



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-04124  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Melvin A. Howry, Esquire, Department Counsel

For Applicant:  
*Pro Se*

June 10, 2009

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (eQIP), on February 15, 2007 (Government Exhibit 1). On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines C and B stating 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 the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked. 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 President Bush

on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 20, 2008. She answered the SOR in writing on December 1, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 27, 2009, and I received the case assignment on January 30, 2009. DOHA issued a notice of hearing on February 17, 2009, and I convened the hearing as scheduled on March 24, 2009. The Government offered Government Exhibits 1 through 3, which were received without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibits A through I, without objection. Pursuant to her request, the record remained open for the Applicant to submit additional information. The Applicant subsequently submitted Applicant's Exhibit J, which was also received without objection. DOHA received the transcript of the hearing, and the record closed, on April 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Colombia.<sup>1</sup> (Transcript at 10-12.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

The Applicant was 36 at the time of the hearing and single. She is employed by a Defense contractor and seeks a Department of Defense security clearance in connection with her employment in the defense industry. In her Answer to the SOR, the Applicant admitted all of the allegations of the SOR with the exception of subparagraph 1.d. Those admissions are hereby deemed findings of fact.

### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in a way that shows a preference for another country ahead of the United States.

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<sup>1</sup>At several places in the SOR and the Transcript, "Colombia" is misspelled "Columbia."

The Applicant was born in Colombia in 1972. At the age of five, the Applicant's parents divorced. She lived with her grandmother after that time until 1993. By 1993, the Applicant's stepmother had moved to the United States and had become a citizen. She sponsored the Applicant's move to this country at that time.

The Applicant became a naturalized American citizen on February 24, 2000. (Government Exhibit 1 at Section 8.) She holds a current American passport issued in May 2004. The passport shows that it was properly used by the Applicant to travel outside the United States, including entry and exit from Colombia in July and August 2006. (Government Exhibit 3 at 14.)<sup>2</sup>

The Applicant had an active Colombian passport that she acquired on August 1, 2006. This passport is valid through 2016. The only stamp in this passport is the one showing her exit from Colombia in August 2006. (Government Exhibit 2 at 20-37.) The Applicant was required by Colombian authorities to obtain this passport, after she entered the country, in order to leave Colombia after her last visit. This is in accordance with Colombian law, which does not recognize revocation of Colombian citizenship. The Applicant submitted documentation from the Department of State and the Colombian government stating this fact. (Government Exhibit 3 at 4-5; Transcript at 26, 34-36.)<sup>3</sup>

The Applicant has several times stated her intent and desire to renounce her Colombian citizenship. She has said this, with full knowledge that the Colombian government will not allow such an event to occur. (Transcript at 28-29, 41-42.)

When she was informed of the Government's concerns about her having a Colombian passport, the Applicant took steps to resolve this situation. Applicant's Exhibit A is a Memorandum from the Installation Personnel Security Manager at the military base where she works. This person confirms in writing that he shredded the Applicant's Colombian passport on March 20, 2009. (Transcript at 59-60.)

The Applicant had the passport destroyed, knowing it would effect her ability to travel to Colombia. Specifically, the Applicant understands that, if her father or brother, who both still live in Colombia, pass away, she will not be able to travel there for their funerals. (Transcript at 41-42, 59-62.)

## **Paragraph 2 (Guideline B - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

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<sup>2</sup>The Applicant's American passport also shows travel to the Phillippines and to Costa Rica.

<sup>3</sup>See Administrative Notice Document II at 1.

The Applicant's father and brother are citizens and residents of Colombia. As stated earlier, the Applicant's parents divorced when she was quite young. She has never had a deep relationship with her father, and it has not improved with the years. She last saw her father when she visited Colombia in 2006. While they did communicate by telephone after her return, she has not spoken to her father in over a year. (Transcript at 45-48.)

The Applicant also does not have much contact with her brother. It has also been more than a year since she spoke to him, and she has not seen him in many years. (Transcript at 48-49.)

The other members of the Applicant's immediate family live in the United States. This includes the Applicant's stepmother, two half-brothers and two half-sisters. One half-sister was living in Colombia, but she moved to the United States in January 2009. The Applicant presented supporting documentary evidence. (Applicant's Exhibit J; Transcript at 49-50.)

The Applicant has lived in the United States since 1993. In the 16 years since, she has visited Colombia three times. Two of those visits, 1998 and 1999, occurred before she was an American citizen. She only visited Colombia in 2006 because a close relative was seriously ill. This relative has since passed away. (Transcript at 40, 51-52.)

Due to the Applicant's connections with Colombia, it is appropriate to discuss the current situation in Colombia.<sup>4</sup> Colombia is a constitutional, multiparty democracy and the second most populous country in South America. The country is a close ally of the United States with the current president, Alvaro Uribe, receiving the Presidential Medal of Freedom from President George W. Bush. Colombia is a country that has a severe problem with narco-terrorism, which has been lessened in recent years, but is still potent. Kidnappings of Americans can, and has, occurred. Although the government's respect for human rights continued to improve, many problems remain.

## **Mitigation**

The Applicant is a successful, respected member of the defense industry. Her connections to the United States are many and varied. In addition to owning a house, she is engaged to a member of the United States military and she has worked for her current employer for over six years.

The Applicant made the point that, in Colombia, there are many barriers to a woman succeeding outside the home. For example, the Applicant owns a house in the United States, but would not be able to do that in Colombia. She is proud of her

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<sup>4</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

success in the United States, in the large part made possible by her being a citizen. (Transcript at 28-32; Administrative Notice Document I at 21-22.)

The Applicant is highly respected at her work. Her supervisor describes the Applicant as “a steadfast dedicated employee whose work has always been and continues to be exceptional.” (Applicant’s Exhibit B at 1.) She is knowledgeable about her responsibilities if she were to be granted a security clearance. (Transcript at 56-58.)

The Applicant’s most recent performance evaluation from her company, dated December 15, 2008, is exceptional. She rates a “10” (highest ranking) from her supervisor, who states, “Her [Applicant’s] dedication and incredible attitude to the tasks she is given can not be matched.” (Applicant’ Exhibit B at 2.)

Additional exhibits submitted by the Applicant have current and retired members of the United States military speaking in very laudatory terms about her. She is described as a person whose “integrity and loyalty are genuine.” (Applicant’s Exhibit C.) The Deputy Fire Chief at her base states that she “consistently displays good moral judgment, trustworthiness, and reliability.” (Applicant’s Exhibit D.) The Deputy Commander of a unit she works closely with states, “She [Applicant] has continually proven herself to be a person of exemplary character and outstanding ability.” (Applicant’s Exhibit E.)

She received a Notable Achievement Award in 2003. (Applicant’s Exhibit F.) The Applicant also submitted documentary evidence showing her involvement with the local community. (Applicant’s Exhibits G and H.)

## **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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant was a dual citizen of Colombia and the United States, and had a valid Colombian passport in the recent past (Guideline C); and that the Applicant has family members in Colombia (Guideline B). The Applicant, on the other hand, has successfully mitigated the Government's case.

## **Paragraph 1 (Guideline C - Foreign Preference)**

Turning first to Guideline C, the Applicant has mitigated the Government's concerns about her possible dual citizenship with Colombia, and her possession of a Colombian passport after becoming an American citizen. The concern is stated thus under this Guideline, *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.*

The Applicant obtained a valid Colombian passport after becoming an American citizen. Accordingly, Disqualifying Condition 10(a)(1) applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (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.*

The Applicant's Colombian passport was shredded by her installation Personnel Security Manager. Accordingly, it has *been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* as required by Mitigating Condition 11(e).

The Applicant is a Colombian citizen by birth. Colombia does not allow its citizens to renounce their citizenship. In such a case, it is the intent of the Applicant that must be evaluated. Here, the Applicant has expressed a credible intent to renounce her Colombian citizenship. Mitigating Condition 11(b) applies to this case: *the individual has expressed a willingness to renounce dual citizenship.* In addition, Mitigating Condition 11(a) also applies as her *dual citizenship is based solely on parents' citizenship or birth in a foreign country.* Guideline C is found for the Applicant.

## **Paragraph 2 (Guideline B - Foreign Influence)**

The concern under Guideline B is styled as follows:

*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.*

The Applicant has family connections to Colombia. Her father and brother continue to live there, though her relationship with them is not close at all. In fact, she has not spoken to either of them in over a year and has no desire to return to Colombia.

It became obvious during the hearing that the Applicant has deep and long-standing roots in the United States. In particular, she drew attention to the fact that she is a successful professional woman in the United States, and that this path would not be available to her in Colombia. She has made friends and connections in this country, has purchased a house and is engaged to be married to a member of the United States military.

The following Disqualifying Condition arguably applies to this case based solely on the fact that the Applicant has family in Colombia: 7.(a) *Contact with a foreign family member . . . 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 . . . 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 . . . by providing that information.*

The Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given her particular background: 7(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 interests of the U.S.;* and (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.*

Based on my analysis of the available information, the Applicant has overcome the adverse inference of her family members present in Colombia. Guideline B is found for the Applicant.

### **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. The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about her pride in being an American citizen, and a member of the defense industry. She is knowledgeable about security and understands her responsibility. I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole person standard, the Applicant has mitigated the security significance of her foreign connections and alleged foreign preference and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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:	FOR THE APPLICANT
Subparagraphs 1.a through 1.d.:	For the Applicant
Paragraph 2, Guideline B:	FOR THE APPLICANT
Subparagraphs 2.a. through 2.c.:	For the 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.

WILFORD H. ROSS  
Administrative Judge