DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

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

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

02/25/2015

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 16, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On June 26, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the

[1] Item 4 (e-QIP, dated December 16, 2013).

Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), and detailed reasons why the DOD CAF could not make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement, dated and notarized on July 14, 2014,[2] Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on November 26, 2014, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on December 5, 2014, but as of January 29, 2015, he had not submitted any further documents or other information. The case was assigned to me on January 30, 2015.

Rulings on Procedure

As part of the FORM, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of Colombia (Colombia) appearing in seven U.S. Government publications which were identified but not attached to the request. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Colombia in publications of the U.S. Department of State,[3] and the Congressional Research Service.[4]

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,[5] as set forth below under the Colombia subsection.

[2] Item 3 (Applicant's Answer to the SOR, dated July 14, 2014).

[3] U.S. Department of State, Bureau of Western Hemisphere Affairs, *U.S. Relations With Colombia, Fact Sheet,* dated November 19, 2013; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for *2013 - Colombia*, undated; U.S. Department of State, *Western Hemisphere Overview, Country Reports on Terrorism 2013*, *Chapter 2*, dated April 30, 2014; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Colombia*, dated April 14, 2014; U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations,* dated September 28, 2012; U.S. Department of State, *Quick Facts, Colombia*, dated April 14, 2014.

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

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

Findings of Fact[6]

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to foreign influence and foreign preference in the SOR (¶¶ 1.a.-1.k., 2.a., and 2.b.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He has been serving as an associate program manager since July 2008.[7] Applicant's educational background has not been developed, but he did obtain a certificate reflecting completion of an ESL (English as a Second Language) course, as well as completion of a TOEFL (Test of English as a Foreign Language), which is a standardized test of English language proficiency for non-native English language speakers wishing to enroll in U.S. universities.[8] Applicant has never served in the U.S. military or any other military,[9] and he has never held a security clearance.[10] Applicant was married in 2012.[11]

Foreign Influence

Applicant was born in Colombia.[12] Both of his parents (his father is a retired manager and is currently self-employed; and his mother, was in retail sales and is currently self-employed, in addition to being a housewife) were born in Colombia.[13] His mother is a dual citizen of the United States and Colombia, and while she previously resided in the United States from the early 1990s until 2007, she has resided in Colombia since 2007.[14] His father, a citizen of Colombia, resides in Colombia.[15] Applicant's stepfather (a retired owner of an American company in the United States) is a dual citizen of the United States and Argentina who was born in Argentina. While he resided in the United States during an unspecified period, he resides with Applicant's

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authoritative information or sources from the internet. *See, e.g*. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

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

[7] Item 4, *supra* note 1, at 14.

[8] Item 4, *supra* note 1, at 13.

[9] Item 4, *supra* note 1, at 18; Item 5 (Personal Subject Interview, dated February 20, 2014), at 4.

[10] Item 4, *supra* note 1, at 43-44.

[11] Item 4, *supra* note 1, at 20.

[12] Item 4, *supra* note 1, at 5.

[13] Item 4, *supra* note 1, at 22-25; Item 5, supra note 9, at 2, 4-6.

[14] Item 4, *supra* note 1, at 22; Item 5, *supra* note 9, at 4.

[15] Item 4, *supra* note 1, at 23-24.

mother in Colombia.[16] Applicant's parents, including his stepfather, have had no relationship with the Colombian government or its military or intelligence services.[17] Applicant was raised in Colombia. Applicant visited Disneyworld in Florida with his parents when he was a child.[18] He moved to the United States in 2005 as a registered alien, and in 2011, he became a naturalized U.S. citizen.[19] He has been a dual citizen of the United States and Colombia since 2011.[20]

In 2011, Applicant sponsored for entry into the United States a woman whom he later married in 2012. She is a Colombian citizen who was born in Colombia.[21] She is a registered alien, and she intends to apply for U.S. citizenship after the mandatory waiting period.[22] Applicant's wife is a teacher's assistant at a local preschool.[23]

Applicant has one brother, a Colombian citizen/resident, who works for a U.S. company. His brother has had no relationship with the Colombian government or its military or intelligence services.[24] Both of Applicant's in-laws – his wife's parents (her father is a sports trainer; and her mother is an assistant to her father, in addition to being a housewife) were born in Colombia, and they both reside there.[25] Applicant's in-laws have had no relationship with the Colombian government or its military or intelligence services.[26] Applicant's brother-in-law, a Colombian citizen-resident, is an athlete. He has had no relationship with the Colombian government or its military or intelligence services.[27] Applicant also has a grandmother, his mother's nine siblings, as well as dozens of cousins who are Colombian citizen-residents.[28] There is no evidence that any member of them has had any relationship with the Colombian government or its military or intelligence services. Likewise, there is no evidence that any family member has ever been approached or threatened by a terrorist or anyone affiliated with the Colombian government, its military, or intelligence services.

[16] Item 4, *supra* note 1, at 25-26; Item 5, *supra* note 9, at 5.

[17] Item 4, *supra* note 1, at 23-26; Item 5, *supra* note 9, at 4-5.

[18] Item 5, *supra* note 9, at 1.

[19] Item 4, *supra* note 1, at 7-8; Item 5, *supra* note 9, at 1.

[20] Item 5, *supra* note 9, at 1.

[21] Item 4, *supra* note 1, at 20, 35; Item 5, *supra* note 9, at 4.

[22] Item 5, *supra* note 9, at 4.

[23] Item 5, *supra* note 9, at 4.

[24] Item 4, *supra* note 1, at 28; Item 5, *supra* note 9, at 5.

[25] Item 5, *supra* note 9, at 5.

[26] Item 4, *supra* note 1, at 29-30; Item 5, *supra* note 9, at 5.

[27] Item 5, *supra* note 9, at 5-6.

[28] Item 5, *supra* note 9, at 6-7.

Applicant's relationship with his extended family members is varied. For example, he generally sees his mother and step-father every two years and speaks with them by telephone on a daily basis; he sees his father and brother once every two years, and speaks with them by telephone once a month; he sees his in-laws once a year, either in the U.S. or in Colombia, and speaks with them by telephone once a month "in passing." His relationship with some of the remaining family members is more distant, and is generally limited to once-a-year holiday greetings.[29]

Applicant maintains some financial interests in Colombia. He owns a residential apartment in which he previously resided that he purchased over 11 years ago for $10,000. His mother manages the apartment, keeps it rented, collects and keeps the rent for herself, and pays the taxes. The property now has an estimated value of $25,000.[30] He also owns a commercial property in which he had a business that he sold when he came to the United States. His mother handles this property in the same manner as the residential property. The current value of the commercial property has not been established.[31] Applicant is willing to transfer ownership of both properties to his mother if required to do so.[32] There is no evidence that he was ever asked to relinquish his ownership of either property. Applicant does not consider the properties to be significant to his overall financial health.[33]

Foreign Preference

Applicant is willing to renounce his Colombian citizenship if asked to do so,[34] but there is no evidence that he was ever advised or asked to renounce it. Before Applicant became a naturalized U.S. citizen he renewed the Colombian passport that his parents had obtained for him when he was a child. That Colombian passport is not expected to expire for several more years.[35] Since his entry into the United States, but before he was naturalized, Applicant used his Colombian passport on a number of occasions to return to Colombia for visits.[36] He also used his Colombian passport on two occasions following his naturalization.[37] The Colombian passport was relinquished to Applicant's facility security officer in March 2014.[38] In August 2014, Applicant requested the

[29] Item 5, *supra* note 9, at 4-7.

[30] Item 4, *supra* note 1, at 32-33; Item 5, *supra* note 9, at 2.

[31] Item 5, *supra* note 9, at 3.

[32] Item 5, *supra* note 9, at 2-3.

[33] Item 5, *supra* note 9, at 2-3.

[34] Item 5, *supra* note 9, at 7.

[35] Item 4, *supra* note 1, at 8; Item 5, *supra* note 9, at 1.

[36] Item 4, *supra* note 1, at 9; Item 5, *supra* note 9, at 1.

[37] Item 4, *supra* note 1, at 37; Item 5, *supra* note 9, at 7; Item 6 (JAMS Incident History, dated August 27, 2014).

[38] Item 6 (Letter, dated March 26, 2014).

Colombian passport be returned to him in anticipation of a trip to Colombia. It was returned to him.[39] It is unclear if he ever returned it to his FSO. Although Colombia requires the use of the Colombian passport by its nationals, Applicant is willing to surrender the passport if asked to do so.[40] There is no evidence that he was ever advised or asked to relinquish his Colombian passport.

Colombia

Formerly under the control of Spain, Colombia's independence was recognized in 1822. It has common borders with Venezuela and Brazil on the east, Ecuador and Peru on the south, and Panama and the North Pacific Ocean on the west, with the Caribbean Sea on the north. It is a middle-income country and one of the oldest democracies in Latin America. For the past 50 years, Colombia has been engaged in intense armed conflict with insurgent and paramilitary groups perpetuated by their involvement in widespread illegal drug production and trafficking, along with criminal and narcotics trafficking organizations. Peace talks between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC) began in October 2012. Long-term U.S. interests in the region include promoting security, stability, and prosperity in Colombia, and according to the U.S. Department of State, Colombia has made progress in addressing its security, development, and governance challenges.

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

Overall law enforcement cooperation between Colombia and the United States has been outstanding, and Colombia has extradited more people to the United States

[39] Item 6, *supra* note 39.

[40] Item 5, *supra* note 9, at 1.

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

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

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[41] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[42]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

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

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

In the decision-making process, facts must be established by "substantial evidence."[43] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[44]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[45]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[46] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline B, Foreign Influence

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

[43] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[44] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[45] *Egan*, 484 U.S. at 531.

[46] *See* Exec. Or. 10865 § 7.

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[47] Applicant's close relationships with his parents, stepfather, brother, brother-in-law, and in-laws, all of whom are residents of Colombia; and with his wife, a citizen of Colombia, but a permanent resident of the United States, are current security concerns for the Government. His more distant relationships with his grandmother, his mother's siblings, and his cousins, are also of some security significance.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." In addition, it is potentially disqualifying under AG ¶ 7(d) where there is "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." Similarly, under AG ¶ 7(e), security concerns may be raised when there is "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation." AG ¶¶ 7(a), 7(d), and 7(e) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships to determine the degree of "heightened risk" or potential conflict of interest.

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

> the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a

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

position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

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

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

In addition, AG ¶ 8(c) may apply where "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." Also, if "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual," AG ¶ 8(f) may apply,

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.[48] In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."[49]

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

As noted above, the United States and Colombia share a strong relationship and cooperate on numerous matters. The evidence does not indicate that the Colombian government targets U.S. classified information. To the contrary, it appears that the Government's main concern is not the actions of the Colombian government, but rather the actions of criminals, terrorists, and narco-terrorists in conducting illegal terrorist attacks, extortion, and kidnappings. Applicant maintains a close and continuing contact

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

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

and relationship with his parents, stepfather, brother, brother-in-law, and in-laws, and a more distant relationship with other extended family members. They maintain a low profile in Colombia. They have all worked in private industry and none of them have connections to the Colombian government or military. His family members have never experienced violence since they have lived there. It is unlikely that Applicant would have to choose between the interests of his family and the interests of the United States.

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

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

By normal standards, Applicant's financial and property interests in Colombia might be considered as "insubstantial." Applicant does not consider the properties to be significant to his overall financial health. As noted above, Applicant is willing to transfer ownership of both properties to his mother if required to do so, but there is also no evidence that he was ever advised or asked to relinquish his ownership of either property.

Applicant has significant connections to the United States, having lived in the United States for a decade. His wife is a registered alien waiting to become eligible for naturalization as a U.S. citizen. His mother is a dual citizen of the United States and Columbia, having resided in the United States for a substantial period. His stepfather is a dual citizen of the United States and Argentina, having also resided and owned a business in the United States for a substantial period. With the exception of his grandmother, his mother's siblings, and his cousins, Applicant's contacts and communications with his family members is not casual and infrequent. Nevertheless, under the circumstances, there is little likelihood that it could create a risk for foreign influence or exploitation. I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and

loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(f) apply. AG ¶ 8(c) does not apply.

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 conditions that could raise security concerns. Under AG ¶ 10(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" is potentially disqualifying. This includes AG ¶ 10(a)(1), "possession of a current foreign passport," which may raise security concerns. Applicant was initially issued a Colombian passport when he was a child, and he subsequently renewed it. That Colombian passport is not expected to expire for several more years. Whenever he traveled to Colombia, he used his Colombian passport because it was required and was faster and more convenient to do so. Most of those trips occurred before Applicant became a naturalized U.S. citizen, but he did use it twice after he was naturalized. The Colombian passport was relinquished to Applicant's facility security officer in March 2014. In August 2014, Applicant requested the Colombian passport be returned to him in anticipation of a trip to Colombia. It was returned to him. It is unclear if he ever returned it to his FSO. Although Colombia requires the use of the Colombian passport by its nationals who wish to enter the country, Applicant is willing to surrender the passport if asked to do so. There is no evidence that he was ever advised or asked to relinquish his Colombian passport. By his actions in continuing to possess and use his Colombian passport after he became a naturalized U.S. citizen, Applicant exercised the rights and privileges of foreign citizenship. AG ¶ 10(a)(1) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(a), the disqualifying condition may be mitigated where the "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Similarly, AG ¶ 11(b) may apply where "the individual has expressed a willingness to renounce dual citizenship." In addition, AG ¶ 11(c) may apply if the "exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor." Also, AG ¶ 11(e) may apply where "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Applicant, a naturalized U.S. citizen, was born of Colombian parents in Colombia, and his Colombian citizenship was based solely on those factors. Dual citizenship, by itself, is not an automatic bar to a security clearance. It is only a security concern if the individual has actively exercised the rights and privileges of the foreign citizenship after

becoming a U.S. citizen. He used his Colombian passport primarily before he became a naturalized U.S. citizen, but he also used it two times since then. Applicant explained that his only motivation for using his Colombian passport was not an indication of a preference for Colombia over the United States, but rather solely for his personal convenience in entering Colombia, and because as a dual citizen, he was required to do so. Such actions, since 2011, have security significance. Applicant stated unequivocally that he is willing to renounce his Colombian citizenship and relinquish his Colombian passport. It is unclear if Applicant was aware at the time he exercised his Colombian citizenship rights and privileges after he became a naturalized U.S. citizen that they had any U.S. security significance. Thus, as to Applicant's dual citizenship, and his possession and use of the Colombian passport after becoming a naturalized U.S. citizen, considering Applicant's explanations, and his subsequent actions, I find ¶¶ 11(a) and 11(b) apply, while 11(c) and 11(e) only partially apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[50]

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

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

The mitigating evidence under the whole-person concept is more substantial. Applicant declared that his life is here in the United States and that he loves this country and has started a family here. Applicant is fully aware of the risks to himself and his parents in Colombia to the possibility of kidnappings, drug-related violence, or terrorist attacks. These risks increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.[51] Moreover, while the "heightened risk" of terrorist activities occurring in Colombia is of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a substantial risk here as well. Applicant's wife resides in the United States, and she is on the track to U.S. citizenship; and his mother and stepfather are both dual citizens of the United States and either Colombia or Argentina. There is a reduced risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Overall, the record evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign influence and foreign preference. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant

[51] *See* ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

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.

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ROBERT ROBINSON GALES
Administrative Judge