

DATE: December 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-15911

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 45-year-old welder, was born in Colombia. He became a naturalized citizen in 2002. His son, who is about to serve in the Marines, was born in Colombia, but brought to the U.S. by Applicant. His mother, a citizen of Colombia, has permanent residency in the U.S. and has lived with Applicant for more than 10 years. He is assisting his brother in Colombia to live in the U.S. and anticipates bringing his sister and her family from Colombia to the U.S. Applicant mitigated the security concerns related to possible foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On November 14, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86). [\(1\)](#) On April 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 a clearance should be granted or revoked.

In a sworn, written statement, executed on May 12, 2006, Applicant responded to the SOR allegations and requested an in-person hearing. The case was assigned to me on August 23, 2006. A Notice of Hearing was issued on October 6, 2006, scheduling the hearing for October 25, 2006. The hearing was conducted as scheduled. At the hearing, the Government submitted 12 exhibits, which were not objected to and admitted as Gov. Exs. 1-12. Applicant submitted two exhibits which were not objected to and admitted as Exs. A and B. The transcript (Tr.) was received on November 13, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign influence under Guideline B, subparagraphs 2.a through 2.c. Applicant denied the factual allegations pertaining to foreign preference under Guideline C, subparagraph 1.a. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 45 years old and has been employed as a welder by a defense contractor since August 2003.⁽²⁾ He is from Colombia, South America.⁽³⁾ He immigrated to the U.S. in 1986 and became a naturalized citizen in November 2002.⁽⁴⁾

In November 2000, Applicant attended school to learn welding, and in February 2001 he was awarded his degree. He has been married for more than 10 years to a naturalized U.S. citizen, and his three stepchildren reside with him and his wife.⁽⁵⁾ His son, who was born in Colombia and brought to live in the U.S. by Applicant, will be joining the U.S. Marines in November 2006.⁽⁶⁾

Applicant possessed a passport from Colombia that was issued in July 1995 and expired in July 2000. Although he has been in the U.S. 20 years, he went back to Colombia for his one and only visit approximately 10 years ago, in 1996.⁽⁷⁾ When he visited Colombia, he used his Colombian passport since he was not a U.S. citizen.⁽⁸⁾

Applicant's mother is a citizen of Colombia, where she was a full-time homemaker. She is a permanent resident of the U.S. and has resided with her son since 1997.⁽⁹⁾ Because of her age, 83 or 84, Applicant testified that she is too old to learn English and would not be able to take the test to become a U.S. citizen.⁽¹⁰⁾ At the time of the hearing, his mother was visiting Colombia.⁽¹¹⁾ He testified that she has visited Colombia at least twice in the last seven years.⁽¹²⁾ She did not accompany him on his visit in 1996,⁽¹³⁾ but she went in 1997. Applicant's father is deceased.⁽¹⁴⁾

Applicant's brother is a citizen and resident of Colombia. At the time of the hearing, his brother was unemployed, unmarried, and the father of a daughter.⁽¹⁵⁾ His brother and his niece are currently awaiting visas to enter the U.S.,⁽¹⁶⁾ and Applicant is assisting them. Approximately two to three times a year, Applicant sends his brother money, if he needs it, of no more than \$100.⁽¹⁷⁾

Applicant's sister is a citizen and resident of Colombia. She is married and has children, aged 7 to 16.⁽¹⁸⁾ She is a manager of a pharmacy.⁽¹⁹⁾ Her husband is an elementary school teacher.⁽²⁰⁾ Neither one works for the government. Applicant has limited telephone contact with his sister, which is usually once every month or once every other month.⁽²¹⁾ Once his brother has immigrated to the U.S., Applicant and his brother will then assist his sister and her family to immigrate here.⁽²²⁾

In a memorandum dated May 11, 2006, the facility security officer at Applicant's place of employment, confirmed that on May 11, 2006, he personally destroyed with Applicant, the latter's Colombian passport.⁽²³⁾ As of the date of the hearing, Applicant did not possess a U.S. passport.

In a letter dated October 24, 2006, his supervisor indicated Applicant has worked for him for the past two and a half years and he highly recommends him for a security clearance.⁽²⁴⁾ His supervisor stated that Applicant has good work habits, reports to work on time each day, and is willing to work overtime. He stated "[Applicant] is a team player and has good attitude."

Colombia is a constitutional democracy.⁽²⁵⁾ The U.S. has long enjoyed favorable relations with Colombia.⁽²⁶⁾ The U.S. continues to provide substantial support to the Colombian government's counter-narcotics efforts and encourages the government's efforts to strengthen its democratic institutions in order to promote security, stability, and prosperity in the region.⁽²⁷⁾ The Colombian government faces several challenges, especially the activities of several political terrorist groups and large, well-organized narco-terrorist organizations.⁽²⁸⁾ The U.S. State Department reports that, although

serious problems remained, the Colombian government's respect for human rights has improved in some areas.⁽²⁹⁾ The threat of crime is significant in all parts of the country because of the activities of the political and drug-related terrorist groups in the country, but is somewhat less prevalent in most urban centers.⁽³⁰⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³¹⁾ The Government has the burden of proving controverted facts.⁽³²⁾ The burden of proof is something less than a preponderance of evidence.⁽³³⁾ 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.⁽³⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³⁵⁾

No one has a right to a security clearance⁽³⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline C (Foreign Preference): *The Concern:* 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.

Guideline B (Foreign Influence): *The Concern:* 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 result in the compromise of classified information.

On August 16, 2000, the Assistant Secretary of Defense, issued the "Money Memorandum," clarifying certain issues in cases involving possession and/or use of a foreign passport. Pursuant to this memorandum, an applicant possessing a valid foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, or (2) offers credible evidence that he obtained official approval for its use from the appropriate United States Government agency.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Foreign Preference

In July 1995, Applicant possessed a Colombian passport, which he used on a trip to that country in 1996. His Colombian passport was to expire in July 2000. He became a naturalized U.S. citizen in November 2002. Until May 11, 2006, Applicant possessed an expired Colombian passport. The DOHA Appeal Board has held that possession of an expired passport constituted possession under the Directive.⁽⁴⁰⁾ Thus, Foreign Preference Disqualifying Condition E2.A3.1.2.2 (*possession and/or use of a foreign passport*) applies.

Various conditions can mitigate a security concern regarding foreign preference. Applicant was born in Colombia. He possessed a Colombian passport. On May 11, 2006, in the presence of his employer's facility security officer, Applicant destroyed his passport, and is in compliance with the Money Memorandum. He no longer possesses a Colombian passport, and he does not have any financial holdings in that country. Accordingly, Foreign Preference Mitigating Condition E2.A3.1.3.1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies. Applicant has mitigated the Government's case. Accordingly, allegation 1.a of the SOR is concluded for Applicant.

Foreign Influence

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. Applicant's brother and sister are citizens and residents of Colombia. His mother is a citizen of Colombia, but she is a permanent resident of the U.S. and for the past 10 years has been living with Applicant. Consequently, Foreign Influence Disqualifying Conditions (FI DC) E2.A2.1.2.1 (*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*) and FI DC E2.A2.1.2.2 (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) apply.

Various factors can mitigate the foreign influence security concern. Applicant's mother is 83 or 84 and has been a housewife her entire life. She is a permanent resident of the U.S. and has lived with her son in the U.S. for the past 10 years. Applicant brought his son from Colombia to the U.S. and he is sponsoring his brother and niece to get visas so they can live here in the U.S. permanently. He will eventually sponsor his sister and her family to move from Colombia to the U.S. Applicant's mother, sister, brother, and niece are not agents of a foreign power or in a position to be exploited. Thus, Foreign Influence Mitigating Conditions (FI MC) E2.A2.1.3.1 (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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*) applies. This mitigating condition focuses on whether a relative or associate of an applicant is in a position to be exploited by a foreign power in such a way as to have an applicant act adversely to the interests of the U.S. It does not apply where a relative or associate may be vulnerable to criminal offenses or even acts of terrorism, unless they could cause an applicant to act against U.S. interests. I find that FI MC E2A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*) does not apply as it may be presumed that an applicant has close ties of affection or obligation to his family members, and Applicant has a strong familial interest in the health and safety of his siblings in Colombia and that is why he is bringing them to live in the U.S.

The government of Colombia is a democracy, with a long history of good relations with the U.S. That factor is not determinative, but suggests it is less likely that Colombia would attempt to exploit its residents or citizens to act adversely to the interests of the U.S. in the future. Applicant has mitigated the Government's case. Accordingly, allegations 2.a through 2.c of the SOR are concluded for Applicant.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual who has lived in the U.S. for more than 20 years. He has strong ties to this country. Applicant no longer has a Colombian passport. Because

of Applicant's deep and long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. I conclude Applicant has mitigated the potential security concerns arising from his personal ties to relatives in Colombia.

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 C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: 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.

Jacqueline T. Williams

Administrative Judge

1. Gov. Ex. 1 (Security Clearance Application, executed November 14, 2003).

2. *Id.*; Tr. 30-31.

3. Tr. at 45.

4. *Id.* at 27.

5. *Id.* at 25.

6. Tr. 19.

7. *Id.* at 15, 42.

8. *Id.* at 16, 42.

9. Tr. 53.

10. *Id.* at 54.

11. *Id.* at 55.

12. *Id.*

13. *Id.* at 56.

14. *Id.* at 11.

15. *Id.* at 39. 45.

16. Ex. B (Letter dated October 20, 2006, regarding the Immigrant Visa case of Applicant's brother). *See also* Applicant's Answer to SOR.

17. Tr. 34, 40.

18. *Id.* at

19. *Id.* at 58.

20. *Id.*

21. *Id.* at 59.

22. *Id.* at 14-15, 18.

23. Gov. Ex. 3 (Facilities Security Officer's Memo to DOHA, signed on May 22, 2006).

24. Ex. A (Supervisor's Letter, dated October 24, 2006).

25. Gov. Ex. 7 (Congressional Research Service Report for Congress, *Colombia: Issues for Congress*, January 19, 2005) at 1; Gov. Ex. 8 (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices - 2005* for Colombia, March 8, 2006), at 1.

26. Gov. Ex. 11 (Excerpt from the U.S. Department of State, Office of the Coordinator for Counter terrorism, *Country Reports on Terrorism*, April 2006) at 8, 9.

27. *Id.*

28. Tr. 11-12; Gov. Ex. 11, *supra*, note 27,

29. Gov. Ex. 8, *supra*, note 26.

30. Gov. Ex. 10 (U.S. Department of State, Bureau of Consular Affairs, Travel Warning for Colombia, January 18, 2006).

31. ISCR Case No. 96-0277 (July 11, 1997) at 2.

32. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

33. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

34. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

35. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

36. *Egan*, 484 U.S. at 531.

37. *Id.*

38. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

39. Executive Order 10865 § 7.

40. ISCR Case No. 03-23236 at 2 (App. Bd. Feb. 17, 2006).