terrorist Organizations. These groups carried out bombings and other attacks in and around major urban areas, including against civilian targets.

The Colombian government's respect for human rights continued to improve. However, illegal armed groups and terrorist groups committed the majority of human rights violations – including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

The U.S. remained fully committed to supporting the Colombian government in its efforts to defeat Colombian-based Foreign Terrorist Organizations. The Colombian government continues vigorous law enforcement, intelligence, military and economic measures against the FARC, ELN, and AUC. The Colombian government has also increased its efforts with neighboring countries to thwart terrorist expansion, investigate terrorist activities inside and outside Colombia, seize assets, secure hostage release, and bring terrorists to justice. Colombia provided anti-terrorism training to nations in the region. The government continues to seek enhanced regional counterterrorism cooperation to target terrorist safe havens in vulnerable border areas.

The U.S. – Colombia extradition relationship remains the most successful of such effort in the world.

## **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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching 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.

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

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) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a

foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant used her Colombian passport after becoming a U.S. citizen when traveling to Colombia in 2013.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply:

FP MC ¶ 11 (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 FP MC ¶ 11(e) *(the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated)* apply. Applicant's dual citizenship results from her birth in Colombia, and her parents' citizenship. Applicant was unaware that possessing a foreign passport would be a significant issue related to her security clearance. She has since surrendered her Colombia passport to her security officer. It is now destroyed. She is willing to renounce her Colombian citizenship.

Applicant has mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

### **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 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 guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

FI DC ¶ 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*) applies because Applicant's extended family, including her grandmother are citizens and residents of Colombia. Applicant maintains some contact with them. She visited her grandmother in 2013. However, the mere possession of close family ties to persons in a foreign country is not as a matter of law, disqualifying under Guideline B.

FI DC ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason. Applicant's relationship with her family members in Colombia create a potential conflict of interest between her obligation to protect sensitive information or technology and her desire to help her family members residing in Colombia.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

FI MC ¶ 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.*) applies. The nature of the foreign country must be considered in evaluating the likelihood of exploitation. Although terrorist groups operate in Colombia, and kidnappings occur, the Colombian government continues its vigorous law enforcement, intelligence, military, and economic measures against these groups. The United States and Colombia share a strong relationship and cooperate on numerous fronts including energy, trade, counter-narcotics and the environment. The documents submitted do not indicate that the Colombian government targets U.S. classified information. Applicant's parents are living in the United States and are naturalized citizens. It is unlikely that Applicant would have to choose between the interests of the family and the interests of the United States.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. While Applicant is close to her grandmother, her immediate family is in the United States and are naturalized U.S.

citizens. She has established a home in the United States. Applicant has lived in the United States since 1983. She attended college at a U.S. university. She works for a U.S. company. Aside from her extended family members in Colombia, her significant personal and professional ties are located in the United States.

After weighing all of the evidence, including the witnesses' testimony, Applicant's testimony, and observing her demeanor at hearing, I am convinced that she would resolve any conflict in favor of the U.S.

For these reasons, I conclude Applicant mitigated the concerns raised under Foreign Influence.

### **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) 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 the facts and circumstances surrounding this case. Applicant is a mature, well-educated, and intelligent woman. She attended U.S. universities to obtain her undergraduate and Masters degrees. She has developed strong bonds in the U.S. While she has ties of affection to her grandmother, her immediate family, her parents, are citizens and reside in the U.S. She intends to live and retire in the U.S. Her superiors and co-workers attest to her favorable character and work performance. After evaluating all of the evidence in the context of the whole person, I conclude Applicant has met her burden of mitigating the concerns raised under foreign influence and foreign preference.



## 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
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

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

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NOREEN LYNCH  
Administrative Judge