

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant, was a dual citizen of Colombia and the United States, and routinely used a Colombian passport during travel to Colombia. His mother, rother, and an uncle reside in Colombia, and his wife is a Colombian citizen. Although he has renounced his Colombian citizenship and surrendered his Colombian passport, the residence of close family members in Colombia, and his prospective travel to that country create an unacceptable security risk. Clearance is denied.

CASENO: 03-24893.h1

DATE: 09/20/2005

DATE: September 20, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24893

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, was a dual citizen of Colombia and the United States, and routinely used a Colombian passport during travel to Colombia. His mother, brother, and an uncle reside in Colombia, and his wife is a Colombian citizen. Although he has renounced his Colombian citizenship and surrendered his Colombian passport, the residence of close family members in Colombia, and his prospective travel to that country create an unacceptable security risk. Clearance is denied.

STATEMENT OF THE CASE

On December 22, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a response to the SOR, signed January 2, 2005, requested a hearing, and admitted all SOR allegations.

The case was assigned to another administrative judge on March 14, 2005, and reassigned to me on May 24, 2005, due to caseload considerations. A notice of hearing was issued on May 27, 2005, scheduling the hearing for June 16, 2005. The hearing was conducted as scheduled. The government submitted nine documentary exhibits that were marked as Government Exhibits (GE) 1-9. GE 1-6 were admitted into the record and administrative notice was taken of GE 7-9 without objection. Applicant testified, called one witness to testify on his behalf, and submitted one

documentary exhibit that was marked as Applicant's Exhibit (AE) 1, and admitted into the record without objection. Applicant submitted a document entitled *Points and Authorities in Support of Applicant for Security Clearance* that was marked as Appellate Exhibit I, considered by me, and is included in the case file.

The record was held open to allow Applicant time to submit additional documentation in support of his case. Two additional documents were timely received, marked as AE 2 and 3, and admitted into the record without objection. The transcript was received by DOHA on June 24, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 38-year-old married man who has been employed by a defense contractor as a software engineer since June 1996. He was born in the United States in December 1966. His father was a U.S. citizen and his mother is a Colombian citizen. Applicant has one brother who was born in the U.S. in September 1965, and, by virtue of the citizenship laws of the U.S. and Colombia, they both acquired dual citizenship with those countries at birth. Applicant's father died when he was very young, and his mother relocated the family to Colombia. Applicant was raised and attended school, through college, in Colombia, and then worked as a program manager for a private company in Colombia from April 1991 to January 1995. He relocated to the U.S. in 1995 to pursue a masters degree which he was awarded in August 1996.

Applicant's mother is either 70 years old (GE 1) or 75 years old (Tr. p. 39). She resides in Colombia, worked as a clerk/secretary for an independent company that provided services to a Colombian governmental organization until she retired at least ten years ago, and presently receives a government pension. Applicant's mother resides with his uncle, a retired attorney who also worked for an independent company that provided services to a Colombian governmental organization until he retired at least ten years ago. The uncle is 73 years old and also receives a government pension. Applicant speaks with his mother weekly and his uncle monthly by telephone. He visits with them in Colombia every two to three years.

Applicant's mother and uncle live in an apartment that the mother owns. Applicant values the apartment, which he stands to inherit with his brother, at about \$30,000.00. Applicant does not own any other property in Colombia. He earns approximately \$105,000.00 per year, owns a home in the U.S., and the Colombian inheritance, when and if it is ever received, will be an insubstantial portion of his assets.

Applicant's brother is 40 years old, married, has two children, and works as a mechanical engineer in Colombia. The brother came to live in the United States with Applicant in 1997, but returned to Colombia after about one year when he was offered a job in that country. Applicant speaks with his brother by telephone about once a month and visits with him during his trips to Colombia.

Applicant's wife is a 38-year-old Colombian citizen who immigrated to the U.S. after they married in Colombia in July 1997. She obtained permanent resident status in 1999, and has applied to become a U.S. citizen. She works as a computer programmer for a school district in the U.S. and earns approximately \$70,000.00 annually. Her parents are both deceased.

Applicant acquired a Colombian passport in June 1994 that expired in June 1999. The Colombian passport was renewed in January 2000, and was to remain valid until January 2010. He acquired a U.S. passport in November 1994 that expired in November 2004. Applicant visited Colombia from December 12, 1995 to January 9, 1996, June 28, 1997 to July 26, 1997, December 15, 1999 to January 6, 2000, and December 2003 to January 2004. He used his Colombian passport on each occasion to enter Colombia in order to maintain a low profile because of the instability in that country caused by various terrorist organizations. He used both passports to exit Colombia, and was told in 1999 that he would not be allowed to leave the country if he did not have a valid Colombian passport.

Applicant's mother is financially independent and able to support herself on her pension, the uncle's pension, and funds she receives from rental property. However, Applicant does provide her with modest financial assistance in the amount of \$100.00 per month. He also sends her and his other relatives in Colombia nominal gifts on special occasions. Applicant's mother came to the U.S. to reside with him in 1999 for six months, and he anticipates she will come to reside with him for a similar period sometime in the future.

Applicant expressed a willingness to renounce his Colombian citizenship and surrender his Colombian passport before and during the hearing. Although surrender of a foreign passport is a prerequisite to being granted a security, renunciation of dual citizenship is not. However, Applicant, in a clear demonstration of his loyalty to the U.S., took both of those actions after the hearing was completed. (AE 2 and AE 3)

Applicant presented the testimony of his supervisor, a retired U.S. Marine Corps Lieutenant Colonel, and submitted numerous letters of recommendation performance evaluations. Together they establish that Applicant is an outstanding employee and gifted engineer. He has earned a reputation for being an honest, dedicated, and loyal individual and U.S. citizen. He has possessed a top-secret security clearance since June 1997, and there have not been any allegations made that he mishandled or otherwise compromised classified information. Those who have addressed the issue believe Applicant can be trusted to properly safeguard classified information and they strongly recommend he be granted a security clearance.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or 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.

Based upon the SOR allegations, Disqualifying Conditions 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*; DC 2: *Sharing living quarters with a person or persons, regardless of the citizenship status, if the potential for adverse foreign influence or duress exists*; and DC 8: *A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B.

DC 1 applies because Applicant's mother, brother, and uncle are citizens and residents of Colombia. Applicant's close ties of affection to all of these people is demonstrated by his frequent telephone contact with them, regular visits with them in Colombia, the modest gifts and financial assistance he provides, and his mother's past and anticipated future extended visits with Applicant in the United States. Applicant's wife's Colombian citizenship does not create any additional concern under DC 2 considering she has resided in the U.S. for eight years, had resident alien status for six years, has taken all steps necessary thus far to become a U.S. citizen, and her parents who resided in Colombia are deceased. Likewise, no additional security concern is raised under DC 8 by the speculative inheritance Applicant may receive considering how minimal it is in comparison with his family income and monetary worth in the U.S.

Once the government meets its burden of proving controverted facts⁽¹²⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹³⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative

Guideline mitigating conditions, and an administrative judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition. [\(14\)](#)

The following information about Colombia is significant in determining whether a security concern exists under the known facts in this case:

Although rates of common crime and violence by narcotics traffickers and terrorist groups have decreased, travel to Colombia still can involve considerable risk.

The Secretary of State has designated three Colombian groups, the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC), as Foreign Terrorist Organizations. These groups have carried out bombings and other attacks in and around major urban areas, including civilian targets. A bombing at an exclusive social club in Bogotá on February 7, 2003, left 36 dead and 160 injured. On November 15, 2003, the FARC conducted grenade attacks against restaurants in an upscale entertainment area in Bogotá; the attack left one person dead and injured 73, including four U.S. citizens. Terrorist groups have also targeted critical infrastructure (water, oil, gas, electricity), public recreational areas, and modes of transportation.

Due to considerable effort on the part of the Colombian government to improve security throughout the country, homicide numbers declined by 20 percent from 2002 to 2003, to a countrywide figure of about 23,000. However, in comparison, this figure still exceeded U.S. homicide levels by about 40 percent, in a country with one-seventh our population. While narcotics and guerilla-related violence account for part of this violence, common criminals are responsible for an estimated 75 percent of the reported murders. Additionally, the Government of Colombia reports a 50 percent decline in the number of kidnappings in the past four years. However, Colombia continues to have one of the highest rates of kidnapping for ransom in the world, with 1827 kidnappings in the 12 months prior to April 2004.

These crimes affect all parts of the country. American kidnap or murder victims have included journalists, missionaries, scientists, human rights workers and businesspeople, as well as persons on tourism or family visits, and even small children. In 1999, the FARC murdered three U.S. citizens whom it had kidnapped. On February 13, 2003, a plane carrying five crewmembers (four U.S. citizen-U.S. government defense contractors and one Colombian citizen) crashed in a remote section of Colombia. Two crewmembers (the Colombian and one of the U.S. citizens) were killed by the FARC and the remaining crewmembers were taken hostage. The FARC continues to hold captive the three missing U.S. citizens. In the past four years, 30 more American citizens were reported kidnapped. . . . [\(15\)](#)

The Department of State warns U.S. citizens against travel to Colombia. Violence by narcoterrorist groups and other criminal elements continues to affect all parts of the country, urban and rural. Citizens of the United States and other countries continue to be the victims of threats, kidnappings, and other violence. Colombian terrorist groups also operate in the border areas of neighboring countries, creating similar dangers for travelers in those areas. Bombings have caused civilian casualties throughout Colombia. Targets include supermarkets, places of entertainment, and other areas where U.S. citizens congregate. . . .

About 2,200 kidnapping incidents were reported throughout Colombia in 2003. Since the year 2000, 28 Americans were reported kidnapped in various parts of the country. . . . No one can be considered immune on the basis of occupation, nationality or any other factor. Most kidnappings of

U.S. citizens in Colombia have been committed by terrorist groups, including the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), which have been designated as Foreign Terrorist Organizations by the Secretary of State. Since it is U.S. policy not to make concessions to, or strike deals with, terrorists, the U.S. government's ability to assist kidnapped U.S. citizens is limited. [\(16\)](#)

Colombia is a successful democracy that is increasingly taking control of its own future. Its success in doing so is making it a force for progress and stability in the troubled Andean region. Despite Colombia's many security problems, it is a vibrant democracy, whose legitimacy is unquestioned and which serves as a model for what can be achieved under adverse conditions. In spite of continued violence, there is no question that the country's democratic traditions are solid and widely-respected. Our investment supporting Plan Colombia has contributed to this and is increasingly paying off.

* * *

Secretary Rice's visit highlighted our close working relationship with Colombia and the unusually complex series of issues that exist with Colombia and its neighbors. [\(17\)](#)

Applicant's mother, brother, and uncle reside in Colombia full-time. Applicant has traveled to Colombia on a regular, if somewhat infrequent, basis in the past, and contemplates so doing in the future. The potential risk and danger to Applicant's foreign relatives and to Applicant himself, and the potential for coercion, exploitation, or pressure being exerted on Applicant directly and through his foreign relatives by any of the terrorist organizations operating in Colombia is obvious. Applicant himself acknowledged the danger by using a Colombian passport to enter Colombia on his past visits in order to not call attention to himself as a U.S. citizen. While the government of Colombia is actively and aggressively striving to eradicate the terrorist and criminal elements operating in that country, it is far from achieving success and security for Colombian citizens and visitors. I have considered all potential mitigating conditions and none apply. Guideline B is decided against Applicant.

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.

Disqualifying Condition (DC) 1: *The exercise of dual citizenship* and DC 2: *Possession and/or use of a foreign passport* are acts that demonstrate a foreign preference. Applicant was a dual citizen of the U.S. and Colombia, and exercised his Colombian citizenship by obtaining and using a Colombian passport to enter Colombia after he became a U.S. citizen. However, his use of his Colombian passport was solely motivated by legitimate concern for his personal safety, and he has now renounced his Colombian citizenship and surrendered his Colombian passport. Mitigating Condition (MC) 4: *Individual has expressed a willingness to renounce dual citizenship* applies. Guideline C is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline C: For Applicant

Subparagraphs a-d: For Applicant

SOR ¶ 2-Guideline B: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For Applicant

Subparagraph g: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Directive, Additional Procedural Guidance, Item E3.1.14
13. Directive, Additional Procedural Guidance, Item E3.1.15
14. ISCR Case No. 99-0597 (December 13, 2000)
15. U.S. Department of State, *Consular Information Sheet, Colombia*, March 4, 2005. (GE 8)
16. U.S. Department of State, *Travel Warning, Colombia*, March 4, 2005. (GE 9)
17. Roger F. Noriega, Assistant Secretary for Western Affairs, Statement Before the House International Relations Committee, May 11, 2005. (AE 1, tab Q)