



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



In the matter of:)	
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)	ISCR Case No. 09-06296
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Jon L. Roberts, Ph.D, J.D.

February 28, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concern posed by his relatives who are Venezuelan citizens and/or residents. Clearance is granted.

Statement of the Case

On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. 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 adjudicative guidelines (AG).

Applicant answered the SOR on May 25, 2010, admitting all of the allegations except subparagraphs 1.a through 1.c. He requested a hearing, and the case was assigned to me on October 6, 2010. On November 10, 2010, a notice of hearing was

issued scheduling the case for December 2, 2010. The hearing was conducted as scheduled. I admitted two Government exhibits marked as Government Exhibits (GE) 1 and 2, and seven Applicant exhibits marked as Applicant Exhibits (AE) A through G. Also, Applicant and a character witness testified. At Department Counsel's request, I took administrative notice of facts about Venezuela contained in seven documents marked as Hearing Exhibits (HE) I through VII.

Findings of Fact

Applicant is a 49-year-old married man with three children, ages 20, 17, and 15. He has a bachelor of science degree in electrical engineering, earned in 1981 from a university in Venezuela, his native country. (AE C at 2) Applicant immigrated to the United States in 1998 and has been living here since then.

For the past nine years, Applicant has worked in a number of capacities for a defense contractor. (AE C at 1) Currently, he is the lead engineer in designing satellite transceiver and implementation software for a DoD satellite tracking system that allows U.S. forces to minimize friendly fire accidents by pinpointing more precisely the location of its troops. (AE B, Attachments 3-4)

Applicant is highly respected on the job. In a 2008 job evaluation, his department head characterized Applicant as "one of [the company's] true creative forces [whom he] was glad to have on [the] team." (AE D at 45) According to a coworker, Applicant "worked tirelessly - including countless evenings and weekends - to meet U.S. Government project goals and objectives." (AE B, Attachment 4) According to the program manager for Applicant's client, Applicant possesses a "unique ability to design complex equipment and software." (AE B, Attachment 3)

One of Applicant's former supervisors is a senior intelligence officer in the U.S. Army Reserve with more than ten years of experience collecting and analyzing intelligence, in addition to supervising and training junior intelligence officers. (AE B, Attachment 1) He has performed his intelligence collecting tasks while assigned, among other places, to two combat theaters. (*Id.*) He supervised Applicant for five years before leaving his job and moving to another company. He characterized Applicant as "a consistent and valuable member of the development team, whose expertise was specifically sought . . . to assist in troubleshooting critical problems." (AE B, Attachment 1) Also, he described Applicant as one "who can absolutely be trusted with access to classified information." (*Id.*)

Applicant's wife is also a Venezuelan native. Both were raised in Venezuela and they met and married in Venezuela. (Tr. 96) In 1998, after 11 years of marriage, Applicant and his wife emigrated from Venezuela to the United States. (Tr. 98) Applicant left Venezuela because he was tired of its "culture of corruption," and because he wanted his children to receive a better education. (Tr. 118)

Applicant and his wife became naturalized U.S. citizens in 2008. (AE 1 at 7) Both renounced their Venezuelan citizenship when they became U.S. citizens. (Answer at 1; Tr. 120)

Applicant's children are naturalized U.S. citizens. It is unclear from the record whether they retain their Venezuelan citizenship. All of Applicant's children live in the United States. His oldest child attends college and the two youngest children are in high school. He pays his daughter's college tuition. (Tr. 127) Applicant is active in the community, volunteering at church, remodeling homes for the underprivileged, and serving as the timekeeper at local high school swim meets.¹ (Tr. 128)

Applicant has been a homeowner since 1999. (Tr. 97) All of his financial interests are in the United States. (Tr. 86) He has approximately \$60,000 to \$70,000 invested in his 401k plan and an insurance policy through his employer worth \$500,000. (Tr. 130) Also, he owns about 2,000 shares of stock in his company valued at approximately \$46 per share. (Tr. 133)

Applicant has only travelled to Venezuela twice in the past ten years. On both occasions, he was attending a parent's funeral. This last trip was in 2008. (Tr. 129) He has no intention of returning to Venezuela. (Tr. 122) His recreational travel is limited to popular vacation destinations in the United States such as theme parks and beaches. (Tr. 133)

Applicant's brother is a citizen of Venezuela who works for a U.S. company and resides in Mexico. (Answer at 2; AE B Attachment 7) His brother is an electrical engineer and his brother's wife is a homemaker. Applicant has a cordial relationship with his brother and his brother's family keeping in touch with them approximately once per month in addition to special occasions and holidays. (Tr. 107, 121) His brother's family travels to the United States to visit him every year at Christmas. (GE 2 at 25)

Applicant's sister is a Venezuelan citizen. She recently moved from Venezuela to Costa Rica. (Tr. 75) She is a software engineer who works for a European company. (Answer at 4) Her husband "buys and sells merchandise to the public." (*Id.*) They have one son, an eight-year-old boy. Although Applicant is cordial with his sister's family, he speaks with them slightly less than he speaks with his brother's family. (Tr. 75)

Applicant's parents-in-law are both retired and in their eighties. Neither worked for the Venezuelan government. (Answer at 4) Applicant's father-in-law was a businessman. (GE 2 at 33) His mother-in-law's former occupation is unknown from the record. Applicant talks with them approximately once a month, and on special occasions. (*Id.*) His wife travelled to Venezuela to visit them in 2009.

Applicant has a sister-in-law who is a Venezuelan citizen and resident. (Answer at 34) She is an unemployed widow who lives with her eight-year-old son and her

¹One of Applicant's daughters is a member of the high school swim team.

parents. (Tr. 81) Applicant communicates with these relatives approximately once per month and on special occasions. (Tr. 81) Applicant considers his relationship with his in-laws to be close. (Tr. 110)

Applicant has several miscellaneous friends who are Venezuelan citizens and residents. They exchange periodic e-mails. (Tr. 82) One is a college professor who was Applicant's mentor while in school. (Tr. 124) They talk approximately twice per year, discussing abstract physics theory. (Tr. 124)

Although Venezuela is a constitutional democracy, its current leader, Hugo Chavez, is a provocative, anti-American ruler who has undermined democratic institutions and orchestrated a government takeover of significant sectors of the economy. (HE V at 31-38) President Chavez is dedicated to establishing a Latin American foreign policy paradigm that is devoid of U.S. influence. (HE I at 7)

Venezuela's relationship with Iran has grown over the past few years. (HE V at 56) Although the ties are primarily economic, military cooperation has been growing. (*Id.*) Venezuela is increasingly buying military hardware from Russia. (*Id.* at 52)

Venezuela is not cooperating fully with U.S. antiterrorism efforts. (HE IV at 1, 15) Consequently, in May 2009, the United States prohibited the sale or license of defense articles and services to Venezuela for one year. (*Id.* at 15)

Venezuela has grown increasingly uncooperative in fighting illegal drug trafficking. (HE V at 42) It is a major transit country for cocaine and heroin, as well as a major money-laundering country. (HE I at 4-5)

Although United States/Venezuelan relations have been strained over the past few years, their relationship has historically been friendly. The United States is Venezuela's most important trading partner, "with U.S. goods accounting for about 25 percent of imports and approximately 60 percent of Venezuelan exports going to the United States." (HE I at 8) A significant percentage of Venezuela's food imports come from the United States. (*Id.* at 7) Approximately 12,000 U.S. tourists visit Venezuela annually, and approximately 500 U.S. companies have a presence in Venezuela. (*Id.*)

The United States continues to provide development assistance funding to Venezuela. The U.S. Agency for International Development funds democracy projects in Venezuela focusing on developing the rule of law, nurturing public debate, and providing leadership training. (HE V at 42)

In August 2007, President Chavez proposed a package of reforms to Venezuela's constitution, including measures to allow indefinite presidential re-election and the redefinition of private property. (HE I at 5) These measures were defeated in a public referendum after several groups of students, opposition leaders, and former Chavez allies launched a campaign urging its rejection. (*Id.* at 5) Gubernatorial and

mayoral elections were held nationwide in November 2008 and were deemed to be free and fair. (*Id.* at 5)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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."

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 B, Foreign Influence

The security concern under this guideline is set forth, 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. (AG ¶ 6)

Applicant's wife renounced her Venezuelan citizenship when she became a U.S. citizen. It is unclear from the record whether Applicant's children still have Venezuelan dual citizenship. However, as U.S. citizens living either at home with Applicant or in college, the risk of coercion by the Venezuelan government is minimal regardless of whether they have Venezuelan dual citizenship. None of the disqualifying conditions applies to these relatives. Therefore, I resolve SOR subparagraphs 1.a through 1.c in Applicant's favor.

Although Applicant's brother and sister are Venezuelan citizens, neither live in Venezuela. There is no record evidence that Venezuela either possesses an intelligence infrastructure significant enough to target citizens beyond its border, or is attempting to develop such an intelligence infrastructure. I resolve SOR subparagraphs 1.d and 1.e in Applicant's favor.

Despite all of President Chavez' bombastic, anti-U.S. rhetoric, Venezuela's economy remains dependent on U.S. trade, tourism, and foreign aid, and a significant U.S. corporate presence remains in Venezuela. Moreover, Chavez' periodic attempts at increasing his authority have been held in check by a robust, organized dissent that, for example, recently organized a successful campaign, through the democratic process, to block a Chavez-sponsored referendum that would have increased his power under the constitution. Nevertheless, Venezuela's relationship with the United States has deteriorated significantly, with Chavez questioning U.S. trade initiatives, nurturing warm relations with U.S. adversaries, expanding its military, enabling drug trafficking, and failing to cooperate in the United States-led regional fight against terrorism. Consequently, 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," applies to Applicant's relationship with his in-laws and friends who are Venezuelan citizens and relatives.

Applicant acknowledges that he is close to his Venezuelan in-laws. Conversely, his contact with his remaining friends living in Venezuela is limited to periodic e-mails and conversations approximately twice yearly. Mitigating Condition (MC) 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," applies to his friends living in Venezuela, but not his in-laws living in Venezuela.

Applicant and his family have been living in the United States for more than ten years. He has no financial interests in Venezuela. In comparison, his U.S. financial interests include, among other things, his home, a \$500,000 employer-sponsored life insurance policy, significant stock ownership in his employer's company, and a 401(k) plan worth approximately \$60,000 to \$70,000 dollars. Applicant is active in his community, serving his church through local public service projects and volunteering at his children's high school sporting events. Over the years, he has developed a network of friends through these activities. AG ¶ "there is no conflict of interest, either because the individual's sense of loyalty or obligation to a 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,” applies.

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.

Since immigrating to the United States and becoming a U.S. citizen, Applicant’s career has flourished, his children have thrived in school, and he has immersed himself in the community. In sum, he is thoroughly integrated into American society. I conclude Applicant’s relationships and loyalties in the United States outweigh the heightened risk generated by his in-laws’ Venezuelan citizenship and residency. Applicant has mitigated the foreign influence security concern.

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 - 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge

