



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-04634
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco J. Mendez, Jr, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 29 October 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR on 21 November 2008, requesting a hearing. DOHA assigned the case to me 17 February 2009, and I convened a hearing on 18 March 2009. DOHA received the transcript 25 March 2009.

¹DOHA acted 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 38-year-old program director employed by a U.S. defense contractor since March 1999. He has not previously held a clearance.

Applicant was born in Peru in May 1970. His father was a career officer in the Peruvian army who served 35 years before retiring in January 1995, with the rank of general in the corps of engineers. Applicant's mother is a life-long homemaker. Applicant has three brothers: one is a student, the second an English teacher, the third a travel guide. Neither his mother nor his brothers has ever had an official connection with the Peruvian government. His father has no further contact with the military. None of Applicant's family members live near Peru's border with Colombia.

In 1986, when Applicant was age 16, he came to the U.S. with his family. His father was assigned for two years as the Peruvian attache to the Organization of American States (OAS). In 1998, Applicant's family returned to Peru. Applicant, however, remained in the U.S. to go to college. He never returned to Peru to live.

Applicant received his undergraduate degree in computer science from an American university in 1992. In March 1995, he married a native-born U.S. citizen. They have two children, born in the U.S. in 1998 and 2001. Applicant eventually returned to school and received a graduate degree in software engineering in 2000. He became a naturalized U.S. citizen in November 2004, overcoming several years of foul-ups regarding his citizenship.

Applicant estimates his net worth in the U.S. at \$150,000–200,000. He and his wife own their home and two timeshare condominiums. He has no property or financial interests in Peru. He believes he renounced his Peruvian citizenship as part of his naturalization oath, and thinks of himself as only a U.S. citizen. He has lived in the U.S. for 23 years. His career and family are here. He does not believe he has divided loyalties, and takes his security responsibilities seriously.

Since 2002, Applicant has traveled to Peru to visit his family six times: in October 2002, March 2003, December 2005, March 2006, June 2007, and October 2008. When he is in Peru, he sometimes sees his uncle, who is a career diplomat with the Peruvian government. These contacts are infrequent, and Applicant has no contact with his uncle when Applicant is in the U.S.

Applicant's character reference has known him as supervisor, coworker, and friend since 1995. He testified that Applicant is absolutely loyal to the U.S., has a great work ethic, and high work ethics. He considers Applicant very honest and loyal, and recommends him for his clearance. He was aware of the administrative hurdles Applicant had encountered and overcome in his quest to become a U.S. citizen. For example, Applicant's application was apparently shifted several times to different naturalization offices around the country, with the result that he had to keep tracking his

application down and provide whatever new information was requested by the new office.

Peru is a developing country and the most populous country in South America. It enjoys strong and cooperative relations with the U.S., particularly regarding counter-narcotics. Although Peru has a history of military rule, democratic rule has governed the country since 1980—albeit with significant human rights problems between 1990 and 2000, when the government was conducting counter-insurgency operations against local terrorist groups. While terrorist groups continue to operate along Peru's border with Columbia, current human rights practices are generally respectful of democratic institutions. Peru is not a known collector of U.S. information.

Peru recognizes dual citizenship. While there is a formal procedure for renunciation of citizenship, acquiring another citizenship does not terminate Peruvian citizenship. Peru confers citizenship by decent to any child born abroad of a Peruvian parent.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the nine whole person factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Further, each guideline requires evaluation in the context of the whole person. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline here is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.²

Analysis

Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁴

In this case, the argument for disqualification under Guideline B is not persuasive. Considering first the foreign country involved, Peru and the U.S. enjoy excellent foreign relations, particularly regarding counter-narcotics operations. Peru is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. In this case, the potential heightened risk concerns the terrorist organizations operating along Peru’s border with Colombia. Here the potential risk of terrorist activity is undercut by the fact that none of Applicant’s family live in the border areas near Colombia that are most at risk.

Considering Applicant’s situation in relation to the Peruvian government, the government produced little evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant’s family contacts in Peru. Applicant’s travel to Peru has no independent security significance given that Peru is not known to be targeting U.S. citizens for information. Further, the security significance of travel under most circumstances is demonstrating an applicant’s affection for family members, which his trips corroborate and which Applicant does not dispute. But, except for his uncle, none of his family members is connected to the Peruvian government nor otherwise situated to be exploited for information gathering. There is nothing in the circumstances of their being in Peru, or in Applicant’s contacts with them, to heighten the risk that he could be impelled to provide protected information to Peru.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

By comparison, Applicant's ties to the U.S. are overwhelming. He has resided here for 23 years. He has been a citizen for almost five, overcoming what appears to have been a bureaucratic wild goose chase concerning his application for citizenship. His wife and children are U.S. born citizens. His financial interests in the U.S.—net worth of \$150,000–200,000 and real estate ownership—coupled with the absence of any property or financial interests in Peru, demonstrate the unlikelihood that he could be influenced to act against U.S. interests. I resolve Guideline B for Applicant.

A whole person analysis of the facts in this case requires no different result. Strictly speaking, this case involves no misconduct subject to the kind of analysis contemplated by RAG ¶ 2 (a), but revolves around Applicant's status in relation to his family members in Peru. The salient consideration under the whole person analysis is the potential for pressure, coercion, exploitation, or duress. As indicated above, the potential for such influence in Applicant's case is low.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Subparagraph f:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge