



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



In the matter of: )  
)  
) ISCR Case No. 07-13564  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: Pro Se

---

**Decision**

---

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 8, 2006. On November 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 December 27, 2007. He admitted the factual allegations in the SOR. He elected to have the matter decided on the written record in lieu of a hearing. Department counsel submitted the Government's written case on February 20, 2008. Applicant received a complete file of relevant material (FORM) on March 14, 2008, and was provided the opportunity to file objections, and

submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely submitted additional information in an undated letter received by DOHA on April 28, 2008. Department Counsel had no objection to consideration of the additional material. The case was assigned to me on May 9, 2008. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural Issues**

Department Counsel in the FORM asked that administrative notice be taken of certain facts concerning Colombia. I have considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts as noted below in the Findings of Fact.

### **Findings of Fact**

Applicant is a 34-year-old radar technician for a defense contractor working at remote locations in South America. He has been employed in this capacity and location by defense contractors since January 2001. He previously served in the United States Marine Corps for over five years in a similar occupation specialty. He held a security clearance for most of the time he was on active duty. (Item 4, e-QIP, dated January 8, 2006)

Applicant's wife, mother-in-law and father-in-law are citizens and residents of Colombia. Applicant's daughter, born in Colombia in 2004, is a dual citizen of Colombia and the United States, and resides with her parents in Colombia. She is a citizen of the United States because she was born of a United States citizen living abroad. (See, Citizen Certificate, Answer to FORM)

Applicant's wife is an officer in the Colombian Air Force serving as an architect. Applicant met his wife while she was assigned as a base facilities engineer. (Item 5, Report of Investigation, dated February 26, 2007). Applicant's wife has an approved resignation from the Colombian Air Force. (See, Applicant's response to FORM) Applicant's supervisor notes that he knows Applicant's wife and has no negative information concerning her. He has no reason to doubt Applicant's loyalty to the United States. The Air Force mission chief overseeing Applicant's work has known Applicant's wife for over two years and worked several projects with her. He states she is a trusted officer and her character and morale (sic) are solid. She is highly respected by her peers and leaders. He has full trust and confidence in her. He has no concerns about Applicant's access to classified information. (Item 3, Applicant's answer to SOR, Letters dated December 26 and December 27, 2007) Applicant presented no information concerning his mother-in-law and father-in-law, except his admission that they are residents and citizens of Colombia.

Colombia is a constitutional democracy with the second largest population in South America. The government generally respects freedom of speech and press, freedom of assembly and association, and freedom of religion. The government has

improved its respect for human rights, although serious problems remain. There were unlawful and extra-judicial killings, forced disappearances, insubordinate military collaboration with criminal groups, and other human rights abuses. Government steps to improve human rights and the security situation showed demonstrated results.

Illegal armed groups committed the majority of human rights violations, to include political killings and kidnappings, force disappearances, and torture. Colombian based terrorists groups were weakened as a result of aggressive actions by Colombian military and police but the groups continue to murder, kidnap, and terrorize Colombians from all walks of life. The United States State Department notes that travel to Colombia can expose visitors to considerable risk. There are at least three recognized foreign terrorist organizations operating in Colombia. These groups have carried out bombings and other attacks in and around major urban areas, including against civilian targets. Kidnappings and murders of journalists, missionaries, scientists, human rights workers, business people, tourists, and even small children have taken place. No one can be considered safe from such actions. The United States Embassy restricts official and personal travel of its employees outside of urban areas.

### **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.

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.

## **Analysis**

### **Guideline B: Foreign Influence**

There is a security concern because 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is location, including but not limited to, such consideration 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. (AG ¶ 6)

Applicant lives in Colombia with his wife and daughter who are citizens and residents of Colombia. Since Applicant's wife, daughter, and in-laws live in Colombia, it is reasonable to assume that there is contact between Applicant and his mother-in-law and father-in-law who are citizens and residents of Colombia. It is unreasonable to believe that his in-laws would not visit their daughter and granddaughter. These contacts raise security concerns under Foreign Influence Disqualifying Conditions AG ¶ 7(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); and AG ¶ 7(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). AG ¶ 7(d) (sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion) is raised because Applicant lives with his wife and daughter, who are residents and citizens of Colombia. The heightened risk in Colombia is created by the actions of the terrorist groups in Colombia.

The nature of the country in which persons are located is an issue. Security concerns can be raised from countries both friendly and hostile to the United States. It can also be raised because of unlawful or terrorists groups that are active in the country. The United States has an interest in protecting its classified information whether the person, organization, or country seeking the information has interests inimical to the United States. (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)) Friendly countries can have disagreements with the United States over matters that are vital to the national security of the United States. Friendly countries have engaged in espionage against the United States while seeking economic, scientific, and technical information (ISCR Case No. 00-0317 (App. Bd. May 29, 2002)). The nature of a nation's government, its relationship with the United States, its human rights record, and the actions and activities of groups operating in the country are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is dependent on or associated with the government, or there are groups known to operate in the country and have or will target individual's to gain intelligence, or other advantages. While the government of Colombia is friendly to the United States and has improved its human rights record, the terrorist groups that operate in Colombia create a significant threat that raises security concerns. Because of these groups, Applicant has a heavy burden to establish that his contacts with his wife, daughter, and in-laws do not create a security concern.

Applicant is living with his wife and daughter in Colombia. It is assumed that he has frequent and non-casual contact with his in-laws. He has not raised Foreign Influence Mitigating Condition (FI MC) AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could created a risk for foreign influence or exploitation) because his contact with foreign citizens is frequent and personal.

The only information presented by Applicant is that his wife is resigning her commission with the Colombian Air Force and the evaluation of his supervisor and the mission chief that he is a loyal United States citizen. He has not presented any information concerning the status of his in-laws or why his in-laws, wife, and daughter would not be vulnerable to exploitation, inducement, manipulation, pressure or coercion by the terrorist groups. He has not presented information to establish that his connection to his family and in-laws in Colombia and the heightened risk created by terrorist groups will not create a conflict between his obligation to protect classified information and his desire to protect his family. He has not presented sufficient information to raise Foreign Influence Mitigating Conditions AG ¶ 8(a) (the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interest of the U.S.); and AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the

individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest) He has failed to meet his heavy burden that his contacts with foreign citizens and residents do not create a security concern.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant served in the United States Marine Corps for over five years, successfully held a security clearance, and received favorable evaluations of security worthiness from his supervisor and the United State Air Force Chief of Mission. I considered the security situation in Colombia created by terrorist groups and Applicant’s failure to present information that his contacts with his foreign resident and citizen family members do not create a security concern. Access to classified information is denied.

### **Formal Findings**

Paragraph 1, Guideline B:           AGAINST APPLICANT

Subparagraphs 1.a-c:               Against Applicant

### **Conclusion**

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

---

THOMAS M. CREAN  
Administrative Judge