

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born in the U.S. of Columbian parents who were here temporarily. Shortly after his birth, Applicant returned to Columbia with his parents. He came to the U.S. to live in the U.S. more than 35 years ago and has held a security clearance for more than 20 years. Although his wife is a dual U.S./Columbian citizen and he has siblings who live in Columbia, Applicant has renounced his Columbian citizenship. Applicant mitigated foreign preference and foreign influence security concerns. Clearance is granted.

CASE NO: 05-06726.h1

DATE: 04/25/2006

DATE: April 25, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06726

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank Jr., Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in the U.S. of Columbian parents who were here temporarily. Shortly after his birth, Applicant returned to Columbia with his parents. He came to the U.S. to live in the U.S. more than 35 years ago and has held a security clearance for more than 20 years. Although his wife is a dual U.S./Columbian citizen and he has siblings who live in Columbia, Applicant has renounced his Columbian citizenship. Applicant mitigated foreign preference and foreign influence security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on 21 December 2005 detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 13 January 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 February 2006. On 23 March 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 30 March 2006.

### **FINDINGS OF FACT**

Applicant is a 56-year-old electronic technician for a defense contractor. He is married and has one son. He has held a security clearance continuously for more than 20 years. Without his clearance, he would be terminated from his employment.

Applicant was born in the U.S. in 1949, of Columbian parents, while his father was studying at a U.S. university for a master's degree in chemical engineering. By virtue of his birth in the U.S., Applicant is a U.S. citizen. Because his

parents were Columbian citizens, he also held Columbian citizenship. Shortly after Applicant's birth, his father completed his degree and returned with the family to Columbia. The family resided in the city of Medellin. His parents are deceased, but Applicant has four sisters and a brother who are citizen residents of Medellin, Columbia. He has two sisters who are naturalized U.S. citizen-residents. Applicant has no assets in Columbia and does not support any of his siblings. He expects that when his father's estate is finally settled, he will get some small inheritance. Applicant fears for the safety of his siblings in Columbia because of the numerous kidnappings for ransom and carjackings. Applicant's siblings live inside the city; most of these crimes occur outside of the city in which they live.

Applicant returned to the U.S. when he was 19 or 20 years old to visit a cousin. He decided to stay in the U.S. and, in 1973, married a Columbian citizen he met in the U.S. Their son is a native-born U.S. citizen who currently resides in Italy, where he is attending graduate school. Applicant's wife became a U.S. citizen in 1980, but maintains her Columbian citizenship, passport, and identification card. She purchased a house for her parents in Columbia. They are now deceased, and the house, valued at \$34,000, is being rented. The rent pays the mortgage. The rest of Applicant's wife's family now reside in the U.S. and most of them are naturalized U.S. citizens. Neither Applicant's parents nor his siblings worked for any Columbian government entity.

Applicant returned to Columbia in 1977 to visit his family and show them his young son. In the almost 30 years since, Applicant has returned to Columbia between 25 and 30 times. Although he initially traveled on his U.S. passport, he obtained a Columbian passport so he would not have to request a visa extension when he wanted to stay there for more than two weeks. Recently, before the death of his father in 2004, Applicant visited as much as twice a year. He maintains contact with his brother by e-mail and his sisters by telephone. He does not provide any financial support to his siblings in Columbia.

In a 29 October 2004 signed, sworn statement, Applicant stated he was not willing to renounce his Columbian citizenship. On 16 March 2006, Applicant formally renounced his Columbian citizenship and returned his Columbian passport and identification card to the Columbian Consulate. He and his wife have not voted in Columbian elections. He never served in the Columbian military. He intends to visit Columbia in the future, but not as often as when his father was alive. He intends to retire in the U.S.

In his more than 20 years as a cleared employee, he has become very well acquainted with security procedures. He understands his duty to report to his security officer any threats to himself or his family and any requests for classified information. If any of his family were taken hostage, he would immediately report it to the U.S. Government. Applicant's family in Columbia does not know he works with classified information.

Columbia is a constitutional, multiparty democracy. Ex. 11 at 1. It is "a steadfast ally" of the U.S. in the fight against narcoterrorism. Ex. 7 at 11. The government continues "to assist U.S. Government counterterrorism efforts and to disrupt terrorist acts, block terrorist finances, and extradite terrorists to face justice in the United States." *Id.* Terrorist groups continue to kidnap civilians for ransom or as political bargaining chips. Ex. 8 at 1. Columbia still suffers the highest kidnapping rate in the world. Ex. 7 at 12. But violence in the Medellin area has decreased markedly in the past few years. Ex. 8 at 1.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Jan. 6, 1993). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline C-Foreign Preference**

In the SOR, DOHA alleged Applicant exercised dual U.S./Columbian citizenship (¶ 1.a); applied for and was issued a Columbian passport although a U.S. citizen by birth (¶ 1.b); used his Columbian passport to enter and exit Columbia from 1997 to at least 2004 (¶ 1.c); applied for and was issued a Columbian identification card in 1995 (¶ 1.d); and does not intend to relinquish his Columbian passport (¶ 1.e). In his Answer, Applicant admitted each of the allegations, except ¶ 1.e. He asserted he was willing to relinquish his Columbian passport, if requested. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government's evidence and Applicant's admissions established each of the allegations under Guideline C. A possibly disqualifying security concern is raised by an applicant who exercises dual citizenship (DC E2.A3.1.2.1) or possesses or uses a foreign passport (DC E2.A3.1.2.2). Applicant was a dual citizen of the U.S. and Columbia and used his Columbian passport on many occasions to enter and exit Columbia.

An applicant may mitigate such foreign preference security concerns by establishing his dual citizenship is based solely on his parents' citizenship (MC E2.A3.1.3.1) or he expressed a willingness to renounce dual citizenship (MC E2.A3.1.3.4). Applicant's citizenship was based on his parents' Columbian citizenship. He not only expressed a willingness to renounce his dual citizenship, he did so. He returned his passport and his identification card and formally renounced his citizenship. After considering all the evidence, I conclude Applicant mitigated foreign preference security concerns. I find for Applicant on ¶ 1.

## **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's brother and four sisters are citizen residents of Columbia (¶ 2.a) and he traveled to Columbia as often as twice a year from 1997 to at least 2004

(¶ 2.b). In his Answer, Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government's evidence and Applicant's admissions establish each of the allegations in SOR ¶ 2. A possibly disqualifying security concern is raised when an applicant has immediate family members who are citizens, residents, or present in a foreign country. DC E2.A2.1.2.1. Security concerns may also be raised if an applicant shares living quarters with a person if the potential for adverse foreign influence or duress exists (DC E2.A2.1.2.2) or the applicant engages in conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (DC E2.A2.1.2.6). Applicant has family members still residing in Columbia; his wife maintains her dual citizenship and Columbian passport, and still owns property in Columbia; and Applicant and his wife have visited the country often.

An applicant may mitigate security concerns raised by foreign family members by establishing that they are neither agents of a foreign power nor in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family member and loyalty to the U.S. MC E2.A2.1.3.1. Congress has directed that the term "agent of a foreign power," when used to determine access to classified information, has the same meaning as set forth in 50 U.S.C. § 1801(b). 50 U.S.C. § 438. As defined in 50 U.S.C. § 1801(b), "agent of a foreign power" means a person, other than a United States person, who acts in the U.S. as an officer or employee of a foreign power, or as a member of a group engaged in international terrorism; or acts on behalf of a foreign power that engages in clandestine intelligence activities in the U.S. contrary to the interests of the U.S. when circumstances suggest the person may engage in such activities in the U.S.; aids or abet terrorists; or engages in international terrorism; or any person who

engages in clandestine intelligence gathering activities or sabotage. 50 U.S.C. § 1801(b). Applicant's family members are not "agents of a foreign power." *But see* ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) (holding the definition of "agent of a foreign power" in the adjudicative guidelines is not limited by 18 U.S.C. ¶ 1801(b) because that federal statute applies only to foreign intelligence surveillance activities); *accord* ISCR Case No. 03-10954 at 4 n. 5 (App. Bd. Mar. 8, 2006).

In determining whether Applicant's foreign contacts are in a position to be exploited by a foreign power, it is important to consider a broad range of factors including the identity of the foreign country, whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. Columbia is not known to target U.S. citizens to obtain protected information, but it is associated with a risk of terrorism. However, Columbia is a "steadfast ally" on terrorism and has made substantial progress in its battle with it. The Colombian government has even extradited terrorists to the U.S. for trial.

Other pertinent mitigating conditions in this case include the following: (1) Applicant has promptly reported to proper authorities all contacts with persons from a foreign country (MC E2.A2.1.3.4); and his foreign financial interests are minimal and not sufficient to affect his security responsibilities (E2.A2.1.3.5).

In weighing the evidence in a foreign influence case, an administrative judge may consider the length of time an applicant has been in the U.S., his financial assets in the U.S., the number of immediate family members who are U.S. citizen-residents, the number of years he has held a security clearance without adverse incident, favorable character references, his understanding of the security concerns raised by his circumstances, and his knowledge of and willingness to undertake necessary security procedures should such action be warranted. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006). Applicant has been a U.S. citizen from birth, maintained his permanent residence in the U.S. for more than 35 years, and held a security clearance for more than 20 years without adverse incident. He is well acquainted with the rules and regulations governing the security of classified information, is sensitive to the security concerns raised by his circumstances, and is willing to follow necessary security procedures should such action be necessary. Although his wife owns a modest dwelling in Columbia, Applicant's assets are all in the U.S. and he does not provide any financial support to his family in Columbia.

After carefully reviewing all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find for Applicant on ¶ 2.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: 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

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

**DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

JAMES A. YOUNG

Administrative Judge