



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



In the matter of: )  
)  
) ISCR Case No. 08-03763  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: Michelle Perry, Esq.

October 15, 2008

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is granted.

On July 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns 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 August 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 3, 2008. DOHA issued a notice of hearing on September 4, 2008, and I convened the hearing as scheduled on September 25, 2008. The government offered Exhibits (GE) 1 through 3, which were admitted without objections.

Applicant testified and three witnesses testified on his behalf. He submitted Exhibits (AE) A through D, which were admitted without objections. The record was held open to allow Applicant an opportunity to submit an English translation of some of his documents. He did so in a timely manner and the additional exhibit was marked as AE E and admitted without objection.

### **Request for Administrative Notice and Procedural Issues**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Colombia. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE). I did not take administrative notice of the facts contained in the memorandum submitted dated September 22, 2008, that was offered as a hearing exhibit. That document was remarked as GE 4 and admitted as a government exhibit. I took administrative notice of the source documents for the facts contained in GE 4 that are contained in HE I through IV. The facts administratively noticed are set out in the Findings of Fact, below.

Department Counsel moved to amend the SOR at the end of the Applicant's case. The motion was marked as HE V. There being no objection, the motion was granted, and the SOR was amended to include subparagraph 1.h. DOHA received the transcript of the hearing (Tr.) on October 2, 2008.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.d and 1.e. The 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 43-year-old mechanical engineer who works for a defense contractor. He was born in Colombia and moved to the U.S. in 1996 and has lived here since then. He received his permanent resident alien status in 1998. When he became eligible to apply for U.S. citizenship he did and became a naturalized U.S. citizen in 2004. He stated he did not want to return to Colombia, so it was important to him to be a citizen of the U.S. He did not want anything to affect him because his immediate family lives in the U.S. He wanted to make sure he had all of the guarantees that a U.S. citizen received. He obtained a U.S. passport, but maintained his Colombian passport until he was advised that it created a security issue. He no longer has a valid Colombian passport. He relinquished his Colombia passport and identification card to his employer's security office and it was returned to the Colombian embassy. He also renounced his Colombia citizenship through its consulate.<sup>1</sup>

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<sup>1</sup> Tr. 51-59, 92-94; AE A and B.

Appellant is pursuing a master's degree in systems engineering. He has voted in U.S. elections since becoming a citizen. He married a U.S. citizen in 1998 and has two children ages ten and seven, both born in the U.S. His wife is a college professor. Applicant's wife is on a sabbatical for six months and is living with their children in Applicant's mother's house in Colombia. They are using this extended visit so that the family can be immersed in the Spanish language. Other than Applicant, neither of his children or his wife speaks Spanish. His wife wanted to learn Spanish and they wanted the children to learn it. They decided the best way to learn it was to live in Colombia for several months. They have been there since July 2008 and are expected to return in November 2008. Applicant does not expect their return to be delayed because his daughter has a medical condition that requires care in the U.S. After Applicant married he no longer voted in Colombian elections.<sup>2</sup>

Applicant and his wife own a home in the U.S. valued at approximately \$450,000 and have investment assets valued at approximately \$40,000. They also expect to inherit a 30% interest in a family farm in the U.S. from his wife's side of the family. Applicant earns approximately \$75,000 a year and his wife earns approximately \$60,000. He does not own any property in Colombia. He previously owned a house in Colombia that was purchased in 1995, but sold it in July 2008.<sup>3</sup> He sold it to his mother for a nominal price and his mother in return sold it to his sister, who lives in the U.S.<sup>4</sup>

Applicant worked in Colombia prior to emigrating to the U.S. and paid into the Colombian version of their social security system. He estimated that the account he may be entitled to is about \$1,000. He credibly testified he does not need the meager amount of money and is uncertain whether he would be eligible to collect it because he is no longer a citizen of Colombia. Even if he is entitled to it he does not expect to apply for it. He does not have any outstanding financial obligations or delinquent debts.<sup>5</sup>

Applicant has traveled to Colombia four times since he emigrated in 1996. When he returns it is to visit his mother. On one occasion he traveled to a Colombian island in the Caribbean for vacation. On each occasion, except in 2007, he traveled to Colombia using his Colombian passport.<sup>6</sup>

Applicant's mother and one sister are citizens of Colombia and reside there. His father is deceased and worked as a shoe salesman when he was alive. His mother is retired from the food service industry. She has never worked for the Colombian government. She owns three houses and uses the rent proceeds as income to live on. Applicant does not provide financial support for his mother or sister. His mother does

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<sup>2</sup> Tr. 59-67, 109-110.

<sup>3</sup> Tr. 73-78; AE C.

<sup>4</sup> Tr. 67-70, 110-111.

<sup>5</sup> Tr. 100-101.

<sup>6</sup> Tr. 55, 73, 92-93.

not receive a pension from the government. His sister works for a private company coordinating customer service needs. He talks to his mother about once a week and if his sister is present he will talk with her. His sister is married and has two children. Her husband has a small business that sells magazines and distributes them to small towns.<sup>7</sup>

Applicant has another sister who lives in Argentina. She has lived there two to three years. Applicant has no phone contact with her. He does not know her phone number. The last time he saw her was three years ago. His contact with her is rare. He had an email from her in January 2008. She is married and her husband works in the fishing industry. Applicant did not know any more about his brother-in-law's employment.<sup>8</sup>

Applicant has another sister who is a citizen of Colombia, but resides in the U.S. She telephones Applicant and his family frequently. Applicant's daughter has a serious medical issue, so his sister calls to see how her health is. She lives in the Midwest and is employed as a house cleaner. She entered the U.S. with a visa, but Applicant is unsure of what her immigration status is.<sup>9</sup>

When Applicant returns to Colombia he meets with four friends he attended college with. None of them have ever visited him in the U.S. He only visits them when he is in Colombia. He last spoke to them when he visited Colombia a year ago.<sup>10</sup>

Applicant's supervisor testified that he is a conscientious employee with a good work ethic. He is always on time and works extra hours; he is respectful and well liked. Applicant has had access to propriety information and has always followed the proper rules and procedures with regard to it.<sup>11</sup>

Applicant's coworkers also testified on his behalf. He is considered conscientious and enthusiastic. He abides by the rules of the company. He is self-motivated and provides quality work. He is believed to be trustworthy.<sup>12</sup>

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<sup>7</sup> Tr. 77-83, 102-104.

<sup>8</sup> Tr. 85-87, 104.

<sup>9</sup> Tr. 87-90, 106.

<sup>10</sup> Tr. 83-85.

<sup>11</sup> Tr. 20-32.

<sup>12</sup> Tr. 33-46.

## Colombia<sup>13</sup>

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 Americans 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 areas and modes of transportation. They have also targeted civilians, government workers, politicians and soldiers. One terrorist organization held three U.S. citizen government contractors as hostages for five years. 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.

### 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.

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<sup>13</sup> All of the information was taken from HE I through IV.

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 B, Foreign Influence**

AG ¶ 6 expresses the security concern 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.”

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. 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 desires to help a foreign person, group, or country by providing that information”) and (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’s mother and three sisters are citizens of Colombia. His mother resides in Colombia, as does one sister. His other sister lives in Argentina and the remaining sister is in the U.S. He also has friends in Colombia that he visits when he is there. He no longer owns property in Colombia. He has a retirement interest in Colombia’s social security system. He travels to Colombia to visit his mother. I find (a) and (b) apply. Applicant has a \$1,000 retirement interest in Colombia. Based on his total financial assets, I find this is not a substantial financial interest and therefore not disqualifying. In the event it was determined to be a substantial financial interest, I have addressed it below.

AG ¶ 8 describes conditions that could mitigate the security concerns raised. I have considered all of them and especially considered (a) (“the nature of the relationships with foreign persons, the country in which these person are located, or the positions or activities of those person 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 interests of the U.S.”); (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. interests”); (c) (“contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation”) and (f) (“the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual”).

Applicant’s mother is retired and has her own means of support. She is not reliant on the government for subsistence. One sister lives in Colombia, one in the U.S. and another in Argentina. Applicant no longer owns property in Colombia and his retirement interests are minimal. Applicant’s has a firm and solid footprint in the U.S. His wife was born here, as were his children. His daughter receives important medical care in the U.S. They own a house and have an inheritance interest in a farm. His wife is a professor at a university. He has lived in the U.S. since 1996. His career, livelihood and family are rooted in the U.S. His attachment to Colombia is primarily his mother, although he has some college friends he sees when there. Colombia’s human rights record has problems, but there is no evidence that the government targets its citizens or former citizens to gain information of a classified or sensitive nature. I find his family is unlikely to be placed in a position where Applicant would have to make a choice between their interests and those of the U.S. Applicant is firmly established in the U.S. and even if there was a conflict Applicant’s can be expected to resolve any conflict in favor of the U.S.

I do not find that because his family is living in Colombia during his wife’s sabbatical so they can learn Spanish, that this in any way undermines his loyalty to the U.S. It is clear this was a unique opportunity for them and does not raise a question of Applicant’s commitment to the U.S. Applicant was quite adamant about their return due

to his daughter's medical condition, which is another factor when considering his sense of obligation to the U.S. Therefore, I find (a) and (b) apply.

Applicant has regular contact with his mother and sister in Colombia, and his sister who lives in the U.S. He has minimal contact with his sister in Argentina. He also has contact with friends in Colombia. I find (c) does not apply.

I have considered Applicant's financial interests in Colombia and determined they are not substantial. At this juncture, Applicant does not know whether he would be entitled to apply for a retirement payment, due to his U.S. citizenship. He credibly testified that he has abandoned his rights to this account, even if he was entitled. Other than this account, all of his financial interests are in the U.S. It is unlikely that a meager, speculative, retirement interest would result in a conflict or could be used to effectively influence, manipulate, or pressure Applicant. I find (f) applies.

### **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's mother, sister, and some friends are citizens of and residents in Colombia. His other two sisters are both citizens of Colombia, but do not live there. There are significant factors supporting approval of Applicant's access to classified information. He has lived in the U.S since 1996 and is a naturalized citizen. His wife and children are citizens. All of his financial assets are in the U.S., except a nominal speculative retirement account in Colombia. His wife is a college professor employed in the U.S. He does not own any property in Colombia. Applicant and his wife expect to inherit part of her family's farm. Applicant has a secure job and a good reputation. There is no evidence that Colombia targets its citizens or former citizens to obtain classified or sensitive information, although there is evidence that there are human rights problems and narcoterrorism. I have considered all of the factors raised and conclude that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these



reasons, I conclude Applicant mitigated the security concerns arising from 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 B: FOR APPLICANT

Subparagraph 1.a-1.h: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge