



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



In the matter of: )  
)  
) ISCR Case No. 09-02034  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: Leslie McAdoo Gordon, Esquire

February 25, 2010

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on April 17, 2008. On August 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence; and Guideline C, Foreign Preference, for Applicant. 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.

On September 22, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 20, 2009. The case was assigned to me on October 22, 2009. On November 10, 2009, a Notice of Hearing was issued scheduling the hearing for December 3, 2009. The hearing was held as scheduled. The government offered Government Exhibits (Gov) 1 - 3, which were admitted without objection. The government requested that administrative notice be taken of four documents. The documents were marked as

Administrative Notice Document (Admin Not) I - IV without objection. A memorandum prepared by Department Counsel summarizing key points in the administrative notice documents has been marked as Demonstrative Exhibit 1 based on Applicant's counsel's objection to the memorandum being marked as an administrative notice document. Applicant testified and submitted 16 exhibits which were admitted as Applicant Exhibits (AE) A - P without objection. DOHA received the transcript of hearing on December 11, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Administrative Notice**

The following information is from the administrative notice documents:

Columbia is a constitutional, multiparty democracy with a population of approximately 44.8 million. Dual U.S. – Colombian citizens must present a Colombian passport to enter and exit Colombia.

The U.S. State Department warns U.S. citizens of the dangers of travel to Columbia because violence by narco-terrorist groups continues to affect some rural areas and cities. While security in Colombia has improved significantly in recent years, terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for use as bargaining chips. The incidences of kidnapping in Colombia have diminished significantly from the peak at the beginning of this decade.

The U.S. Secretary of State has designated three Colombian groups – the Revolutionary Armed Forces of Columbia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) - as Foreign Terrorist Organizations. These groups carried out bombings and other attacks in and around major urban areas, including against civilian targets.

The Colombian government's respect for human rights continued to improve. However, illegal armed groups and terrorist groups committed the majority of human rights violations – including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

The United States remained fully committed to supporting the Colombian government in its efforts to defeat Colombian-based Foreign Terrorist Organizations. The Colombian government continues vigorous law enforcement, intelligence, military and economic measures against the FARC, ELN, and AUC. The Colombian government has also increased its efforts with neighboring countries to thwart terrorist expansion, investigate terrorist activities inside and outside Colombia, seize assets, secure hostage release, and bring terrorists to justice. Colombia provided anti-terrorism training to nations in the region. The government continues to seek enhanced regional counterterrorism cooperation to target terrorist safe havens in vulnerable border areas.

The United States – Colombia extradition relationship remains the most successful and comprehensive effort in the world.

### **Findings of Fact**

In her Answer to the SOR, dated September 22, 2009, Applicant admits to all the SOR allegations.

Applicant is a 48-year-old research scientist employed with a Department of Defense contractor applying for a security clearance. She has worked for the same employer since January 7, 2008. This is her first time applying for a security clearance. She has a doctorate in computer science. She is married and has a daughter, age 9. (Tr at 26-32; Gov 1)

Applicant was born and raised in Colombia. She attended school in Colombia. In 1988, she moved to the United States to study for her master's degree. She completed her master's degree and then pursued her doctorate at a U.S. university. She completed her doctorate in 1996. (Tr at 28-29)

In August 1996, Applicant was employed as an assistant professor at a U.S. university. She then briefly worked as a software design engineer for a computer technology company from February 2000 to May 2000. After the birth of her daughter, she took three years off. From September 2003 to May 2005, she was an assistant professor at another U.S. university. After May 2005, she and her husband opened their own firm. She worked there until she accepted her current position. (Tr at 30 – 31; Gov 1, section 11)

Applicant married her husband in 1998. He was born and raised in the United States. In October 2000, Applicant's daughter was born in the United States. Applicant became a U.S. citizen in 2004. After becoming a U.S. citizen, she immediately applied for a U.S. passport. She traveled to Canada on one occasion using her Colombian passport after becoming a U.S. citizen. Her U.S. passport had not arrived in time before the trip. Since that trip, she has always traveled using her U.S. passport. On October 15, 2008, she destroyed her Colombian passport in the presence of her company's facility security officer. She is willing to renounce her Colombian citizenship. (Tr at 31, 34, 45, 47-49; Gov 2 at 23)

Applicant voted in the Colombian presidential elections in May 2006. She went to the Colombian Consulate to place her absentee ballot. Before she voted, she made sure that she could legally vote in the Colombian election after becoming a U.S. citizen. She voted for President Uribe because he is a staunch ally of the United States. She voted before she applied for a security clearance and was unaware of the security issues raised by voting in a foreign election. She does not intend to vote in future Colombian elections. (Tr at 45-46, 50, 55)

Applicant has ten siblings who are citizens of and reside in Colombia. One brother is a retired economist. Another brother is a retired civil engineer for the local telephone company. From 1969 to 1971, he served in the Colombian Navy. Another brother is a self-employed dental technician at a dental lab. Another brother is a construction auditor. He tests the soundness of buildings. One brother is a computer scientist who may work as a government contractor for the Colombian government. One of Applicant's sisters is a retired economist. One of her sisters is a retired librarian. Two sisters are retired school teachers. One sister is a dentist. Aside from her brother who is a computer scientist, Applicant does not believe any of her siblings work for or are affiliated with the Colombian government. (Tr at 33-35; Gov 2; Gov 3)

Applicant's contact varies with each sibling. They call each other on birthdays and holidays. She has seen most of her relatives two or three times within the past eight years. She telephones each of them on average of two to three times a year. She traveled to Colombia twice in 2001 when her mother was still living. The last time she traveled to Colombia was in 2002 to attend her mother's funeral. Some of her siblings visited her in December 2006 and 2009. (Tr at 36-38, 40)

Applicant has occasional contact with extended family members who are citizens of and reside in Colombia. She does not provide financial support to any of her relatives. (Tr at 40-41; Gov 3 at 13-14; Gov 2 at 27-29)

Applicant inherited a small interest in her father's house when he passed away. In 2007 – 2008, she visited the Colombian Consulate on several occasions to sign a power of attorney in order to divest her interest in her father's home. She no longer has an interest in her father's house. She owns no property or other financial assets outside of the United States. (Tr at 41-42, 50; Gov 3 at 7)

After her mother passed away in 2002, Applicant has had no interest in traveling to Colombia. Her life is in the United States with her husband and daughter. The United States has given her a lot of opportunities. She considers the United States her home. She and her husband's net worth is approximately \$230,000. All of her assets are located in the United States. (Tr at 51-52; Gov 2 at 9)

The Facility Security Officer of Applicant's company provided a letter stating that Applicant has not been involved in any security incidents. He states that Applicant has been proactive in keeping up-to-date with knowledge of security practices by attending security training and reading security training materials. (AE A)

The Senior Vice President, Director of Information Systems and Security of Applicant's company wrote a letter on her behalf. He has been her direct supervisor since January 2008. He states that Applicant is trustworthy and dedicated to her work. Her work has been praised by the company's clients in the defense industry. He strongly supports her application to obtain a security clearance. (AE B) Other individuals wrote letters saying similar favorable things about Applicant. (AE C – F)

Applicant's 2008 Employee Performance Review indicates that she meets standards. (AE H) She has been recognized by her employer for her performance. (AE O) In April 1999, she received a grant from the National Science Foundation – Faculty Early Career Development Program. (Tr at 30; AE N)

### **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 required 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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

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 guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant’s case:

FI DC ¶ 7(a) (*contact with a 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*);

FI DC ¶ 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*)

Applicant’s ten siblings are citizens and residents of Colombia. Applicant also has several extended family members who are citizens of and residents of Colombia.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has contacts with that relative, this factor alone is sufficient to create a heightened risk for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)

In this case, FI DC ¶ 7(a) and FI DC ¶ 7(b) apply because Applicant has contacts with and connections to her family members in Colombia. All of her siblings live in Colombia. Applicant's contact with her siblings several times a year creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. However, Applicant's ties to her extended family members who are citizens of and reside in Colombia are not nearly as strong as her ties to her siblings. None of her Colombian relatives appear to be connected to high levels of the Colombian government. Her brother works as a computer scientist for a government contractor. Her other siblings do not work for the Colombian government.

Three of the six mitigating conditions under the Foreign Influence guideline (FI MC) may apply to the facts and circumstances of this case:

*FI MC ¶ 8(a) (the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.) ;*

*FI MC ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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);*

*FI MC ¶ 8(c) (contact or communication with foreign citizens is so casual and infrequent that there is little likelihood it could create a risk of foreign influence or exploitation).*

FI MC ¶ 8(a) and FI MC ¶ 8(c) do not apply because Applicant's relationships with her nuclear-family members in Colombia are of sufficient magnitude to negate these two mitigating conditions. There is at least a remote or slight possibility that dangerous elements within Colombia could attempt to use her family members to coerce or pressure Applicant.

FI MC ¶ 8(b) applies. Applicant's deep and longstanding relationships and loyalties in the United States support the conclusion that she can be expected to resolve any conflict in favor of the United States interest. Applicant moved to the United States in 1988. She earned her master's and doctorate degrees at U.S. universities. She has been gainfully employed in the United States and has not worked in foreign countries after moving to the United States. Her husband is a U.S. citizen. Her daughter was born and has been raised in the United States. Applicant became a U.S. citizen in 2004. She has lived and worked in the United States for 22 years. She does not possess a valid foreign passport. She intends to live and work in the United States for the rest of her life. The last time she traveled to Colombia was in 2002 to attend her mother's

funeral. Now that both her parents are gone, she feels her life is now in the United States. Her strongest ties are in the United States.

Applicant's deep and longstanding relationships and loyalties in the United States outweigh any potential for conflict because of Applicant's relationship to her siblings and extended relatives who are citizens of and reside in Colombia. The Guideline B concern is mitigated.

### **Guideline C – Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

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 guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (7) voting in a foreign election*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant exercised her Colombian citizenship after becoming a U.S. citizen in 2004 when she voted in the 2006 Colombian presidential election. Although not alleged in the SOR, she also exercised her Colombian citizenship when she traveled on her Colombian passport on a trip to Canada shortly after becoming a U.S. citizen.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FI MC) apply:

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) Applicant was unaware that voting in the Colombian presidential election in 2006 would raise an issue related to her security clearance. In fact, she did not apply for a security clearance until two years after the election. Before voting in the Colombian presidential election, she made sure it was legal to do so as a dual citizen. Now that she is aware of the security issues raised by voting in a foreign election, she does not intend to vote in future Colombian elections. She is willing to renounce her Colombian citizenship.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies with respect to Applicant's use of her Colombian passport on a trip to Canada shortly after becoming a U.S. citizen. Her



reason for doing so was because she did not have time to get her U.S. passport. Regardless, she never traveled on her Colombian passport again after obtaining her U.S. passport. She destroyed her Colombian passport on October 15, 2008, before the SOR was issued which is more than likely the reason why the passport issue was not alleged in the SOR. However, I felt it important to address this issue which is mitigation under the Foreign Preference concern.

Applicant mitigated the Foreign Preference concerns. Guideline C is found for 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) the 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. I considered the totality of Applicant's family ties to Colombia, a country that is an ally of the United States but has significant internal problems.

I considered that Applicant is highly regarded at her current place of employment. She has lived in the United States for over 22 of her 48 years. She became a U.S. citizen in 2004. She has not visited Colombia in over seven years. While Applicant's family members living in Colombia raise a potential security threat due to the very nature of familial relationships, Applicant's significant ties to the United States mitigate the security threat. Her husband and daughter are citizens of and reside in the United States. Her deep and longstanding relationships and loyalties in the United States strongly support the conclusion that Applicant would resolve any attempt to exert pressure, coercion, or exploitation in favor of the United States.

While Guideline C, foreign preference concerns were raised because Applicant voted in the 2006 Colombian presidential elections, she did not do so before making sure that it was legal for her to do so as a dual citizen. She did not apply for a security clearance until two years later, and was unaware of the security implications. After learning about these concerns, she does not intend to vote in future Colombian elections and is willing to renounce her Colombian citizenship.

Guideline B is a security concern that affects applicants through no fault of their own. The internal issues within Colombia make it a substantial burden to mitigate the concerns raised under foreign influence. In Applicant's case, her significant personal relationships and contacts within the United States outweigh the concerns raised by having relatives who are citizens of and reside in Colombia. Overall, the record evidence leaves no questions or doubts as to Applicant's eligibility and suitability for a security clearance. Foreign Influence and foreign preference security concerns are mitigated.

### **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:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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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ERIN C. HOGAN  
Administrative Judge