



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02829
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

May 19, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant, a naturalized United States (U.S.) citizen from Brazil, continues to vote in Brazilian elections to maintain his dual citizenship. Also, his wife, a naturalized U.S. citizen who is also from Brazil, works for a Brazilian government agency located in the U.S. that purchases material for the Brazilian government. These facts create Foreign Preference and Foreign Influence security concerns that Applicant failed to mitigate. Clearance denied.

**Statement of the Case**

On October 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, Foreign Influence, and C, Foreign Preference. 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.

DOHA received Applicant's answer on October 23, 2009. He admitted all of the allegations and requested a hearing. The case was assigned to me on December 7, 2009. On December 28, 2009, DOHA issued a notice of hearing scheduling the case for January 26, 2010. I conducted the hearing, as scheduled. At the hearing, I received four Government exhibits, thirty-seven Applicant exhibits, and the testimony of two Applicant witnesses. At the conclusion of the hearing, I left the record open, at Applicant's request, for him to submit additional evidence. Within the time allotted, Applicant submitted two additional documents that I received as AE LL and AE MM. DOHA received the transcript on February 3, 2010.

### **Findings of Fact**

Applicant is a 58-year-old married man with two adult children. He was born in Argentina, and raised in Brazil. In 1970, at age 18, he became a Brazilian citizen. (Tr. 70)

Applicant attended college and graduate school in Brazil, earning a bachelor of science in electrical engineering and a master's degree in computer science. (GE 1 at 13; AE KK) In 1975, Applicant moved to the U.S. to pursue a doctorate in computer science. After earning his Ph.D in 1978, Applicant returned to Brazil and joined the faculty of the college he previously attended.

Applicant remained in Brazil until 1991 when he decided to move back to the U.S. (GE 3 at 11) He became a naturalized U.S. citizen in 1999. (Tr. 37) Since 1992, he has been on the faculty of a U.S. university.

Currently, Applicant is the senior associate dean of engineering, and is a consultant in the field of capacity planning. (AE J) Among other things, he is in charge of all research programs that the university conducts. Applicant is internationally renowned, having lectured throughout the world, patented several innovations, and published a prolific body of work. Also, he has testified as an expert witness in several patent infringement cases. (AE KK) In 1997, Applicant was designated an "Association for Computer Machinery Fellow," the most prestigious honor in the information technology field. (AE Z)

Much of the research Applicant conducts is U.S.-Government funded. (Tr. 85) He conducts some of his research for DoD agencies, and needs a security clearance to facilitate it.

Applicant travelled to Brazil approximately seven times between 2002 and 2008 to visit his ailing parents. (Answer) Each time, he used his Brazilian passport. This enabled him to enter the country promptly without having to apply for a visa. (Tr. 58) He has not returned to Brazil since March 2008. Both of his parents are now deceased. (Tr. 57) He surrendered his Brazilian passport to the university's facility security officer (FSO) in January 2010. (AE LL) Applicant appeared reluctant about surrendering his

passport, asking at the close of the hearing if he could retrieve it if his security clearance application was denied. (Tr. 109)

Applicant votes in Brazilian presidential elections. He does so in order to maintain his dual citizenship with Brazil. (Tr. 58; AE GG) When questioned regarding whether he will continue to vote in Brazilian presidential elections, Applicant responded, as follows:

If I am still holding a Brazilian citizenship, I have to do that. It's Brazilian law. And during my entire life, I have always been a law-abiding citizen. (Tr. 105)

Applicant and his wife have been married for more than 35 years. She is a dual U.S.-Brazilian citizen. (GE 3 at 12) She became a naturalized U.S. citizen in 2000. She works for a branch of the Brazilian government that purchases material for the Brazilian Army from the U.S. Army. (Tr. 65) Products purchased include, among other things, medicines unavailable in Brazil, avionics, machine gun spare parts, and night vision accessories. (GE 4; Tr. 88) This organization consists of 30 employees, 18 of whom are civilian. The remaining 12 are Brazilian army members. Applicant's wife is a purchasing agent who prepares the procurement contracts. (Tr. 64-66, 95)

Both of Applicant's children were born in the U.S. (Tr. 15) They are dual U.S.-Brazilian citizens based upon their parents' Brazilian citizenship status. (Tr. 61-62). Both are married to U.S. citizens and live in the U.S. (Tr. 62) His son works for the federal government and his daughter works for a research institute. (Tr. 60)

Applicant's parents-in-law are deceased. Two sisters-in-laws, a brother-in-law, two nieces and a nephew are citizens and residents of Brazil. (Answer) Another brother-in-law is a citizen and resident of Israel.

Applicant visited his siblings-in-law when he travelled to Brazil to visit his parents. Since his parents passed away and he no longer regularly travels to Brazil, his contact with his siblings-in-law has decreased. Now, he only talks to them if they call for his wife and he happens to be at home. (Tr. 59) Applicant and his wife did, however, pay for one sister-in-law and his brother-in-law to visit them in the U.S. (Tr. 63)

Applicant's nieces and nephews living in Brazil are the children of his brother-in-law. One is a college student and the others are teenagers. (Tr. 64)

Applicant's brother-in-law living in Israel is a dual citizen of Israel and Brazil. He has lived in Israel for 12 years. (Tr. 67) Applicant has not seen him since he moved to Israel, and does not know where in Israel he lives. Applicant's brother-in-law last called him in 2009 to tell him his daughter was in the U.S. (Tr. 67) Applicant and his wife then contacted this niece and paid her travels arrangements to visit them. Applicant has never been to Israel. (Tr. 66)

Applicant and his wife maintain a bank account in Brazil. They use it to wire money to Applicant's siblings-in-law. (Answer, Tr. 68) They send them approximately \$800 per month, collectively, to help with rent and medical expenses. (Tr. 68-69) Between March and June of 2008, using the bank account in Brazil, they transferred approximately \$26,000 to a sister-in-law to help her purchase a home. (GE 2 at 9)

Applicant earns more than \$250,000 annually and has a net worth of \$2.2 million. (Tr. 69) The account he shares with his wife in Brazil constitutes less than 1.7 percent of his net worth. All of the money used to support Applicant's siblings-in-law comes from his wife's salary.

Brazil is a charter member of the United Nations. (AE II) It has enjoyed "friendly, active relations [with the U.S.] encompassing a broad political and economic agenda." (*Id.*)

The security of Israel is a cornerstone of U.S. foreign policy. Relations between the U.S. and Israel "are continually strengthening in every field." (AE JJ)

## **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 AG list potentially disqualifying conditions and mitigating conditions.

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.

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."

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 for obtaining a favorable security decision.

## Analysis

### Guideline C, Foreign Preference

Under this guideline, “[w]hen 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.” (AG ¶ 9) Applicant’s use of a Brazilian passport for nine years after becoming a naturalized U.S. citizen and his continued participation Brazilian presidential elections triggers the application of AG ¶ 10(a), “exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of another family member.” Specifically, AG ¶¶ 10(a)(1), “possession of a current foreign passport,” and 10(a)(7), “voting in a foreign election,” apply.

Applicant surrendered his passport to his employer’s FSO after the hearing. AG ¶ 11(e) “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” applies.

Applicant continues to vote in Brazilian presidential elections to fulfil his obligation as a Brazilian citizen. Consequently, none of the other mitigating conditions apply.

### Guideline B, Foreign Influence

AG ¶ 6 explains the foreign influence security concern 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.

Although Applicant’s two adult children are dual U.S.-Brazilian citizens, both live in the U.S. and are married to U.S. citizens. Also, one works for the federal government. Under these circumstances, they do not generate any security concerns.

Conversely, Applicant’s wife, a dual U.S.-Brazilian citizen, works as a procurement officer for a Brazilian government agency that purchases supplies for the Brazilian army. AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion,” applies.

Applicant's siblings-in-law, who are either Brazilian citizens and residents or Israeli citizens and residents, trigger the application of AG ¶ 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." Also, Applicant's maintenance of a bank account in Brazil that he used to, among other things, wire money to a sister-in-law to help her purchase a home, generates a security concern under AG ¶ 7(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."

Since Applicant's parents died, he rarely sees or speaks with his siblings-in-law. Applicant and his wife provide financial support for them through money deposited in a Brazilian bank account. Though this support is significant to their relatives, it represents a minuscule percentage of Applicant and his wife's net worth. AG ¶¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," and 8(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," apply. Applicant's relatives in Brazil do not pose a security concern.

Applicant has not seen his brother-in-law living in Israel in 12 years, and does not know where in Israel he lives. Although Applicant and his wife arranged for his brother-in-law's daughter to visit them while she was in the U.S., their contact, in sum, is sufficiently casual and infrequent for AG ¶ 8(c) to apply to these relatives, also.

Brazil is a staunch U.S. ally; however, friendly countries can conduct espionage as readily as hostile ones. Consequently, Applicant's position as a procurement agent for a Brazilian government agency that purchases equipment and supplies for the Brazilian army poses a significant conflict of interest for Applicant that his deep and longstanding personal and professional relationships and loyalties in the U.S. cannot overcome. None of the mitigating conditions apply. In reaching this conclusion, I considered Applicant's reluctance to surrender his Brazilian passport and his intent to continue voting in Brazilian elections.

### **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.

Applicant is an extraordinarily accomplished expert in his field. He is dedicated to his family and is a pillar of his community. These factors cannot overcome the vulnerability to coercion generated by his wife's employment with a Brazilian government agency that purchases supplies for the Brazilian army, and his intent to continue voting in Brazilian elections in order to maintain his Brazilian citizenship. Upon considering this case in the context of the whole-person concept, I conclude Applicant is an unacceptable candidate for a security clearance.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b - 1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d-2.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge