

DATE: June 27, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07846

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Patrick F. Roche, Esq.

SYNOPSIS

Applicant, born and raised in Venezuela, immigrated to the US in 1980. Married to a US citizen, he has two children of US citizenship by birth. He became a naturalized US citizen in 1996, and in doing so gave up his Venezuela citizenship. Applicant has immediate and extended family members in Venezuela, who are not employed by either the government or the military and exhibit no known vulnerability to coercion or pressure. Applicant's aunt and cousins reside in Colombia, who, likewise, are not employed by either the government or the military and exhibit no known vulnerability to coercion or pressure. Neither country has any reputation for gathering foreign intelligence or engaging in espionage in the US. Any risks of coercion or compromise to Applicant's family members residing in Venezuela and Colombia are manageable ones. Clearance is granted.

STATEMENT OF THE CASE

On January 23, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR in February, 2003 and requested a hearing. The case was assigned to this Administrative Judge on March 18, 2003, and was initially scheduled for hearing to be held on March 28, 2003. Due to scheduling conflicts, the case was continued and rescheduled for April 23, 2003. A hearing was convened on April 23, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on seven witnesses (including himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on May 2, 2003.

PROCEDURAL ISSUES

Before the closing of the hearing, Department Counsel requested official notice be taken of a State Department consular statements covering the internal affairs of Venezuela and Colombia. There being no objections from Applicant's Counsel, and good cause being shown, official notice was taken of the State Department's Nicaragua and Colombian consular statements pursuant to Rule 201 of the Federal Rules of Evidence.

STATEMENT OF FACTS

Applicant is a 38-year old computer technician for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Under Guideline B, Applicant is alleged to have immediate family members in Venezuela who create security risks of potential foreign influence. Specifically, Applicant is alleged to have (a) a father who is a citizen and resident of Venezuela, (b) two brothers who are citizens and residents of Venezuela, (c) two sisters who are both citizens and residents of Venezuela and maintain twice-monthly telephone contact, (d) an aunt who is a citizen and resident of Venezuela and maintains twice monthly contact, (e) an aunt who is a citizen and resident of Columbia and maintains once a year telephone contact, and (f) three cousins who maintain telephone contact with Applicant one to three times a year.

For his response to the SOR, Applicant admitted each of the allegations, but denied that his family relationships are not clearly consistent with the national interest.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was born and raised in Venezuela. He immigrated to the US in 1980 at the age of 15. He graduated from a local State A high school in 1984 and married a US citizen (W), who he met in high school. Applicant has two children from his marriage to W who have also been educated in the US schools.

Applicant and W have owned their own home in State A for ten years. Applicant and W each have 401(k)s. They own two cars between them and have life insurance. After completing high school, he worked various construction jobs before becoming a permanent resident of the US in 1996. He applied for and became a US citizen in 1999. When granted his US citizenship, he gave up his Venezuela citizenship.

By 1996, Applicant made the decision to pursue a compute career. To this end, he attended a local computer school at night while working construction during the day. He is credited with excellent academic achievement in his educational pursuits (*see ex. H*). After receiving his degree in computer science in 1997, he worked for several firms in his computer field before joining his current firm in 1999 as a computer technician (*see ex. 1*).

Applicant registered to vote in US elections and voted in the 2000 US presidential election (*see ex. D; R.T., at 27*). He has never voted in a foreign election and last traveled outside the US in 1991: to see his relatives in Venezuela. Neither he nor W own any property in either Venezuela or Colombia and have no intention of acquiring any in either of these countries (*see R.T., at 29*). The last time he traveled to Colombia (to see his relatives) was in 1970. While he holds an expired Venezuela passport, he has no intention of ever renewing it.

None of Applicant's relatives residing in Venezuela work or are affiliated with the Venezuela Government or military establishment, and none have any known connections with Venezuela's chief executive. His mother continues to live with him in the US. While his father resides in Venezuela, he has had no contact with him since 1985 (*see R.T., at 31*). He continues to maintain monthly telephone contact with one of his brothers and both of his sisters on a monthly basis. He also maintains telephonic contact with his cousin in Venezuela and two of his three cousins residing in Colombia (*see ex. 2; R.T., at 53-55*). None of his cousins are employed by either the Venezuelan or Colombian Governments. And

none of his cousins are known to have any interest in local politics.

Applicant has no information that would lead him to believe any of his family members residing in Venezuela and Colombia are at any risk to coercion, pressure or compromise (*see* R.T., at 58-59). Were any of Applicant's relatives to ask him to take any action adverse to the interests to the US, Applicant would report it to his security officials with his company. And in the event of a hypothetical conflict between the US and Venezuela, Applicant would side with the US; his home country.

Applicant is highly regarded by his company supervisor, colleagues, family and friends as a valued person who can be trusted and relied upon.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or may* be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Conditions:

DC 1: An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions:

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense decision. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively

demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen and a highly regarded computer technician for a defense contractor whose father, sisters, brothers and one aunt have citizenship and residence in their ancestral country: Venezuela. Besides these family members in Venezuela, Applicant also has relatives who are citizens and residents of Colombia: an aunt and three cousins. Both Applicant and his wife and children (who are US citizens by birth) claim their allegiance to the US, while just the same maintaining regular contact with Applicant's family members in Nicaragua, and to a lesser extent with Applicant's extended family members in Colombia..

The Government finds security risks associated with Applicant's father and siblings living in Venezuela, and to a lesser extent by his aunt and cousins residing in Colombia, who the Government believes to be vulnerable to pressure and coercion by virtue of the current instability that exists in each country. Applicant argues any such potential concerns are shown to be either assuaged or significantly mitigated.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Available source information confirm Venezuela and Colombia to be countries with democratic histories, whose political and economic conditions are currently quite fluid (*see US State Department consular reports*). The consular reports also mention frequent kidnaping of Americans in the Venezuela/Colombian border regions. Because of the current political situations in these two countries, potential security concerns are raised. In this vein, Government may invoke several disqualifying conditions: DC 1 (immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen or resident or present in a foreign country).

Venezuela and Colombia are constitutional democracies with fully consistent histories of respect for human rights and the rule of law. Both of these countries can be considered to be in relative transition (reflected in the fluid conditions that currently pervade these countries), but still committed globally to restoring and preserving democratic institutions guided by the rule of law and respect for human rights. Important, too: Neither country has exhibited any hostile government attitudes towards the US. This is partially reflected in the absence of any organized intelligence gathering and foreign espionage initiatives in the US by either of these two countries.

Because of the recognized improving political and economic climate in Venezuela and Colombia, security concerns over the status of Applicant's relatives either residing or linked to these two countries are considerably reduced. Mitigation of these concerns now permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his father (whom he has not spoken to in 18 years), brothers, sisters and one aunt domiciled in Venezuela, and with his other aunt and cousins domiciled in Colombia. With security risks surrounding his family members considered manageable, Applicant may claim the mitigation benefits of MC 1 (presence of immediate family in host country does not pose an unacceptable security risk) of the Adjudicative Guidelines. Overall, favorable conclusions warrant with respect to sub-paragraphs 1.a through 1.f of Guideline B of the Adjudicative Guidelines.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

Sub-para. 2.e: FOR APPLICANT

Sub-para. 2.f: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge