



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



In the matter of:)	
)	
)	ISCR Case No. 10-01611
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

April 5, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the foreign influence concern that existed due to her family ties to and real estate interest in Venezuela, and the foreign preference concern that existed due to her previous possession of a Venezuelan passport. Clearance is granted.

On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant's response to the SOR was received by DOHA on November 19, 2010. Applicant admitted SOR allegation 1.a.1, but denied she had exercised dual citizenship with Venezuela. She admitted SOR allegation 2.a, denied

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

allegation 2.b, and denied that her foreign contacts or interests created a security concern. Applicant requested a hearing.

The case was assigned to another administrative judge on January 13, 2011. She caused a notice of hearing to be issued on February 17, 2011, scheduling the hearing for March 17, 2011. The case was reassigned to me on March 15, 2011, due to the unavailability of the originally assigned judge on the scheduled hearing date. The hearing was conducted as originally scheduled.

The Government submitted 10 documentary exhibits that were marked as Government Exhibits (GE) 1-10. GE 1-3 were admitted into the record without objection. Administrative notice was taken of the contents of GE 4-9 without objection. Applicant's objection to administrative notice being taken of the contents of GE 10 was sustained. Department Counsel submitted one document containing written comments on the contents of GE 3-9, which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified, and submitted four documents that were marked as Applicant's Exhibits 1-4, which were admitted into the record without objection. The transcript was received on March 24, 2011.

Findings of Fact

Applicant's admissions are incorporated herein. In addition, after a thorough review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 56-year-old woman who has been employed by a defense contractor, currently as a civil engineer, since April 2007. She was previously employed by the United States Army in Germany as an environmental/civil engineer from July 1999 until January 2003; and by the United States Department of State in Germany as a community liaison officer from June 2003 until June 2005. She was unemployed from February 2003 until May 2003, and again from July 2005 until March 2007. Applicant's periods of unemployment were due to permanent change of station (PCS) orders issued to her husband, a career United States Army officer.

Applicant is a Venezuelan citizen by birth. She immigrated to the United States in 1982 to attend college. She obtained a bachelor's degree in civil engineering from that university in May 1985, and a second bachelor's degree from the same university in international economics and finance in December 1986. Applicant became a naturalized United States citizen on October 22, 1993. In her response to the SOR, Applicant stated she renounced her Venezuelan citizenship when she became a United States citizen, although she does not elaborate as to how she renounced that citizenship.

Applicant was first married in June 1984. That marriage ended by divorce in December 1986. Applicant's first husband was a United States citizen. Applicant has been remarried since December 1992. Applicant's husband is a United States citizen and a graduate of the United States Military Academy. He retired from the Army as a

Lieutenant Colonel. Applicant has a 16-year-old daughter from her second marriage who is solely a United States citizen.

Applicant's current United States passport was issued in August 2004. She had a Venezuelan passport that was issued in November 2007 that was not due to expire until November 2012. Applicant explained in a statement she provided in December 2009, that she obtained the Venezuelan passport at her parents' urging because they were concerned that she might not be allowed to enter or exit Venezuela if she only possessed a United States passport. Applicant surrendered her Venezuelan passport to her employer's Facility Security Officer (FSO) in August 2010, after she learned her possession of that passport created a security concern. She retrieved the passport from the FSO in anticipation of the hearing of this case and then destroyed it in open court during the conduct of the hearing.

Applicant listed significant foreign travel in the security clearance application she submitted. That travel was either in connection with PCS moves or visits to nearby countries where she and her husband were stationed. She provided copies of her United States and Venezuelan passports, which disclose that she exclusively used her United States passport in connection with that travel.

Applicant's father is an 82-year-old citizen and resident of Venezuela. Her mother is a 75-year-old citizen and resident of Venezuela. Because her parents were concerned their family residence, a condominium they own in Venezuela, would escheat to Venezuela upon their deaths, they conveyed ownership of the condominium equally to Applicant and her brother in 2008. Applicant reconveyed the condominium to her parents when she discovered her ownership of the condominium created a security concern. Applicant estimated the value of the condominium is approximately \$240,000.

U.S. Department of State publications provide the following information about Venezuela:

U.S. - Venezuelan relations have been tense in recent years, although both nations agreed at the April 2009 Summit of the Americas in Trinidad to seek a relationship based on mutual interest. President Chavez continues to define himself in opposition to the United States, using incendiary rhetoric to insult the U.S. Government and U.S. influence in Latin America. (GE 4)

Violent crime in Venezuela is pervasive, both in the capital, Caracas, and in the interior. The country's overall per capita murder rate is cited as one of the top five in the world. . . . Armed robberies take place throughout the city, including areas generally presumed safe and frequented by tourists. Well-armed criminal gangs operate widely, often setting up fake police checkpoints. Only a small percentage of crimes result in trials and convictions. (GE 5)

In May (2009), the United States re-certified Venezuela as “not cooperating fully” with U.S. counterterrorism efforts under Section 40A of the Arms Export and Control Act, as amended. Pursuant to this certification, defense articles and services may not be sold or licensed for export to Venezuela from October 1, 2009 to September 30, 2010. This certification will lapse unless it is renewed by the Secretary of State by May 15, 2010.

President Hugo Chavez persisted in his public criticism of U.S. counterterrorism efforts. In October (2009), he called the United States “the first state sponsor of terrorism” and has repeatedly referred to the United States as a “terrorist nation.” Since Colombia and the United States signed a Defense Cooperation Agreement, Venezuela’s cooperation with the United States on counterterrorism has been reduced to an absolute minimum. President Chavez continued to strengthen Venezuela’s relationship with state sponsor of terrorism Iran. Iran and Venezuela continued weekly Iran Airlines flights connecting Tehran and Damascus with Caracas. (GE 6)

Politicization of the judiciary and official harassment and intimidation of the political opposition and the media intensified during the year (2009). The following human rights problems were reported by the nongovernmental organization (NGO) community, the media, and in some cases the government itself: unlawful killings, including summary executions of criminal suspects; widespread criminal kidnappings for ransom; prison uprisings resulting from harsh prison conditions; arbitrary arrests and detentions; corruption and impunity in police forces; a corrupt, inefficient, and politicized judicial system characterized by delays and violations of due process; political prisoners and selective prosecution for political purposes; infringement of citizens’ privacy rights by security forces; government closure of radio and television stations and threats to close others; government attacks on public demonstrators; systematic discrimination based on political grounds; considerable corruption at all levels of government; threats and attacks against domestic NGOs; violence against women; inadequate juvenile detention centers; trafficking in persons; and restrictions on workers’ right of association. (GE 7)

A July 28, 2009, Report for Congress, prepared by the Congressional Research Service provides the following information about Venezuela:

Over the past several years, U.S. officials have expressed concerns about human rights, Venezuela’s military arms purchases (largely from Russia), its relations with Cuba and Iran, and its efforts to export its brand of populism to other Latin American countries. Declining Venezuelan cooperation on antidrug and antiterrorism efforts also has been a concern. Since 2006, the Department of State has prohibited the sale of defense

articles and services to Venezuela because of lack of cooperation on antiterrorism efforts. . . . (GE 8)

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence) and Guideline C (foreign preference) with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶

Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸ No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant’s mother and father are citizens and residents of Venezuela. Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . 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.

Applicant’s parents transferred ownership of their family residence in Venezuela to Applicant and her brother in an effort to prevent it from escheating to the Venezuelan Government upon their death. When Applicant realized her ownership of this property created a security concern, she reconveyed the property to her parents. Department Counsel conceded that by so doing, Applicant had mitigated this alleged security concern. I agree. No additional disqualifying condition applies due to Applicant’s temporary ownership of a condominium in Venezuela.

Applicant has resided in the United States since 1982, when she entered this country to attend college. She obtained degrees from a university in the United States in 1985 and 1986. She became a naturalized United States citizen in October 1993. She has been married to a career United States Army officer since December 1992. She has served as a military wife with her husband in overseas assignments during which she was herself employed by the United States Army and the United States Department of State. She has a 16-year-old daughter who is a United States citizen.

Succinctly stated, Applicant has proven herself to be a loyal and dedicated United States citizen by her service to this country as the wife of a career military officer and as an employee of the United States Army and the United States Department of

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

State. Mitigating Condition (MC) 8(b): *there is no conflict of interest, . . . because . . . the individual has such deep and longstanding relationships in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest applies.*

The President of Venezuela defines himself in opposition to the United States, using incendiary rhetoric to insult the U.S. Government and U.S. influence in Latin America. Venezuela refuses to cooperate with the United States in its counterterrorism efforts and, instead, fosters a close relationship with Iran, a state sponsor of terrorism. Violent crime is rampant in Venezuela and serious concerns exist about Venezuela's human rights conduct. While there is no record evidence that Venezuela has attempted to exploit its citizens to obtain information from foreign relatives, the totality of the negative information available about Venezuela prohibits application of MC 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions 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.*

Guideline C, Foreign Preference

Foreign preference is a concern because 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.

Applicant obtained a Venezuelan passport at her parent's urging because they were concerned she may encounter problems entering or exiting Venezuela on only a United States passport. Applicant never used the Venezuelan passport, and, instead, used her United States passport for all her foreign travel. She surrendered her Venezuelan passport when she discovered possession of it created a security concern. She destroyed the Venezuelan passport in open court during the hearing of her case. Department Council conceded that her prior possession of a Venezuelan passport no longer creates a security concern and that she has mitigated the foreign preference concern that previously existed. I agree. No foreign preference disqualifying condition applies.

I have considered all relevant and material facts and circumstances present in this case, the whole-person concept, including Applicant's almost 30 years of residency in the United States, her almost 20 years of being a United States citizen, her service to the United States as the wife of a career military officer, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Having done so, I conclude Applicant has mitigated the foreign influence and foreign preference security concerns. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guidelines B and C are decided for

Applicant. It is clearly consistent with the national interest to grant Applicant 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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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 is granted.

Henry Lazzaro
Administrative Judge

