



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



In the matter of: )  
)  
) ISCR Case No. 10-07937  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin Howry, Esq., Department Counsel  
For Applicant: *Pro se*

February 1, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Security concerns are raised under the guidelines for Personal Conduct and Foreign Influence. The allegations pertain to Applicant’s Columbian citizenship; her associations with her siblings who are citizens of Columbia; and Applicant’s falsification and poor judgment with respect to her sister who resides in the United States illegally. Foreign Preference concerns were not established. Clearance is denied.

**Statement of the Case**

On July 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, Personal Conduct; B, Foreign Influence; and C, Foreign Preference. The action was taken under Executive Order (EO) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) in writing on August 6, 2011, and elected to have the case decided on the written record in lieu of a hearing. Due to an administrative error, the case was assigned to the undersigned on October 5, 2011, and was scheduled for hearing on November 2, 2011. Applicant reiterated her request for a decision on the record in an October 25, 2011 email, and the hearing was canceled. Department Counsel submitted the Government's written case on November 7, 2011. A complete copy of the file of relevant material (FORM) was received by Applicant on November 11, 2011. It consisted of a 12-page letter setting out the Government's position; 10 Government exhibits (GE) marked GE 1 through GE 10; and 5 documents for administrative notice, marked GE I through GE V. Applicant was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of December 29, 2011, she had not responded. The case was assigned to me on January 13, 2012.

### **Findings of Fact**

In Applicant's response to the SOR, she admitted the conduct alleged in SOR ¶¶ 1.a-1.d, 2.a, and 2.b. She denied ¶ 3.a. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 55-year-old employee of a defense contractor. She was born in Columbia. She immigrated to the United States in 1995, and became a citizen of the United States on September 15, 2000. On her Electronic Questionnaires for Investigative Processing (eQIP), she indicated she was a dual citizen of both the United States and Columbia. She surrendered her Columbian passport, which was issued on June 25, 1999, and expired on June 24, 2009, to her facility security officer for destruction on January 5, 2011. (GE 3; GE 5; GE 6.)

Applicant is entitled to retirement pay for work she did while still in Columbia. She estimated that she was only entitled to "about \$100 to \$200 a month." She indicated in her affidavit that she does not plan to collect the retirement pay and does not need it to live. She estimated her net worth in the United States totals \$450,000. (GE 5; GE 6.)

Applicant has one brother and one sister. A second sister is deceased. Applicant's brother is a citizen and resident of Columbia, where he lives with his wife and adult son. Applicant's brother calls Applicant on a monthly basis to visit with their mother, who resides legally with Applicant. Applicant applied eight years ago to sponsor her brother and his family to immigrate to the United States. Her brother has been approved for a visa, but is "awaiting final approval" before he moves to the United States. (GE 3; GE 5; GE 6.)

Applicant's sister is a Columbian citizen residing illegally in the United States. On January 25, 2010, Applicant completed an eQIP. On the eQIP, in her answer to "Section 18: Relatives" she indicated that her sister resided in Columbia and listed an address in Columbia. Applicant knew at that time that her sister was actually residing in the United States. Further, in her March 26, 2010 statement to an agent of the Department of

Defense, Applicant indicated her sister was a resident of Columbia employed in a small store that makes baby clothes. She further indicated that the last contact she had with her sister was in 1996. (GE 2; GE 3; GE 6.)

In 1998, Applicant's sister, a citizen of Columbia, entered the United States on a five year visa, with "the standard permission to stay for six months." Applicant wrote in her Answer that "before that permission expired I bought her a return ticket and sent her back to Columbia." Applicant's Answer indicated that in 2000, Applicant's sister reentered the United States and resided in New York until 2008, when she relocated to another state to live with her daughter. Applicant's August 2010 Affidavit further disclosed:

I was not truthful with the other investigator who interviewed me for my security clearance in Mar[ch] [20]10. My sister [Applicant's sister] lives in the United States illegally. I was nervous and did not inform the Investigator that [Applicant's sister] does not live in Columbia as I listed on my security paperwork. She came to visit me in the U.S. legally in 1998 but when it was time for her to leave, she did not want to go back to Columbia. My husband and I told her that she had to leave and bought her a plane ticket back to Columbia. My husband and I are lawful citizens and did not want [Applicant's sister] living with us illegally. Some time later I discovered that she was living in New York. She is a Columbian citizen and does not have a visa to be in the U.S. [Applicant's sister] came to [Applicant's state] about one and a half to two years ago. Since that time [Applicant's sister] has been living with me off and on. When she is not living with me she stays with my niece in [another city in the same state]. When [Applicant's sister] comes to stay with me she stays for one week every month. My husband and I are not happy about [Applicant's sister] staying with us but she is in poor health, unable to find work because of her status and she is my sister. I am not able to let her live on the streets. I am very sorry I did not tell the truth about [Applicant's sister] to the other investigator. (GE 6.)

## **Columbia<sup>1</sup>**

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

The Department of State warns 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 Columbia. 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

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<sup>1</sup> GE I through GE V.

dangers. Approximately 282 kidnappings committed by terrorist groups and for-profit kidnap gangs were reported to authorities in 2010. 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 -- all U.S. citizens -- hostage for five years, until they were rescued on July 2, 2008 by the Colombian military.

Although the government's respect for human rights continued 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.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. (AG.) In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative;
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-

person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group; and

(g) association with persons involved in criminal activity.

Applicant's sister resides illegally in the United States. Applicant has supported her sister by providing her a place to live, for one week out of each month since 2008. Thus, not only is Applicant associated with a person who is involved in criminal activity, but she is potentially committing a crime herself by violating 8 U.S.C. § 1324, the criminal statute which addresses "Harboring Certain Aliens." Moreover, she falsified facts concerning her sister's residence on both her eQIP and in her March 2010 interview with an investigator. Applicant has demonstrated questionable judgment, a lack of candor with the Government, dishonesty, and an unwillingness to comply with rules and regulations of the United States. AG ¶¶ 16(a), 16 (b), 16 (c), 16(e) and 16(g) are applicable as disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant intentionally omitted significant details regarding her sister on the eQIP. She continued her questionable judgment by further lying to an investigator in her March 2010 security clearance interview. She did disclose her sister's immigration status to an investigator in August 2010, but Applicant failed to present proof that her disclosure was a prompt, good-faith effort to correct the falsification. Further, she continues to associate with and provide housing for her sister. No mitigating conditions are applicable to Applicant's deliberate falsifications and questionable conduct.

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

The security concern for the Foreign Influence guideline is set out in AG ¶ 7:

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 guideline notes nine conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; and

(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.

Applicant's brother is a citizen and resident of Columbia. Her sister is a citizen of Columbia, residing illegally in the United States. Applicant's sister resides with her for a week out of each month. Her close connections to her Columbian siblings, coupled with the security risks present in Columbia including the activities of narco-terrorist organizations, terrorist cells, and human rights violations of the Columbian government itself, give rise to security concerns. If

Applicant has access to classified information, she could be subject to foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; 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.

AG ¶ 8(a) does not apply to Applicant's failure to report her sister's illegal status. Applicant failed to report her sister because she was focused solely on her sister's interests. She made the repeated decision to falsify her eQIP and her March 2010 interview, instead of complying with her duty and obligation to report her sister's location to the U.S. Government. In doing so, she chose the interests of her sister over the interests of the U.S. Government. Given that Applicant's sister is still illegally in the U.S., I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between the interests of her sister in the future, based upon her past choices.

Additionally, it cannot be said that Applicant could be expected to resolve any conflict of interest in favor of the U.S. because she has offered little evidence to demonstrate her compliance with legal obligations concerning her sister. Applicant has a strong sense of loyalty and obligation to her sister. Applicant's contacts with her foreign family members are not minimal, and she has provided little concrete evidence showing her relationships in the U.S. Therefore, it cannot be found that AG ¶ 8(b) applies.

AG ¶ 8(c) does not apply. One week out of each month, Applicant lives with her sister, who is still a Columbian citizen despite her illegal residency in the U.S. She also



communicates with her brother in Columbia on a monthly basis. Thus, it cannot be said that her contacts with her siblings are casual and infrequent.

Further, mitigating condition AG ¶ 8(e) does not apply. Applicant's disclosure of her sister's residency was not prompt. It occurred over eight months after the initial falsification. In addition, Applicant had opportunities after completing her initial eQIP to correct her omission, but she failed to do so until she was questioned in August 2010. Judging the record in its totality, the Foreign Influence guideline is resolved against Applicant.

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:<sup>2</sup>

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(3) accepting educational, medical, retirement, social welfare, or other such benefit from a foreign country.

In 2000, Applicant became a citizen of the United States. She had obtained a Columbian passport prior to her naturalization as a U.S. citizen. That passport has been destroyed. She indicated that she is entitled to between \$100 to \$200 a month in retirement pay in Columbia. There is no evidence that she is collecting any retirement pay. She has indicated that she has no intent to seek such benefits from Columbia. The Government failed to produce evidence that Applicant acts in such was as to indicate a preference for Columbia over the United States. None of the disqualifying conditions set out in AG ¶ 10 apply.

### **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):

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<sup>2</sup> Department Counsel's argument under Guideline C pertains to another foreign nation and appears to involve facts dissimilar from the case at hand.

(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, B, and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but warrant additional comment.

Applicant offered no letters in support of her application. Her misconduct and criminal association indicate Applicant cannot be trusted to be honest with the Government and indicate she exercises poor judgment. She has offered no evidence to suggest that she takes the responsibilities of holding a security clearance seriously.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Personal Conduct and Foreign Influence security concerns.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

## **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge