



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02336
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: J. Theodore Hammer, Esquire, Department Counsel  
For Applicant: William F. Savarino, Esquire

July 28, 2011

**Decision**

---

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for foreign influence and financial considerations. Accordingly, Applicant's request for a security clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on April 15, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On February 4, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the

---

<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

Adjudicative Guidelines (AG).<sup>2</sup> Applicant signed his notarized Answer to the SOR on February 23, 2011. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on May 10, 2011, and the case was assigned to me on May 20, 2011. DOHA issued a Notice of Hearing on June 1, 2011, and I convened the hearing as scheduled on June 17, 2011. During the hearing, Department Counsel offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified and offered six exhibits, which I admitted as Applicant Exhibit (AE) A through F. I granted Applicant's request to hold the record open to submit additional documentation. He did not submit documents. DOHA received the transcript (Tr.) on June 27, 2011, and the record closed on July 7, 2011.

### **Procedural Rulings**

I take administrative notice of facts relating to Colombia, as requested by Department Counsel. The facts are set forth in a summary with six attached documents, marked as Hearing Exhibit (HE) I. I also take administrative notice of facts related to Chile, as requested by Applicant. The facts are contained in two documents, which are marked collectively as HE II. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

### **Findings of Fact**

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant seeks a security clearance, required for his employment by a defense contractor as a systems engineer. He is 49 years old, and was born in Chile. He came to the United States in 1986, when he was 24 years old. He worked at odd jobs, including dishwashing, to support himself. From 1989 to 1990, he attended community college. At times, he attended school and worked two jobs to pay his bills. He then transferred to a university and earned a bachelor's degree in computer engineering in 1993. He met his wife, a Colombian citizen, in 1999. They married in Colombia in 2001, and returned to the United States. She worked as an attorney in Colombia, but is not currently employed outside the home. Applicant became a U.S. citizen in 2000, and his wife was scheduled to take her naturalization oath on June 27, 2011, ten days after the hearing. Their son, who is 8 years old, was born in the United States and attends a U.S. elementary school. (GE 1, 5; AE E; Tr. 36-42, 86-88, 90-91)

---

<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

The SOR alleges one debt of \$25,554, related to a foreclosed mortgage. In 2000, Applicant bought a house, and made timely mortgage payments for eight years. He was working as a contractor for a financial services company. The market became unstable, and in 2007, he lost his job. Applicant contacted his mortgage lender to inform it that he had lost his job and the lender suggested putting the house up for sale. Applicant had savings, and he was able to continue paying his mortgage while he was unemployed in state A. He eventually accepted employment in state B. He and his family moved in 2008 to state B, and he rented an apartment there. (Tr. 43-51)

At that point, Applicant was paying his mortgage in state A, the condominium fee on that home, and rental payments in state B. He contacted the mortgage lender approximately monthly, to inform the company that although he was paying, he would eventually be unable to make the payments. Applicant provided documents from the lender showing that he maintained his payments up to May 2008. He took numerous steps to try to sell the property including offering it for rent, reducing the price several times, and attempting a "short sale." However, the real estate market had crashed, and he was unable to sell the house. In 2008, he notified the lender he was unable to maintain the payments. In August 2009, the lender foreclosed. (AE A, F; Tr. 43-52)

When he called the law firm handling the foreclosure, Applicant was informed that the bank purchased the house at auction. The firm forwarded a letter to the same effect, dated April 2011. Approximately \$25,500 remained on the loan after it sold. The bank did not contact Applicant for payment. He contacted the law firm and offered to pay the deficiency, but was told the law firm could not accept such payments. He was instructed to contact the bank. He contacted the bank several times by letter. He was willing to pay any remaining debt, but the bank informed him that it could not accept payments. The bank forwarded a payment history dated August 19, 2010, showing no balance owed. When he contacted the bank about whether he had any further obligation on the loan, he was informed that he did not, because it was covered by private mortgage insurance (PMI). (GE 2, 5; AE A, D; Tr. 51-55)

Applicant submitted a credit summary from a credit reporting agency showing that his current credit score is 680, up from 605 one year ago. In the category for "Real Estate Debt," it shows no real estate debt owed. He has \$10 in credit card debt. He has two open accounts, which are related to a car loan and a student loan, totaling \$13,331. He testified that both have been paid timely and are in good standing. The credit summary noted, "Debt: 0% (\$10)." (GE 3; AE C; Tr. 55-58)

Applicant's 81-year-old parents and his four sisters are citizens and residents of Chile. His father was a civil engineer for a private company, and then taught engineering at a public university for 20 years before retiring. He receives a pension from the university position, but the children have no inheritance rights to the pension. Applicant's mother, also a civil engineer, worked for the Ministry of Public Works before she retired 15 years ago. She receives a government pension. Applicant talks with his

parents by phone weekly. They own two houses in Chile, and Applicant expects the properties will be divided equally among the five siblings. (GE 5; Tr. 62-65, 95-97)

Applicant's oldest sister is a humanities professor at a private school. Her husband works for a private company. Applicant's second sister is 52 years old and divorced. She has a degree in engineering and works in the food industry. Her ex-husband is a civil engineer at a private company. Applicant's third sister, 51 years old, attended nursing school and married a doctor. She has five children and is not employed outside the home. Applicant's youngest sister is 42. She also has five children and is not employed outside the home. Her husband is a civil engineer for a private company. Applicant speaks with his siblings about once per month. (GE 5; Tr. 58-62)

Applicant has savings in the United States, as well as investments in stocks through 401(k) plans with his former and current U.S. employers. Neither Applicant nor his wife own property or have financial interests in Chile or Colombia. Between 2002 and 2009, Applicant visited Chile five times to see his family. He informed his security officer of his travel plans. He tries to go every year or two because both parents have serious medical problems. He does not provide financial support to them, as they are financially comfortable. None of them are involved in political organizations or have had contacts with government officials. Applicant's wife and parents are aware of his security investigation. No other family members in Chile or Colombia know that he is seeking a security clearance. (GE 5; Tr. 65-67, 80-82, 84-85)

Applicant's parents-in-law are citizen-residents of Colombia. His mother-in-law is 68. His 73-year-old father-in-law is a retired family law attorney who had his own practice from the 1960s to the 1990s. His father-in-law handled a few cases for the local government of the town where he lived. (GE 5; Tr.67-72, 76-77, 103-105)

Two of Applicant's wife's siblings live in Colombia. His 42-year-old sister-in-law lives in a large city. She works for a medical company, and her husband owns a small construction company. Applicant's 33-year-old sister-in-law is single and works in television production in a different large city. None of Applicant's in-laws are politically active and none have had contacts with police or government officials. Applicant's wife calls her family on holidays and Applicant may talk with them briefly. He does not provide financial support to any of his in-laws. (Tr. 72-75, 77, 102)

Applicant's brother-in-law was a citizen and resident of Colombia. He now lives in Canada. He is a civil engineer, and his wife is an architect. In the past, he lived with his family in a large Colombian city. Applicant testified that the large cities are generally safe. However, Applicant's brother-in-law could not find sufficient work in the city, so he accepted a well-paying job in a rural area. Although he was not personally threatened, he felt unsafe because of illegal drug activity in the area. His wife has family in Canada, and in 2008, he, his wife, and their two children moved to Canada. Applicant's understanding is that his brother-in-law received a special visa offered to those who, *inter alia*, lived in a country where they felt threatened. His brother-in-law became a

legal permanent resident of Canada in September 2009. (GE 5; Tr. 67-77, 97-102, 160-164)

When Applicant and his wife traveled to Colombia annually from 2000 to 2003, they visited his parents-in-law and stayed in their apartment. Applicant and his wife were not contacted by authorities or police during their stay. His in-laws are unaware of his job or that he is applying for a security clearance. Although his wife goes to Colombia every year or two, Applicant has not been there since 2003, and does not plan to travel with her to Colombia in the future. (GE 4; Tr. 77-79, 106-107)

Applicant completed all required security paperwork to inform his security manager before and after his trips. His facility security officer testified that Applicant has attended the necessary security briefings and complies with all security requirements. She characterized him as “a model employee, as far as security is concerned.” (Tr. 20-34, 81-82)

### **Administrative Notice**

I take administrative notice of the following facts.<sup>3</sup> Colombia 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 Colombia 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 kidnapped and held persons of all nationalities and occupations. The incidences of kidnapping in Colombia have diminished significantly from the peak at the beginning of this decade.

The Colombian government’s respect for human rights continued to improve. However, human rights violations continued, committed primarily by illegal armed groups and terrorist groups. These violations include political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

The U.S. Secretary of State has designated three Colombian groups – the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) – as foreign terrorist organizations. In 2009, these groups carried out bombings and other attacks in and around major urban areas, including against civilian targets.

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

---

<sup>3</sup> The facts cited concerning Colombia derive from Hearing Exhibit 1.

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.

I also take administrative notice of facts related to Chile. According to information from the White House Press Secretary, the United States and Chile are strong partners in trade, investment, energy and climate change, and environmental cooperation. They work together to reduce poverty and bolster institutions critical to increasing stability and prosperity in the hemisphere. They cooperate in multilateral forums concerning the rule of law, democracy, and full respect for human rights and fundamental liberties. The two countries also share a strong defense cooperation relationship. (HE II).

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the (AG).<sup>4</sup> Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to applicants to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters a fiduciary relationship based on

---

<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

trust and confidence. The government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as her or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the government.<sup>7</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern regarding financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

The evidence requires consideration of AG ¶19(a) (*inability or unwillingness to satisfy debts*). The mortgage loan deficiency of \$25,554 on Applicant's foreclosed house supports application of this disqualifying condition.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

When Applicant purchased his home, he was unable to predict that he would lose his job, or that the real estate market would crash. These two events, which were beyond Applicant's control, caused him to be unable to meet his mortgage payments.

---

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Such a combination of events is unlikely to occur in the future. Applicant acted reasonably. He saved money while he was generating income from employment. He used these funds to continue paying his mortgage loan even after he lost his job. He kept the lender apprised of his financial situation. His good judgment is not in question. AG ¶ 20(a) and (b) apply. Applicant also receives credit under AG ¶ 20(d) because he made consistent efforts to determine whether or not he had a remaining obligation after the house sold. The evidence indicates the loan is resolved, because the deficiency was covered by the PMI; the bank notified him in April 2011 that the account was closed; and his credit summary from the credit reporting agency notes that he currently has no real estate debt.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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 following disqualifying conditions under AG ¶ 7 are relevant:

- (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; and
- (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 has close foreign ties to his parents and sisters who are citizen-residents of Chile. His mother was a Chilean government employee until she retired 15 years ago. Applicant's wife was a citizen of Colombia, and a U.S. resident alien as of the date of the hearing. She maintains contact with her family in Colombia. Disqualifying conditions AG ¶ 7(a) and (b) apply.



The foreign influence guideline also includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

(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 United States;

(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; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

The mere possession of close family ties to persons 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 frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>8</sup> Here, it is unlikely that Applicant would be exploited based on his relationships with his parents and siblings in Chile. The United States and Chile share a strong relationship and cooperate on numerous fronts including energy, trade, and the environment. The documents submitted do not indicate that Chile targets U.S. classified information.

Applicant's wife's family in Colombia is more of a concern, given the presence of terrorist organizations there. However, Applicant has infrequent contact with his wife's family in Colombia, limited to when he sometimes says hello on the telephone. The last time he visited there was eight years ago, in 2003, and he has no intention to return. His two sisters-in-law live in large cities and have no connection with the government. His father-in-law's contact with the government was on a local level, and occurred about 20 years ago. Although Applicant's brother-in-law sought refuge in Canada, it did not result from any personal involvement with government officials or in drug-related activities. When he found he could only support his family by working in an unsafe area, he left the country to provide a safer environment for himself and his family. He is no longer in that situation, and is a legal permanent resident of Canada.

---

<sup>9</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 09-0424 (App. Bd. Feb. 8, 2001).

Applicant's ties to the United States weigh in his favor when evaluating the question of potential conflicts of interest based on his relationships in either Chile or Colombia. He worked at low-paying jobs to support himself, and succeeded in earning a college degree in the United States. He has succeeded in building a professional career of more than 20 years in the United States. He is a naturalized U.S. citizen, and his son is a native-born U.S. citizen. Moreover, he has followed all security requirements, reported his foreign travel, and is a model employee in terms of meeting security obligations. I conclude that he would report any incident of attempted exploitation if one were to occur, and would choose his strong U.S. ties over his foreign connections, in the event that a conflict of interest arose. Mitigating conditions AG ¶¶ 8(a), 8(b), and 8(e) apply.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for conflicts of interest and exploitation. Here, Applicant's contacts with his family in Chile, and his spouse's family in Colombia, raise such concerns. Although his mother worked for the government, any relationship would be tenuous, as she has been retired for 15 years. Moreover, Applicant has no inheritance rights in her government pension. His remaining family members have no connection with the Chilean government.

The connection with Colombia is of more concern, given the drug trafficking and associated civilian targeting and kidnapping. However, Applicant's contacts with his wife's family in that country are infrequent, he has not traveled there since 2003, and has no intention to travel there in the future. Although Applicant's brother-in-law sought

refuge in Canada, he was not fleeing because he was personally known or specifically targeted by drug traffickers. Moreover, he is now a permanent resident of Canada, is no longer at risk, and has no intention to return to Colombia. Applicant has strong ties to the United States. He has been here for 25 years, half of his life. He showed character and resilience by working at low-level jobs to pay for his education, and he realized his goal of a college degree. The education and employment he achieved, as well as his U.S. family and friends, represent substantial ties to the United States. I conclude that he would resolve any conflict of interest in favor of the United States.

Applicant home was foreclosed in 2009. The loss of his job in 2007, and subsequent real estate market crash, combined to make it difficult to meet his payments. He continued making payments, using savings, for as long as he could. He kept the lender apprised of his situation. After the foreclosure, he was informed that he did not owe the deficiency because it was resolved through PMI. Applicant made a good-faith effort throughout these events to meet his obligation on the debt. In light of his current credit report which shows no outstanding real estate debt, and his two open accounts which have never been delinquent, I find that any security concerns about financial considerations are mitigated.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a – 1.g	For Applicant
Paragraph 2, Guideline F	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 the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

---

RITA C. O'BRIEN  
Administrative Judge