



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



In the matter of:)
)
) ISCR Case No. 14-05896
)
Applicant for Security Clearance)

Appearances

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

09/11/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On December 10, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on January 5, 2015, and elected to have her case decided on the written record. On July 2, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and

it was received on July 23, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did object to any of the items offered and they are admitted into evidence. She submitted additional information. There was no objection and the information is admitted into evidence. The case was assigned to me on September 1, 2015.

Request for Administrative Notice

Department Counsel submitted a written request, as part of the FORM, that I take administrative notice of certain facts about Colombia. The request is attached to the record. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. I have also taken administrative notice of other facts from official U.S. Government websites. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the allegations in the SOR. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. She holds a bachelor's degree. She has worked for the same federal employer since 1998. She married her husband, a citizen of Colombia, in a civil ceremony in the United States in 2007. They also had a religious ceremony in Colombia several months later. Her husband has two adult daughters, who were born and reside in the United States. Applicant's oldest stepdaughter is married. Applicant and her husband have two children, who were born and reside with them in the United States. They are seven and five years old. Applicant's husband has three grandchildren, who were born and reside in the United States. Applicant has held a top secret security clearance since 1999, without incident.¹

Applicant's spouse resides in the United States and holds a G-4 visa. This visa is a nonimmigrant visa for employees of international organizations and members of their immediate families. It permits the holder to engage in business activities and remain in the United States as long as the Secretary of State recognizes the G-4 status. Applicant's spouse has been employed by a prominent international organization since 1990. In the past, he held U.S. resident status derived from his previous marriage to a U.S. citizen. His children from that marriage were born in the United States and are citizens. In 2002, Applicant's husband converted his U.S. resident status to a G-4 status because of its favorable financial benefits for his family. As the holder of a G-4 visa, upon retirement from the international organization, Applicant's husband is eligible to

¹ Item 3.

apply for U.S. permanent residency. Applicant indicated that, upon retirement, her husband intends to apply for U.S. citizenship based on his marriage to her.²

Applicant's mother-in-law is a citizen and resident of Colombia. She has held a U.S. tourist visa. Applicant has contact with her annually or every other year. Two of Applicant's sisters-in-law are citizens and residents of Colombia. Another sister-in-law is a citizen and resident of France. Three of her brothers-in-law are citizens and residents of Colombia. Another brother-in-law is a citizen of Colombia and resides in the United States. Applicant noted all of these in-laws have held U.S. tourist visas, and she has contact with them annually or every other year when she and her husband visit his mother. She also will greet them when her husband communicates with them via electronic means. There is no evidence that any of these relatives are employed by the Colombian government.³

Applicant has two aunts that are citizens and residents of Colombia. They are her mother's sisters. Applicant's aunts have held U.S. tourist visas and her contact with them consists of when she visits Colombia, or on a rare occasion when they may travel to the United States. Her other contact is an infrequent email or for special occasions. There is no evidence her aunts are employed by the Colombian government.

Applicant's cousin is a citizen and resident of Colombia. Her cousin is employed by a department of the local government, similar to a state. Applicant visited her in 2010 when their grandmother passed away. Applicant has limited contact with her on special occasions, such as birthdays.

Applicant's mother became a naturalized citizen of the United States in 1972, after her marriage to Applicant's father. Applicant's father was a U.S. foreign services officer for 35 years and served as a deputy chief of mission and an interim ambassador during his tenure. Her mother worked as a contractor for a U.S. government agency for several years before becoming a permanent employee of the agency. She retired from the agency after 28 years of honorable service. Both of her parents held top secret security clearances while employed with the federal government. Her mother passed away in 2009.

At one time, Applicant and her brother owned land in Colombia that they inherited from their grandmother. The land was sold in 2013, and they no longer own it.

Applicant and her brother inherited a house in Colombia that was owned by their mother. It was purchased by her in 1993, with the purpose of providing a place for their grandmother to live until she passed away. Applicant's mother predeceased their grandmother, and the house remained in her mother's name, but her brother and she are the heirs. They have attempted to sell the house, but have had difficulties because it is not yet held in their names. It is their intention to sell it because neither Applicant nor

² Item 2.

³ Item 2.

her brother ever plan to move to or live in Colombia. Their cousin has agreed to purchase the house, and they project the sale to be completed sometime in 2015. She estimated the value of the property to be approximately \$30,000. If it sells for that amount, her share would be \$15,000. She stated in her response to the FORM that this amount is insignificant, especially compared to her annual salary which is almost five times that amount, presumably almost \$75,000. She considered the property, which was inherited and not purchased, to be more of a burden at this point.

In Applicant's response to the FORM, she indicated her contact with her relatives in Colombia is infrequent. When her husband contacts his relatives via electronic communications, her participation is to say "hello." She sees her husband's relatives when they visit Colombia every year or two years for about a week of their three to four week stay. She last saw her mother's relatives in Colombia in 2010 when her grandmother was ill. Applicant attributes the frequency of her visits to Colombia as due to the benefits the international organization provides, rather than a close relationship with their relatives. Her familial contacts in Colombia are unaware of what her employment is or that she holds a security clearance.⁴

Applicant indicated that she has strong financial ties to the United States. Along with her commitment to her job, she and her husband have a home valued at approximately \$770,000. She stated she has never lived in Colombia and her brother, stepchildren, children, and step-grandchildren all are citizens and residents of the United States. Applicant explained she has always contacted her facilities security officer prior to foreign travel and submitted a debrief form after her travel was completed. She has always complied with the U.S. State Department's travel warnings and other requirements.⁵

Colombia

The United States and Colombia have had diplomatic relations since 1822, following Colombia's independence from Spain. It is a middle-income country and one of the oldest democracies in Latin America. It has experienced more than a half century of conflict with illegal armed groups involved in drug trafficking. There have been peace talks since 2012 between the government of Colombia and the Revolutionary Armed Forces of Colombia, its largest guerilla group. This group committed the majority of terrorist attacks in the Western Hemisphere in 2013. The United States has long-term interests in Colombia promoting security, stability, and prosperity, and supporting Colombia's continued progress in addressing its security, economic development and governance challenges.

Colombia's National Consolidation Plan seeks to re-establish state control and legitimacy in strategically important areas previously dominated by illegal armed groups through a phased approach that combines counternarcotic, economic and social

⁴ Response to FORM.

⁵ Response to FORM.

development initiatives. The U.S. policy supports the Colombian government's efforts to strengthen its democratic institutions, promote respect for human rights and the rule of law, foster socio-economic development, address immediate humanitarian needs, and end the threats to democracy posed by narcotics trafficking and terrorism. The United States is Colombia's largest trade partner and has numerous trade agreements.

Colombia's most serious human rights problems are an ineffective judiciary, forced displacement, corruption and societal discrimination. The availability of drug trafficking revenue often exacerbated corruption. Other problems include extrajudicial and unlawful killings; slow pace of investigations, trials, and indictments in cases related to extrajudicial killings; insubordinate military collaborations with members of illegal arms groups; forced disappearances; harassment of human rights groups and activists, including death threats; violence against women and girls; and trafficking in persons. The government continued efforts to prosecute and punish perpetrators, including members of security services who committed abuses. It has increased resources for the Attorney General's Office, prioritizing human rights cases, and employed a new strategy to analyze human rights and other cases.⁶

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 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 avoided drawing 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

⁶ <http://www.state.gov/misc/list/index.htm>

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 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 that an 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.

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 B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to

protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) 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; and

(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.

AG ¶¶ 7(a), 7(c), and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

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 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.”⁷

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”⁸ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.⁹

Applicant's husband is a citizen of Colombia. He resides in the United States and has a G-4 visa due to his employment with an international organization. He has been a permanent resident of the United States in the past and upon retirement intends to

⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

⁸ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **16-16 (App. Bd. Mar. 29, 2002).

⁹ *See generally*; ISCR Case. No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) reversing decision to grant clearance where administrative judge did not consider terrorist activities in area where family members resided.

apply for U.S. citizenship. Applicant's husband's mother and some of his siblings are citizens and residents of Colombia. Applicant also has two aunts and a cousin who are citizens and residents of Colombia. Applicant travels to Colombia every one to two years and visits these relatives. Colombia has numerous terrorist groups operating within its borders and has issues with human rights violations. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(c) have been raised by the evidence.

Applicant and her brother inherited from their mother property valued at approximately \$30,000. They are attempting to sell the property and have no intention of moving or living in Colombia. If the property sold for its estimated value, Applicant would only be entitled to \$15,000. Based on Applicant's significant financial footprint in the United States, I find this property does not constitute a substantial financial interest, which could subject her to a heightened risk of foreign influence or exploitation. SOR ¶ 1.f alleged she owned farm land in Colombia. She no longer owns this land. I find disqualifying conditions do not apply to SOR ¶¶ 1.f and 1.g.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

Applicant's husband is a Colombian citizen and has resided in the United States for approximately 24 years. Applicant has customary familial contact with her two aunts and a cousin in Colombia and visits them annually or every two years. She has limited other contact with them. She and her husband visit his relatives in Colombia about once a year or every two years. Applicant's contact with her husband is more than casual or infrequent. Her contact with other family living in Colombia is not infrequent or casual. Therefore, I cannot conclude that it is unlikely that his familial relationships could create a risk for foreign influence or exploitation. AG ¶ 8(c) does not apply.

There is no evidence that Colombia actively engages in espionage against the United States or that it targets its citizens for exploitation to gain information. The nature of a nation's government and its relationship with the United States are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Except for Applicant's cousin who is employed by the local government, it does not appear other family members are dependent upon the Colombian government. Applicant's husband resides in the United States and works for an international organization and is not dependent on the Colombian government. The United States maintains close relations with Colombia. It is unlikely Applicant will be placed in a position of having to choose between her family and the interests of the United States. AG ¶ 8(a) applies

Both of Applicant's parents were career federal employees holding top secret clearances. Applicant has held a top secret clearance without incident since 1999. Her children, stepchildren, and step-grandchildren are all citizens and residents of the United States. She and her husband have significant financial interests in the United States. At one time, her husband was a permanent resident of the United States, but due to financial benefits he maintains a G-4 visa status, and intends on remaining in the United States after he retires and applying for citizenship. Applicant has family in Colombia, but those she is most loyal to are her immediate family in the United States. I find there is no conflict of interest because of Applicant's deep and longstanding loyalty to the United States and she can be expected to resolve any conflict of interest in favor of the U.S. interests. AG ¶ 8(b) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments

under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 44 years old. She has worked for the same federal contractor since 1998 and held a top secret security clearance, without incident, since 1999. Applicant's husband has worked in the United States for the past 24 years for an international organization. Due to exceptional benefits he receives, it is financially advantageous for him to maintain his Colombian citizenship until he retires, whereupon he will apply for U.S. citizenship. Although Applicant and her husband visit family in Colombia, her ties, commitments, and loyalties are firmly grounded in the United States. She provided sufficient information to meet her burden of persuasion to mitigate the foreign influence security concerns. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence.

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

Subparagraphs 1.a-1.g: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge