DATE: January 19, 2005

In Re:

SSN ----------

Applicant for Security Clearance

ISCR Case No. 03-05725

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 45-year-old laboratory analyst was born in Columbia in 1957. She came to the U.S. in 1979 to pursue her education and became a U.S. citizen in 1986. Her parents and siblings remain in Columbia as Columbian citizens. She was married and divorced, and has two grown native-born sons who are in the U.S. military. She sees herself as an American only, with no loyalty or emotional attachment to Columbia. She has demonstrated by word and deed (including the raising of her sons) that she is not vulnerable to any pressure intended to coerce her to act against U.S. interests. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On April 29, 2004, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On May 14, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on July 2, 2004. A Notice of Hearing was issued on August 3, 2004, setting the hearing for August 23, 2004. At the hearing, the Government introduced four exhibits (GX 1 - 4). Applicant testified and introduced two exhibits (AX A and B). All exhibits were admitted as marked. The transcript was received at DOHA on September 7, 2004.

FINDINGS OF FACT

Applicant is a 45-year-old systems analyst for a major defense contractor. She came to the United States in 1979, to

make a better life for herself. The April 29, 2004 SOR contains nine allegations under Guideline B (Foreign Influence). In her May 14, 2004 Response to the SOR, Applicant *admits* all the allegations, 1.a - 1.i., with explanations. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's father and mother are citizens of Columbia, and are currently residing in that country. They are both in their early 70s and are practicing attorneys (Response to SOR), her father in general practice and criminal law, and her mother in estates, wills, and "stuff like that" (Tr at 25).

1.b. - Applicant has monthly telephone contact with her parents in Columbia. Applicant is mindful of their health and the conversations relate primarily to family matters (*Id.*).

1.c. - Applicant's three sisters are citizens of Columbia and currently reside in that country.

1.d. - One of Applicant's brothers is a citizen of Columbia, currently residing in that country. He began as a lower court judge right out of law school and worked his way up (Tr at 39, 40). He is now a Supreme Court Judge in Columbia (GX 2)[(1)] and serves in a small town some distance from the national capital at Bogota. Applicant is proud of this brother, who is an honorable and respectful individual (*Id.*). He is "active in prosecuting and putting some of the drug trade people in jail" (Tr at 19). Over the years, he has been the sibling with whom she has had the least contact (Tr at 40).

1.e. - A second brother, who was residing in the U.S. when Applicant migrated here, was deported to Columbia in 2000/2001after a criminal conviction. Applicant is not aware of all the circumstances, but assumes it was drug-related (Tr at 47), and she is "ashamed and disappointed" that it happened (GX 3). The brother is a citizen of Columbia, and currently resides in that country, living with his parents.

1.f. - A third brother, who is a citizen of Columbia, currently resides in that country. Applicant is petitioning for him to gain entry into the United States. He is an architect and, Applicant believes, could do well here. Applicant has monthly telephone contact with this brother

(*Id.*).

1.g. - Applicant's aunts and uncles are citizens of Columbia and currently reside in that country (*Id.).*

1.h. - Applicant provides financial support to her family members when they need it. She sends money as gifts to her parents and siblings. This past year (2004), Applicant sent her parents about $2,000 as gifts (Tr at 26). Her parents also have money in an account in a U.S. bank (Tr at 27, 28).

1.i. - Applicant traveled to Columbia in December 1997, June 2000, and June 2002. Each occasion was on family business, including a wedding and her parents 50th wedding anniversary *(Id*.).

Her parents know only that she has a good job (Tr at 30). She has seven siblings, all of whom reside in Columbia. The family is substantially well educated (two sisters are psychologists and one brother is an architect). Applicant has been a loyal citizen of the U.S. since her naturalization in 1986. The only thing that connects Applicant to Columbia is the presence there of her family members, many of whom would like to come to the U.S. (Tr at 22). She has voted in every U.S. election for which she was eligible since becoming a citizen. She owns a home and has a retirement account with her employer (Tr at 54).

She was divorced when the younger of her two U.S.-born sons was six months old, and she has raised her two sons on her own, without any substantive help by their father (Tr at 55). One is serving in the Navy and the other had signed up to join the Marine Corps, on a delayed entry program, in November 2004, with the hope of eventually becoming an aviator (Tr at 55). As "a mother and citizen, [she] would never do anything that would endanger their lives" (*Id.*).

Applicant recognizes the effect of her having so many family members who are citizens of Columbia and who reside in that troubled country, but she has "the power of what I do and what I don't [do] and my loyalties are with the United States" (Tr at 23, 24). She would never "do anything that is dishonorable" (Tr at 24). There is no indication that Applicant has done anything improper. Under Guideline B, the concern is one of risk based on familial relationships.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6)

the presence or absence of rehabilitation and other pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of

Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Under Guideline B, a security risk may exist when [members of]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Conditions - (1). An immediate family member . . . is a citizen of, or resident or present in, a foreign country; and (3) relatives who are connected with any foreign government.

Mitigating Conditions - MC 1 is not applicable. It requires a "determination that the immediate family member(s) . . . in question 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 person(s) involved and the United States." In ascertaining the meaning of the term "agent of a foreign power," I note a recent decision in which the Appeal Board found that a "member of a foreign military" is an agent of a foreign power within the meaning of the Directive.[(2)] In the present case, one of Applicant's brothers is a Supreme Court Judge on Columbia's highest criminal court, a position, I conclude, that makes him an agent of the Columbian government and, therefore, precludes the application of MC 1.

This conclusion is not by itself determinative. The applicability or nonapplicability of a specific disqualifying or mitigating condition from the Adjudicative Guidelines is not solely dispositive of a case.[(3)] Rather, decisions should be based on "articulated . . . reasons all . . . reflecting

a plausible interpretation of the evidence in this case, for why [the Administrative Judge] concluded Applicant was not vulnerable to foreign influence."[(4)]

Since first coming to the U.S., there has been no conduct by Applicant suggesting any remaining positive feelings or any preference for Columbia. Since the SOR does not contain any allegations of such conduct (under Guideline C) by Applicant, I have considered this factor only in the context of evaluating whether Applicant might be vulnerable to foreign influence, when considered under Guideline B or the general guidelines found in Section E2.2.1 of the Directive. Based on the totality of the record, I conclude that Applicant is not vulnerable to such improper influence by reason of the strength of character and integrity she has shown during the 25 years she has been in the United States. The facts and circumstances surrounding her family members in Columbia and her relationship with them suggests affection for her family, but not to the point of overwhelming her affection for the United States, and the opportunities it has given her, and her children, over most of her adult life.

A brother who is a Supreme Court Judge, even one in a small town some distance from the capital is, perhaps, more likely to be asked by his government to apply pressure on his sister than a sibling not so employed. However, based on the description of this brother supplied by Applicant, it is doubtful that he would agree to do so. The fact that no such conduct occurred in the past does not necessarily mean it will not occur in the future, but it is a factor to be considered

among others. In any case, I conclude that these abstract questions are outweighed by Applicant's certainty as to how she would respond if ever asked to do something against U.S. interests. Applicant's revealing of the matter to DSS makes a strong case that she can be relied upon to support U.S. security interests. Based on the totality of the evidence, I conclude Applicant has demonstrated she is not vulnerable to improper pressure, even from her own family.

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern:

None that are supported by the overall evidence of record.

Letters of praise from coworkers see Applicant as dedicated, honest, and trustworthy (AX A and AX B). I find these letters to be on point and persuasive as to Applicant's character, dedication, and integrity. Applicant has spent most of her adult life in the U.S. She considers herself to be an American and much of her professional career has been in support of U.S. interests (AX B). Nothing she has done since emigrating to the U.S. suggests any lingering feelings or preference for Columbia. To the contrary, she is clear about why she is committed to protecting her adopted country.

While relatives in any foreign country may present a risk, this factor is not an automatic bar to holding a security clearance. Fairness and common sense require an analysis of the entire record and an overall common sense determination. The Government has not shown that Columbia is viewed as active in espionage in the U.S. In fact, Columbia, although troubled internally (GX 4), also cooperates with the U.S. on most issues of common concern.

The lack of any improper contact in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that must be considered along with all other evidence, including, but not limited to, Applicant's statement that her allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for Columbia; and (2) there is minimal risk that Applicant's relatives will be pressured into contacting Applicant for improper purposes. In addition, based on her long history of residence in and dedicated service to this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests. I find Applicant to be highly credible and a person of high integrity.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the 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 a security clearance for Applicant.

Barry M. Sax

Administrative Judge

1. In Columbia, the judicial system has four coequal judicial organs. One of these is the Supreme Court of Justice or *Corte Suprema de Justical*. This is the nation's highest court of criminal law; its judges are selected from the nominees of the Higher Council of Justice for eight-year terms. Source: CIA - "The World Factbook," updated as of December 16, 2004.

2. Appeal Board Decision, ISCR Case No. 02-29143 (January 12, 2005), at page 3.

3. *Id*., citing ISCR Case No. 02-11810 (June 10, 2003), at page 5

4. *Id*., at pages 3, 4.