



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 07-08013

Applicant for Security Clearance

Appearances

For Government: Melvin Howry, Esquire, Department Counsel

For Applicant: *Pro Se*

January 17, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

On August 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 28, 2007, and requested a hearing before an Administrative Judge. The case was originally assigned to another administrative judge and reassigned to me on November 16, 2007. DOHA issued a notice of hearing on November 20, 2007, and I convened the hearing as scheduled on December 13, 2007. The government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through C, without objection. DOHA received the transcript of the hearing (Tr.)

on December 19, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Colombia. There was no objection to the request. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact below.

The correct spelling of Applicant's middle name was changed on the original SOR due to a typographical error.

Findings of Fact

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

Applicant is a 31-year-old master scheduler for a federal contractor. He was born in the U.S. to Colombian parents and moved to Colombia with his parents when he was very young. He remained in Colombia where he grew up. He is a dual citizen of Colombia and the U.S. Colombian law requires American citizens born in Colombia or who otherwise have Colombian citizenship to have both a Colombian and U.S. passport. He possesses a Colombian passport and uses both his American passport and Colombian passport when traveling to Colombia.¹ At the hearing, Applicant translated a document that was in Spanish that pertained to Colombian law that requires dual citizens to comply with Colombian law.²

Applicant's parents are divorced. Both are citizens and residents of Colombia, as is his stepmother, sister and grandmother. His mother had worked for a government agency, but has since left its employment. His father owns a family business. Applicant owns shares in the business worth approximately \$7,500.³ From 2001-2004, he received dividends from the shares. Applicant has a savings account in Colombia. He stated "I do have a savings account of about \$50. I don't use it. I just have it just, you

¹ Tr. 23-26; HE I.

² Tr. 25-26

³ Tr. 33-35.

know, for whatever. If someday I need to retire over there, I wanted a history of credit, so I just keep it.”⁴

Applicant completed his primary, secondary and university education in Colombia. After he graduated from college he was employed from 1997-1999 in Colombia. He returned to the U.S. in 2000 to earn a master’s degree in business from an American university, which he did. He likes where he lives in the U.S. and decided to stay. He does not know if he will return to Colombia in the future to reside.

Applicant returns to Colombia at least annually to visit his family and friends and for special occasions. He has a close familial relationship with his immediate family and is in contact with them weekly. He has contact with his grandmother usually once a month. He also is in regular contact with his uncles. One uncle is the regional manager for a Colombia bank and another is studying to be a professional officer in the Colombian Air Force. He has two godchildren with whom he is close. Applicant contacts his family by phone or email on a regular basis. In answers to interrogatories Applicant listed 20 relatives (including those listed above) and 88 friends with foreign citizenship, mostly Colombian, with whom he maintains contact. The contact ranges from a couple times a year to daily.⁵

In a statement made in July 2007, Applicant was unwilling to destroy, surrender or return his Colombian passport. He stated at his hearing “I said I didn’t want to destroy it, but I was willing to surrender it.... I haven’t surrendered it yet, I asked the director of security at [work] how that worked to see if I was supposed to surrender it to them”⁶ Applicant still possesses his Colombian passport. When asked what his intention was he stated, “My intention is, since I still need it whenever I go to Colombia, I asked the security office if they had a place where, if I give it to them to hold it until I have to travel to Colombia, in which case, every time that there’s an international trouble, I need to go and speak to them....”⁷ He has not destroyed it or returned it to Colombian authorities, or otherwise invalidated it. He has not renounced his citizenship in Colombia and although he stated he was willing to do so, his demeanor was that it was with reluctance.

Applicant voted in the Colombian elections in May 2006. When asked why he stated because it was his right to as a Colombian national.⁸ He further explained “it was a critical election because of all the problems with the guerrillas and the terrorism that

⁴ Tr. 33.

⁵ Tr. 35-36, 42; GE 2.

⁶ Tr. 27.

⁷ Tr. 27-28.

⁸ Tr. 29-30.

was affecting the country, the need for a strong president was vivid. So it's—I figure, if I could vote for the guy that was strongest, I would be helping, and so I did.”⁹

Applicant provided three character letters that attested to his character and integrity as a responsible and skillful employee. He is considered trustworthy, has the highest degree of professionalism, and conducts himself in a courteous manner.¹⁰

Colombia is a constitutional, multiparty democracy and the second most populous country in South America. Any person born in Colombia is considered a Colombian citizen. There are travel warnings for U.S. citizen by the Department of State highlighting the dangers of violence by narcoterrorist groups and other criminal elements in Colombia. Foreigners continue to be victims of threats, kidnappings, and other criminal acts and there are severe restrictions on travel to and within Colombia for American residing there for official duties. Victims of violence have included journalists, missionaries, scientists, human rights workers, and tourists including children. The Secretary of State has designated three Colombian groups as Foreign Terrorist Organizations that have carried out bombings and other attacks. They have also targeted critical infrastructure, public recreation and modes of transportation. They have also targeted civilians, government workers, politicians and soldiers. One terrorist organization has held three U.S. citizen government contractors as hostages since 2003. The government of Colombia's record on human rights has improved, but there are still serious problems, including unlawful and extrajudicial killings, forced disappearances, insubordinate military collaboration with criminal groups, torture and mistreatment of detainees, and other serious human rights abuses.¹¹

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

⁹ Tr. 30.

¹⁰ AE A, B and C.

¹¹ HE I.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concerns involving foreign preference: 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.

I have considered all of the foreign preference disqualifying conditions and especially considered AG ¶ 10(a) (exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport . . . and (7) voting in a foreign election). Applicant continues to possess a valid Colombian passport and voted in the 2006 Colombian election acknowledging it was his right to do so as a Colombian national. I find AG ¶ 10(a) applies.

I have considered all of the foreign preference mitigating conditions under AG ¶ 11 and especially considered (a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country), (b) (the individual has expressed a willingness to renounce dual citizenship), (c) (exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor), (d) (use of a foreign passport is approved by the cognizant security authority), (e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated), and (f) (the vote in a foreign election was encouraged by the United States Government).

Applicant's dual citizenship status is not based solely on his parents' citizenship, but is based on his exercising the rights of a Colombian citizen. He maintains his Colombian passport and uses it to enter Colombia, which is required by law. It is a valid passport. He has not surrendered it. There is no evidence the use of his Colombian passport was approved by the cognizant security authority. His exercise of foreign citizenship occurred while he was a U.S. citizen. Applicant also voted in a Colombia election, as he believed was his right as a Colombian citizen. There was no evidence that the U.S. government encouraged him to vote in the election. He reluctantly stated he would renounce his Colombian citizenship. I find (b) applies. However, this mitigating condition alone is not enough to overcome all the evidence which supports Applicant's foreign preference to Colombia.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

I have considered all of the foreign influence disqualifying conditions under AG ¶ 7. I have especially considered (a) (contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion), (b) (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information), (e) (a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation).

Applicant has consistent and regular contact with his immediate family and numerous family and many friends in Colombia. He has two family members who are quasi-connected to the government; one is a military student and the other an uncle who works for a national bank. Applicant also has a nominal financial interest in a family owned and operated company and maintains a financial footprint in Colombia so he can establish credit in the event he chooses to retire there. Although Applicant has many family and social connections in Colombia I do not have any evidence to conclude those connections create a heightened risk or conflict of interest. I also find that the nominal financial interest Applicant has in Colombia does not create a heightened risk of foreign influence or exploitation. Colombia is an ally in the war on terrorism and although they have narcoterrorist organizations in their country, there is no evidence that they have attempted to obtain protected information. I find none of the foreign influence disqualifying conditions apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a U.S. citizen by birth, but lived most of his life in Colombia. He maintains a Colombian passport and has voted in the Colombian presidential election in 2006. As he stated, it was his right as a Colombian national to do so. Even though he stated he is willing to renounce his Colombian citizenship, the other evidence clearly leads me to conclude he has not mitigated the security concerns raised under the foreign preference guideline.

Applicant has strong family and social ties to Colombia, but there was not evidence to support that those ties created a heightened risk or a potential conflict of interest. None of his family has close ties to the Colombian government. I find he has mitigated the security concerns raised under foreign influence.

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:	AGAINST APPLICANT
Subparagraph 1.a-e:	Against Applicant
Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 2.a-n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CAROL G. RICCIARDELLO
Administrative Judge