



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 10-06107
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant was born in United States, and he has substantial connections to the United States. He served in Colombia while he was on active duty in the Army and on behalf of the U.S. State Department for more than five years. He honorably retired from the U.S. Army. He had numerous contacts with Colombian government officials and advisors as part of his official duties, with his spouse's Colombian family members, and with friends living in Colombia. Although these contacts raise a security concern, Applicant has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 22, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On November 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him. (Hearing Exhibit (HE) 2)) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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), which were promulgated by the President. The SOR

detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. DOHA set forth the basis for its action in the SOR, citing security concerns under Guideline B (foreign influence). (HE 2)

On November 28, 2011, Applicant responded to the SOR and requested a hearing before an administrative judge. (HE 2) On December 21, 2011, Department Counsel was prepared to proceed. On February 8, 2012, DOHA assigned the case to me. On February 15, 2012, DOHA issued a hearing notice. (HE 1) On March 1, 2012, the hearing was held. At the hearing, Department Counsel offered two exhibits (Tr. 19; GE 1-2), and Applicant did not offer any exhibits. There were no objections, and I admitted GE 1-2. (Tr. 19, 22-27) Additionally, I admitted the SOR, response to the SOR and the hearing notice. (HE 1-3) I held the record open until March 9, 2012, to afford the Applicant the opportunity to submit additional evidence. (Tr. 151-152) He did not submit additional evidence. DOHA received the hearing transcript (Tr.) on March 12, 2012.

Procedural Ruling

Department Counsel requested Administrative Notice (AN) of facts concerning Colombia. (AN Request with Ex. I to V; Tr. 8-9) Department Counsel provided supporting documents to show detail and context for these facts. Applicant did not object, and I granted Department Counsel's request. (Tr. 9-10)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

In his response to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a to 1.c with explanations, and he denied the SOR allegations in ¶¶ 1.d-1.o with explanations. (HE 2) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor. (GE 1) He was born in the United States. (Tr. 91) When he was 12 years old, he and his family moved to

¹The facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Puerto Rico. (Tr. 90-91) In 1981, when he was 20 years old, he returned to the United States and joined the Army. (Tr. 91-92) In 1984, he was commissioned as an officer. (Tr. 93) He honorably retired from the Army. (Tr. 110; GE 2) He has 22 years of active service and six additional years of reserve service. (GE 2 at 188) In 1987, he earned a bachelor's degree in business administration. (Tr. 93-94) In 1996, he was awarded a master's degree in international relations. (Tr. 95) He is an in-resident graduate of the U.S. Army's Command and General Staff College. (Tr. 95; GE 2)

Applicant received imminent danger pay while he served in Colombia from January 2003 to April 2008. (Tr. 111-112) Towards the end of his military career, he was entrusted with access to top secret and sensitive compartmented information (SCI). (Tr. 150)

Applicant married the first time in 1984, and he was divorced in June 2008. (Tr. 96) He married his second and current spouse in December 2008. (Tr. 96) Applicant's spouse is a citizen of Colombia, and lives in the United States with Applicant as a permanent resident alien. (Tr. 96, 99; SOR ¶ 1.a) Applicant and his spouse have not been in Colombia for more than one year. (Tr. 109-110) Applicant's stepdaughter is 18 years old, she lives in the United States, and she is a permanent resident of the United States. (Tr. 98)

Applicant's son is 27 years old, and he is currently an Army first lieutenant serving in Afghanistan. (Tr. 100-101) His son is married, and his wife is expecting a baby in April 2012. (Tr. 101) His son's home is in the United States. (Tr. 102) Applicant's daughter is 23 years old, and she works for a defense contractor. (Tr. 103, 162)

Applicant's mother lives in Puerto Rico, and he communicates with her almost every day. (Tr. 97) Applicant's brother is retired from employment at Homeland Security. He now lives in Puerto Rico. Applicant communicates with his brother about twice a month. (Tr. 103-104) Applicant's sister is married and she is also in Puerto Rico. Applicant communicates with her about twice a month. (Tr. 105)

Applicant's father-in-law is deceased. (Tr. 106) Applicant's mother-in-law is a citizen and resident of Colombia. (Tr. 106; SOR ¶ 1.b) She is currently visiting Applicant in the United States. (Tr. 106) Applicant's spouse occasionally sends her mother money on special occasions, such as her birthday. (Tr. 145) Applicant's stepson lives in Colombia. (Tr. 103) His contact with his mother-in-law and stepson is infrequent, but cordial. (Tr. 107) Applicant's spouse has one brother, who is a citizen and resident of Colombia. He is a full-time student attending law school. (Tr. 146; SOR ¶ 1.c) Applicant's spouse has affection for her family members (mother, brother, and son) living in Colombia.

Investments in Colombia

In 2009, Applicant made a \$10,000 investment to start a company in Colombia. (Tr. 134-137) The company had five listed owners, including Applicant's spouse, mother-in-law, brother-in-law, and his spouse's cousin. (Tr. 137)

In about 2008 or 2009, Applicant invested about \$25,000 from his Thrift Savings Account in another Colombian company. (Tr. 138-143) Applicant worked closely with two employees of this company, who were vetted by the U.S. Embassy so that they could receive U.S. Aid funds. (Tr. 139-140) His Colombian investment has been liquidated, and he does not have any financial interest in either Colombian company. (Tr. 143) His most recent contact with an employee of this Colombian company was about six or eight months ago. (Tr. 144)

Applicant does not own any foreign property or have a bank account in a foreign country. (Tr. 108; SOR ¶ 1.d) All of Applicant's banking is in the United States. (Tr. 108) He exercises his rights, such as voting, in the United States, and not in Colombia. (Tr. 109)

Applicant's Contacts with Non-family Colombians

Applicant had numerous frequent contacts with Colombian government officials, military officers, government advisors, businessmen, and friends during his five years of U.S. military service in Colombia. One of his primary objectives was to develop relationships with Colombian citizens, especially Colombian government officials, to encourage the Colombian government to make decisions which would result in positive outcomes in their war against terrorists and lawless elements. During his Office of Personnel Management (OPM) interview, he disclosed these contacts with Colombian citizens and residents.

Applicant's most recent contacts with advisors to a high-ranking Colombian government official and several senior officers in the Colombian Army were in 2008, when he worked for the State Department and was living in Colombia. (Tr. 122-125; SOR ¶¶ 1.e, 1.f, 1.h)

Applicant has not had contact with two lawyers (alleged in the SOR) in Colombia (one officiated at Applicant's wedding in Colombia), for more than two years. (Tr. 123-124, 133; SOR ¶¶ 1.g, 1.o) He called the lawyer who officiated at his wedding once after he left his State Department employment in 2008. (Tr. 124-125; SOR ¶ 1.g) Applicant's most recent contact with another senior officer in the Colombian Army was 30 to 36 months ago. (Tr. 126; SOR ¶ 1.i)

Applicant had contact with a civilian advisor to the Colombian Army about 18 months ago, and he has her phone number pre-programmed on his cell phone. (Tr. 127-128; SOR ¶ 1.j) She left a message for Applicant last week on his birthday. (Tr. 128; SOR ¶ 1.j) They worked together when Applicant was in Colombia for over five years. (Tr. 129)

Applicant had contact with a civilian advisor to the Colombian government about 12 months ago. (Tr. 130; SOR ¶ 1.k) He has the civilian advisor's phone number pre-programmed on his cell phone. (Tr. 128, 130; SOR ¶ 1.k)

Applicant had frequent contact with a Colombian business associate, who is a civilian advisor to the Colombian government and owner of a large Colombian business. (Tr. 130-132; SOR ¶ 1.l) The U.S. Government has made substantial progress on an important initiative because of Applicant's relationship with him. (Tr. 130-132; SOR ¶ 1.l)

Applicant has frequent contact with another Colombian business associate, who is a civilian advisor to the Colombian government. (Tr. 132; SOR ¶ 1.m) Applicant had contact with her in the last seven days. (Tr. 132; SOR ¶ 1.m)

Applicant has frequent contact with a retired senior Colombian military official, who now has an important Colombian government job. (Tr. 132-133; SOR ¶ 1.n) Applicant had contact with him in the last 14 days. (Tr. 133; SOR ¶ 1.n)

In sum, all of Applicant's contacts with non-family Colombians were in the course of official duties on behalf of the U.S. government or his employer, whose goal was to further the interests of the U.S. government in Colombia. (Tr. 147) He maintained contact with them to establish a network to better support the U.S. government and U.S. government contractors. (Tr. 147-148)

Character Evidence

Applicant's former supervisor when Applicant served in Colombia from 2003 to 2008 is now Applicant's colleague, as they both work for the same defense contractor. (Tr. 21-22) He retired from the Navy as a commander and held a security clearance for 40 years. (Tr. 24, 41) Following his retirement from the Navy, he worked for 16 years in the area of drug interdiction for the State Department primarily in Latin America. (Tr. 24-30) When he met Applicant in 2002, Applicant was an Army major. (Tr. 29) During their service together in Colombia, Applicant was a valuable U.S. government asset, who made substantial contributions to mission accomplishment. (Tr. 32-37) Applicant was on a five-person team, with the other team members being Colombian nationals. (Tr. 35-36, 49-50, 53-54) Applicant's team met frequently with numerous Colombian officials as part of their official duties. (Tr. 32-50) He believed Applicant was completely loyal to the United States, and that his contacts with Colombians were for official U.S. government purposes. (Tr. 40-41, 48)

Applicant's current supervisor served on active duty in the Air Force for 20 years and retired as a lieutenant colonel. (Tr. 68-69) He first met Applicant when Applicant was serving in Colombia. (Tr. 70-71) Applicant was very knowledgeable and professional. (Tr. 71) He hired Applicant for his current job because of his knowledge of Colombia and his contacts in Colombia. (Tr. 72) He described the necessity of Applicant being able to network with Colombians as "extremely important." (Tr. 75) Applicant is loyal to the U.S. government. (Tr. 76-77)

A retired Navy intelligence officer and corporate officer in Applicant's company has known Applicant and had daily contact with him for three years. (Tr. 80-81, 88) He described Applicant as very experienced in Latin America and professional. (Tr. 81) His position working for the contractor requires him to have a solid network of contacts in Latin America and to interact with senior leaders in Latin America. (Tr. 81-82) Applicant is trustworthy and loyal to the U.S. government. (Tr. 84)

Colombia²

Any person born in Colombia is considered a Colombian citizen. Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

The United States has provided more than one billion dollars over the last ten years assisting Colombia in its war against terrorists. The success of Colombia's war against terrorists is an important U.S. government interest that has received substantial U.S. resources especially in the last 10 years. The United States and Colombia are allies in the war on terrorism, and the United States is committed to a free and independent government in Colombia. Colombia and the United States have close relationships in diplomacy and trade.

On July 22, 2011, the Department of State issued a travel warning to U.S. citizens of the dangers of travel to Colombia. Violence by narco-terrorist groups continues to affect some rural areas and cities. The potential for violence by terrorists and other criminal elements exists in all parts of the country. Three terrorist groups also pose a threat in Colombia. Terrorist organizations and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for use as bargaining chips. U.S. government officials and their families have strict limitations on travel to and within Colombia due to these dangers. Robbery and other violent crimes are common in major cities while small towns and rural areas can be extremely dangerous due to the presence of narco-terrorists.

The 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. These groups have carried out bombings and other attacks in and around major urban areas, including against civilian targets. The FARC has targeted civilians, government representatives and politicians, soldiers, and the civilian infrastructure. FARC held three U.S. government contractors (U.S. citizens) hostage for five years, until the Colombian military rescued them on July 2, 2008.

Although the government's respect for human rights continues to improve, serious problems remain. Unlawful and extrajudicial killings, forced disappearances, insubordinate military collaboration with criminal groups, torture and mistreatment of detainees, overcrowded and insecure prisons, and other serious human rights abuses were reported during 2010.

²The facts in the section concerning Colombia are from Department Counsel's factual summary and source documents I-V.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole-person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude Guideline B (foreign influence) is the relevant security concern with respect to the allegations set forth in the SOR.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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 ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying in this case:

- (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;
- (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;

(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; and

(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.

Applicant served in Colombia from January 2003 to April 2008 on behalf of the U.S. government. Applicant made numerous contacts with Colombian government officials, military officers, government advisors, and businessmen over those five years. Some of them became friends and remained business associates after he left Colombia.

Applicant married his spouse in December 2008 in Colombia. She currently lives in the United States, she is a citizen of Colombia, and she is a permanent resident of the United States. Applicant's stepdaughter is 18 years old, she lives in the United States, and she is a permanent resident alien of the United States. Applicant's mother-in-law is a citizen and resident of Colombia. She is currently visiting Applicant and his spouse in the United States. Applicant's spouse sends her mother money on special occasions, such as her birthday. Applicant's stepson lives in Colombia. His contact with his mother-in-law and stepson is infrequent. Applicant's spouse has one brother, and he is a citizen and resident of Colombia, who is attending law school.

Applicant's spouse has ties of affection for family living in Colombia. She also provides funds for her mother on special occasions. In 2011, the Appeal Board stated:

[I]n-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.

ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011) (citing ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005)).

Applicant has not rebutted this presumption. His relationship through his spouse with her family living in Colombia is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his family and in-laws living in Colombia. See ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). He has affection for his spouse, and she has affection for her family living in Colombia. His communications with his in-laws living in Colombia are less frequent, and accordingly, that relationship does not raise a security concern.

The mere possession of close family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, who has a relationship with another family member living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the country has a significant problem with lawless elements or terrorists. The relationship of Colombian government with the U.S. government reduces Applicant's burden of persuasion to demonstrate that his or his spouse's relationships with family in a foreign country do not pose a security risk. The United States and Colombian governments have close ties forged through several years of being allies in a conflict against terrorists. Nevertheless, Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his in-laws, friends, or contacts living in Colombia.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from Colombia or terrorists seek or have sought classified or economic information from or through Applicant or his in-laws. Nevertheless, his relationship with his spouse, in-laws, friends, and contacts living in Colombia create a potential conflict of interest. His relationship with them is sufficiently close to raise a security concern about his desire to assist them by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his spouse, friends, business contacts, and his spouse's contacts with her family living in Colombia. His and his spouse's relationships with family members, friends, and business contacts living in Colombia raise the issue of potential foreign pressure or attempted exploitation. In addition, Applicant made two investments in Colombia, one for about \$10,000 and one for about \$25,000, which are sufficient to subject Applicant to a heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; and

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with and affection for his spouse, who lives with him, and she has a close relationship with her family living in Colombia, which includes her son, mother, and brother. Applicant continues to have frequent contact with some business associates and friends in Colombia. He is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives, friends, and business associates who are Colombia citizens and living in Colombia] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his spouse and through her with her family living in Colombia. Although there is no evidence that terrorists or criminals have approached or threatened Applicant because of his work for the United States, he is nevertheless potentially vulnerable to threats and

coercion made against his in-laws living in Colombia. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant was born in the United States. He served 22 years on active duty in the U.S. Army and six additional years in the reserves. He served more than five years in an imminent-danger zone, Colombia. Applicant's son is currently an Army first lieutenant serving in Afghanistan. His son is married, and his wife is expecting a baby in April 2012. His son's home is in the United States. Applicant's daughter is 23 years old, and she works for a defense contractor. None of Applicant's children live in Colombia. Applicant's parents and siblings do not live in Colombia. Through his many years of Army service, he has repeatedly shown his patriotism, loyalty, and fidelity to the United States.

AG ¶ 8(d) applies to Applicant's non-family relationships with Colombian citizens. All of Applicant's contacts and relationships with non-family Colombian citizens were on behalf of the U.S. government. One of his key objectives was to develop relationships with Colombian citizens, especially Colombian government officials, and to encourage the Colombian government to make decisions, which would result in positive outcomes in their war against terrorists and lawless elements.

AG ¶ 8(e) does not apply. Applicant is not required to report his contacts with family members and others living in Colombia. Applicant reported his Colombian contacts and relationships in detail to an OPM investigator and described those contacts at his hearing.

AG ¶ 8(f) applies to the allegations in SOR ¶ 1.d because Applicant has divested himself of any interest in property or businesses in Colombia. This mitigating condition can only fully mitigate AG ¶ 7(e).

In sum, Applicant's connections through his spouse to her family living in Colombia and his relationships on behalf of the U.S. government to Colombian citizens are much less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

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 have incorporated my comments under Guideline B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are important factors supporting a foreign influence security concern and tending to support revocation of Applicant's security clearance because of Applicant's connections to Colombia, and the risk that his in-laws face in the event that terrorists or criminals discover his relationship to them. In ISCR Case No. 09-06457 (App. Bd. May 16, 2011), the Appeal Board concluded that an Applicant's father, who was prominent in the Afghan Government and who had guards for protection because of his position, might receive additional danger or threats because his son wanted to be a linguist in Afghanistan. The Appeal Board explained their rationale for reversing that grant of access to classified information stating:

In the case before us now, those who might be tempted to use Applicant's father as a means of coercion include terrorist organizations that are hostile to the U.S. and that are engaged in operations designed to defeat our geopolitical goals. As we have previously stated, terrorist activity in a foreign country is an important consideration in Guideline B cases. See, e.g., ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007).

Applicant has emotional ties to his spouse, and she has emotional ties to her mother, son, and brother, who are citizens and residents of Colombia. Should insurgents, terrorists, or criminals discover their connections to Applicant, his family living in Colombia would face some increased probability of reprisal, especially kidnapping for ransom. They are vulnerable should terrorists or insurgents seek to harm them. Applicant's five years of Army service included liaison with numerous Colombian government officials, government advisors, business associates, and military officers. He formed a social relationship with some of them, which was encouraged by the U.S. government. His cordial relationships with these same officials remain an important aspect of his current employment. Applicant invested \$10,000 in one Colombian company and about \$25,000 in another Colombian company.

The whole-person factors weighing towards reinstatement of Applicant's security clearance are more significant. He was born in the United States 50 years ago. He served 22 years on active duty in the U.S. Army and six additional years in the reserves, including more than five years in an imminent-danger zone, Colombia. His son is currently an Army first lieutenant serving in Afghanistan. His son is married, and his wife

is expecting a baby in April 2012. His son's home is in the United States. Applicant's 23-year-old daughter works for a U.S. Government contractor, and provides support for the Department of Defense. None of Applicant's children live in Colombia. Applicant's parents and siblings do not live in Colombia. Through his many years of Army service, he has repeatedly shown his patriotism, loyalty, and fidelity to the United States. All of Applicant's contacts and relationships with non-family Colombian citizens were on behalf of the U.S. Government. He developed relationships with Colombian citizens, especially Colombian government officials, and encouraged the Colombian government to make decisions that would result in positive outcomes in their war against terrorists and lawless elements. Applicant credibly reported his Colombian contacts and relationships in detail to an OPM investigator and described those contacts at his hearing. Applicant divested himself of any interest in property or businesses in Colombia. His employer lauds his duty performance and contributions to mission accomplishment. He mature and responsible.

A Guideline B decision concerning Colombia must take into consideration the geopolitical situation in Colombia, as well as the dangers existing in Colombia.³ Colombia is a dangerous place because of violence from criminals and terrorists. Criminals and terrorists continue to threaten the Colombian government, the interests of the United States, and those who cooperate and assist the United States. The United States and Colombia are allies in the war on terrorism, and the United States is committed to a free and independent Colombian government. Colombia and the United States have close relationships in diplomacy and trade.

Applicant has often put himself in harm's way, working for five years in an imminent-danger zone, Colombia. He has made significant contributions to national security, fully aware of the risks to himself. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Three character witnesses lauded his loyalty, trustworthiness, and responsibility while serving in Colombia. Applicant's strong connections to the United States and especially to his U.S. family, community, and his employment establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra*.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has fully mitigated the foreign influence security concern.

Formal Findings

³See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

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

Subparagraphs 1.a to 1.o: 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.

Robert J. Tuider
Administrative Judge