DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-12140
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

September 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On April 6, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons 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 Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 7, 2009, and requested a hearing. The case was assigned to me on June 17, 2009, and was scheduled for hearing on June 30, 2009. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of two exhibits (ex.); Applicant relied on one witness (himself) and one exhibit. The transcript

(Tr.) was received on July 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is granted.

Summary of Pleadings

Under Guideline B, the SOR alleges that Applicant: (a) has a spouse and daughter who are dual citizens of the U.S. and Brazil and reside in Brazil, (b) has a mother-in-law who is a dual citizen of Brazil and Portugal and resides in Brazil, (c) has a father-in-law who is a dual citizen of Brazil and Portugal and resides in Brazil, and (d) has a father-in-law who is a high-ranking officer in the Brazilian Army.

For his answer to the SOR, Applicant admitted most of the allegations. He denied that his wife and daughter reside in Brazil.

Findings of Fact

Applicant is a 38-year-old senior staff software engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant married his wife in June 1997 (ex. 1). His wife was born and raised in Brazil to the parents of Brazilian parents. She was naturalized as a U.S. citizen in November 2006 (s*ee* ex. 1; Tr. 24, 44). Applicant and his wife have two children: ages five and two (s*ee* ex. 1).

Applicant graduated from a highly regarded American university in June 1994 with a bachelor's of science degree in electrical engineering (ex. 1). Following his graduation, he was employed by a large computer maker as a software engineer, specializing in FAA-related issues (Tr. 22, 37). Applicant's firm was later absorbed by a major defense firm (*see* ex. 1; Tr. 35).

Applicant met his wife in 1994 at a local U.S. community college where she was attending college on her father's diplomatic visa (Tr. 22). Her father is a high-ranking officer in the Brazilian Army. He was in the U.S. at the time as a part of an educational exchange program operated by DoD (Tr. 23-24). Before accompanying her father to the U.S. on his exchange program, she earned a bachelor's of science degree in nutrition in Brazil.

Following her father's return to Brazil, Applicant's then-girlfriend remained behind in the U.S. to continue her schooling and relationship she had established with Applicant. Eventually, she earned a another bachelor's degree in nutrition from an American university.

After they were married, Applicant and his wife purchased a home in March 1998. In December 1998, they traveled to Brazil to attend a family-arranged church wedding (Tr. 24).

Neither Applicant nor his wife discuss their business with her father. Her father, in turn, has never discussed his military work with Applicant (Tr. 25). Essentially, Applicant and his wife's father have a relationship that does not include any discussion of each other's work and business (Tr. 25-26). For additional safety precautions, Applicant never discusses his business with his wife. He confines his work-related conversations with his wife to work and travel schedules (Tr. 83-85).

Since their marriage in 1997, Applicant has made several family-related trips to Brazil. On these trips, he has never engaged in any business-related conversations with his father-in-law. When Applicant travels to Brazil, his wife and two children accompany him.

Applicant's naturalized father currently resides in the Netherlands. He became a U.S. citizen in 1971 (Tr. 32)., and pursued his post-graduate studies in the U.S. at a prestigious foreign business school (Tr. 73). After working on projects throughout the world for many years, he settled in the U.S. in 1999 (Tr. 33). More recently, he moved back to the Netherlands. Applicant's step-mother is a U.S. citizen who was born in the Philippines (Tr.34). She became a naturalized U.S. citizen after marrying his father, and currently resides in the U.S. Applicant has no brothers or sisters (Tr. 35).

Between 1997 and 2006, Applicant was involved in a host of FAA-related projects for his employer. Most of these projects required a security clearance, which Applicant obtained in 2008 (*see* ex. 1; Tr. 37). Beginning in 2006, he transferred his engineering skills to security-related projects with his same employer (Tr. 36-39).

Applicant and his wife moved to his current state of residence in September 2006 with their five-year old daughter. His mother-in-law visited them from time-to-time to help with their daughter (Tr. 28). After their second child arrived (in July 1998), his wife departed with the child for Brazil to reside with her parents for a short time (Tr. 28-29, 42-43). While living in Brazil, his wife applied for Brazilian citizenship on behalf of their daughter (Tr. 44-45). She did this to preserve their daughter's opportunity to become a Brazilian citizen at some future time, should she choose to do so (Tr. 45-46). She received Brazilian citizenship for their daughter in 2008 (Tr. 28-29, 44).

More recently, Applicant's father-in-law became a naturalized citizen of Portugal. His wife's parents will likely retire to Portugal.

Applicant currently has little communication with his father-in-law (Tr. 26-27). Before he returned to Brazil in 1997, Applicant occasionally saw him on his visits to the U.S. His father-in-law last visited his wife and their family in June 2008 (Tr. 49-50). Applicant has also had several opportunities to see his mother-in-law on her infrequent visits to the U.S. (Tr. 49).

Applicant estimates to have made approximately nine trips to Brazil between 2000 and 2006 to see his wife and her parents. He made trips in 2000 (twice), 2002, 2005, 2006 (twice), and 2008 (three altogether) (Tr. 50-57). His Brazilian visits were always for the sole purpose of seeing his wife and her family (Tr. 56). Since 2008, he has made one trip to Brazil to see his wife and daughter (in February 2009), and he vacationed in Brazil with his wife and children in April 2009 (see ex. A; Tr. 57).

Applicant's contacts with his in-laws have been exclusively face-to-face (*see* ex. 2; Tr. 70-71). His contacts have been limited to his family visits to Brazil and the few occasions when his in-laws came to his home in the U.S., with the last visit in June 2008 (Tr. 70). Applicant's conversations with his father-in-law never include discussions of his work (Tr. 26). His father-in-law knows the name of his employer, but nothing about the nature of his work (Tr. 61).

Applicant's in-laws reside outside of the Brazilian capital city. His father-in-law is a high-ranking officer in the Brazilian Army (Tr. 58). His father-in-law attended the top military academy in Brazil for leadership training (Tr.58-59), and grew up in a relatively privileged social setting. His family once owned a factory. Eventually, they lost everything (Tr. 59). His father-in-law resided in military housing for most of his early military career. In the 1990s, he and his wife's mother bought a plot of land. They built a house on this land and moved into the new home in 2000 (Tr. 60-61). Applicant's mother-in-law is a retired school teacher.

Applicant assures that should his father-in-law ever inquire about his business, he would follow his employer's strict reporting guidelines (Tr. 66-67). These guidelines would require Applicant to report any inquiries from his father-in-law through his employer's established ethics chain of command, beginning with his facility security officer (FSO) (Tr. 66-68).

Applicant has already advised his FSO of his father-in-law's status in the Brazilian Army (Tr. 65-66). Applicant is would report his father-in-law to his FSO were the father-in-law ever to be pressed by his father-in-law for business-related information (Tr. 64-65). He would report any Brazilian intelligence information passed on to him by his father-in-law (Tr. 67-68).

Applicant is semi-fluent in Portuguese and knows a little French and Spanish (Tr. 71). While his work has been limited to projects requiring only a collateral security clearance, he could conceivably work on projects in the future that require a higher level of clearance (Tr. 85-86).

Brazil's country status

Brazil remains a non-hostile trading partner of the U.S. and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. Brazil maintains strong bilateral trading and commercial relations with the U.S. and is a charter member of the Organization of American States.

See Background Note: Brazil, U.S. Department of State (2008). Brazil is a country with no known recent history of government-sponsored hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data (*id*.)

Policies

The revised AGs list guidelines to be considered by administrative judges in the decision-making process covering DOHA cases. These guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ E.2(a) of the revised AGs, which are intended to assist the administrative judges in reaching a fair and impartial commonsense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Foreign Influence

> *The Concern:* 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 the this Guideline can and should considered 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), ¶ 6.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

Analysis

Applicant presents as a conscientious senior staff software engineer who married a Brazilian citizen who became a naturalized U.S. citizen following her marriage to Applicant in February 1997. Applicant and his wife have two children, one of whom became a naturalized dual citizen of Brazil.

Principal security issues raised in this case center on Applicant's father-in-law who is a dual citizen of Brazil and Portugal and a high-ranking officer in the Brazilian Army. Department Counsel raises security concerns over risks that Applicant's in-laws (primarily his father-in-law) residing in Brazil might be subject to undue foreign influence by Brazilian government and military authorities to access classified information in Applicant's possession or control.

Because Applicant's in-laws (particularly his father-in-law) reside in Brazil, they present potential heightened security risks covered by disqualifying condition (DC) ¶ 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," of the guidelines for foreign influence. The citizenship/residence status of these in-laws in Brazil pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Due to the infrequency of the contacts (all face-to-face) Applicant has historically had with his in-laws, potential risks associated with his in-laws residing in Brazil are tempered considerably. Moreover, none of Applicant's in-laws have any identified affiliations or contacts with Brazilian officers currently known to be

associated with intelligence or military organizations interested in collecting proprietary or sensitive information in the U.S.

Further, from what is known from the presented evidence, none of Applicant's in-laws residing in Brazil have any known (a) political affiliations with Brazil's government, (b) history to date of being subjected to any coercion or influence, or (c) or major indications of any vulnerability to the same. Applicant's mother-in-law is a retired school teacher with no apparent political interests in Brazil or the U.S. While his father-in-law is a high-ranking officer in the Brazilian Army, he has shown no interest in Applicant's business and made no attempts to discuss his business and military interests in Brazil or inquire of Applicant's business. Applicant has already kept his FSO informed of his father-in-law's military status, and pledges to report any business-related inquiries of his father-in-law in the future in compliance with his employer's strict reporting guidelines.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in officer. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Brazil.

Unlike the old AGs, the new ones explicitly take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. Brazil remains a friendly country of the U.S. with strong bilateral trade and commercial relations, a good humans rights record, and historical respect for the rule of law.

As for security concerns associated with the presence of Applicant's relatives in Brazil, any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his in-laws residing in Brazil is quite remote. Applicant, accordingly, may take partial advantage of one important mitigating condition: MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S."

MC ¶ (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," has application, too, to Applicant's situation.

Applicant is a U.S. citizen by birth who has demonstrated loyalty, patriotism, and professional commitments to the U.S. throughout his life. His wife is a naturalized U.S. citizen, and both of his children are U.S. citizens by birth. And all of his financial interests (home and retirement savings) are situated in the U.S. Whatever potential conflicts he may have through his in-laws (primarily his father-in-law) who reside in Brazil are more than outweighed by Applicant's demonstrated U.S. citizenship responsibilities.

MC ¶ (8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organization from a foreign country," has some applicability as well to Applicant's situation. He credibly assured that he advised his FSO of his father-in-law's military status and would report any further business-related contacts of her father-in-law, should they occur. Applicant has a considerable history of reliable and trustworthy service to his defense contractor and the U.S. and merits acceptance of his reporting commitments.

Whole person assessment also serves to minimize Applicant's exposure to conflict of interests with his Brazilian in-laws. Not only is Applicant a U.S. citizen by birth with demonstrated loyalty, patriotism, and professional commitments to the U.S., but he has made every effort to keep his FSO informed of his father-in-law's military status in Brazil. Any risks associated with Applicant's in-laws are clearly manageable ones. In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on any of his in-laws, spouse or children by Brazilian authorities is minimal.

Overall, any potential security concerns attributable to Applicant's in-laws residing in Brazil are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Brazil. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.e of Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2(a) of the revised AGs.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE):	FOR APPLICANT
Subparas. 1.a through 1e:	For Applicant

Conclusions

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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge