



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-01560  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

October 10, 2012

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on October 4, 2010. (Government Exhibit 1.) On May 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on June 4, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 28, 2012. I received the case assignment on August 7, 2012. DOHA issued a notice of hearing on August 13, 2012, and I convened the hearing as scheduled on September 6, 2012. The Government offered Government Exhibits 1 through 4, which

were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A and B, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 14, 2012. Applicant requested that the record remain open for the admission of additional documents. On September 24, 2012, he submitted Applicant's Exhibit C, which was also admitted without objection. The record closed on September 24, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Colombia. (Tr. 13-16.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

Applicant is 24, single, and has a bachelor's degree. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted allegations 1.b and 2.b. in the SOR. Those admissions are deemed findings of fact. He specifically denied allegations 1.a and 2.a. Applicant did not admit or deny the remaining allegations, 1.c through 1.f. I view those allegations as being denied. He also provided additional information to support his request for eligibility for a security clearance.

### **Paragraph 1 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

Applicant was born in the United States in 1988 to an American mother and Colombian father. His parents subsequently divorced and his father returned to Colombia. Applicant's mother was murdered in 1996 and he went to live with his father in Colombia. (Government Exhibit 1 at Section 18.) He lived with his father until Applicant turned 17, in 2005, when he returned to the United States. He has lived in the United States continually since then.

Applicant's father remarried and had two daughters with his new wife. He recently divorced Applicant's step-mother. (Tr. 34, 36.) Applicant has had no contact with his step-mother for at least six years, but he talks to his two teenage half-sisters

once a month. (Tr. 37-38.) He also has an older half-brother who is a citizen and resident of the United States. (Government Exhibit 1 at Section 18.) Finally, Applicant has a cousin who is a dual citizen of Canada and Colombia. This cousin, who is a renowned physician, is currently residing in the United States. (Tr. 45-46.)

In 2007 Applicant applied for his father to be granted permanent residency in the United States. The status was granted in 2011. Applicant applied so that his father could travel to the United States freely, rather than Applicant having to travel to Colombia. (Tr. 35-37.)

Applicant believes that many of Colombia's problems stem from a lack of alternatives for young people. As a very entrepreneurial person, when he was visiting Colombia in approximately 2010 he saw an opportunity to help. He arranged for a long term lease on a plot of land and spent less than \$15,000 of his own money to have two soccer fields built. To do this he created a non-profit corporation in Colombia with a childhood friend who still lives there. The soccer fields are run by his friend. Other than providing the money to build the fields, Applicant has no further financial involvement with the activity. He testified, "I don't disburse any money there. I don't receive any money from there." (Tr. 49.) (See Tr. 26, 47-53, 61-62.)

### **Paragraph 2 Guideline C - Foreign Preference**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

As stated above, Applicant is a native-born American citizen. After his mother's death, his father moved Applicant to Colombia. There, in 2001 when he was 12 years old, he received a Colombian passport. (Government Exhibit 3 at 18-34.) There are no immigration stamps in this passport after 2006. This passport expired in 2011 and he has no intention or desire to renew it. (Tr. 43-44.)

Applicant moved back to the United States in 2005, when he was 17, because that was the first opportunity he had to live on his own. He has a current and valid United States passport issued to him in January 2005. This passport shows many immigration stamps from Colombia from 2006 through 2011. (Government Exhibit 3 at 5-17; Tr. 43-44.)

Applicant is a Colombian citizen because of his father's citizenship in Colombia. Applicant has never used his Colombian citizenship after moving back to the United States in 2005, except when forced to use his Colombian passport by the Colombian authorities. He has stated that he is willing to renounce his Colombian citizenship and that he does not think of himself as Colombian. (Government Exhibit 1 at Section 10, Government Exhibit 2 at page 3; Tr. 61.)

## Administrative Notice

Applicant has contacts with Colombia. Accordingly, it is appropriate to discuss the situation in Colombia at this time.<sup>1</sup> Colombia is a constitutional multiparty democracy. Colombia is a close ally of the United States, as shown by a visit of the Secretary of Defense to Colombia earlier this year. (Cheryl Perelin, American Forces Press Service, *Panetta Promises Continued Support to Colombia*, <http://www.defense.gov/news/newsarticle.aspx?id=116054> (April 23, 2012).) Colombia has had major problems with terrorism and narco-terrorism. On February 21, 2012, a Travel Warning from the State Department states, "Security in Colombia has improved significantly in recent years, including in tourist and business travel destinations such as Cartagena and Bogota, but violence by narco-terrorist groups continues to affect some rural areas and large cities." (Administrative Notice Document IV at 1.) The United States also expressed concerns about governmental human rights violations in a Human Rights Report concerning Colombia dated April 8, 2011. (Administrative Notice Document V at 1.)

## Mitigation

In addition to his job, Applicant has an independent business enterprise here in the United States. (Tr. 26-27, 55-56, 62-63.)

Applicant has never held a security clearance. However, he understands his responsibility not to "share any proprietary information with other than the people appointed to get it." (Tr. 58.)

Applicant has completed a Project Management Certificate Program that is run by his employer. (Applicant Exhibit A.) In addition, he has been commended by his employer for his work with the USO in organizing and running a soccer tournament, which raised money for the USO. (Applicant Exhibit B; Tr. 56-57.)

Applicant submitted two letters of recommendation. One was from a friend, who also works in the defense industry. He states that Applicant is "a trustworthy American citizen," and "a true moral guide . . . whom you can trust at all levels." (Applicant Exhibit C at 4.)

Applicant's long-time girlfriend wrote an extensive letter on Applicant's behalf. She gives many examples of how Applicant is an outstanding and trustworthy American citizen. (Applicant's Exhibit C at 5-7.)

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<sup>1</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments, except as otherwise stated.

## Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

#### **Paragraph 1 Guideline B - Foreign Influence**

The concern under Guideline B is styled as follows at AG ¶ 6:

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 Applicant has family connections to Colombia. He also established a company to build two soccer fields for at-risk youths.

The following Disqualifying Conditions apply to this case under AG ¶ 7:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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 has proved that he is a conscientious and patriotic citizen, and member of the defense industry. It was only because of the tragedy of his mother's murder that

he had to live with his Colombian father until he was old enough to return to America to go to school. He has substantial family and financial ties in the United States that outweigh his relationship to Colombia. While he still has family in Colombia, the Applicant has shown that his loyalties are to the United States. His father, who still resides in Colombia, has permanent resident alien status in the United States, which means Applicant has no further interest in traveling to Colombia since his father can travel here freely.

As for the non-profit company Applicant created, he no longer has an active interest in it. He is to be commended for his desire to help others overseas through his own generosity.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this particular case, given his particular background:

(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; 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.

Based on my analysis of the available information, Applicant has overcome the adverse inference of his family members presence in Colombia, as well as his establishment of the non-profit corporation. Guideline B is found for Applicant.

## **Paragraph 2 Guideline C - Foreign Preference**

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Colombia and the United States, and that he had a valid Colombian passport.

Applicant has mitigated the Government's concerns about his dual citizenship with Colombia, and his possession and use of a Colombian passport while an American citizen. The concern is stated thus under this Guideline at 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.

This is an unusual situation. Applicant is a native born American citizen, who was forced to live in Colombia because of the death of his mother. His father is a Colombian citizen, who acquired a Colombian passport for Applicant at a young age. Applicant used that passport until, at the age of 17, he could acquire his own American passport. Accordingly, based solely on the fact that he traveled on a Colombian passport while a minor, Disqualifying Condition AG ¶ 10 applies to the facts of this case:

(a) Conditions that could raise a security concern and may be disqualifying include: (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.

Applicant's Colombian passport has expired and he expresses a credible intent not to renew it. Accordingly, "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," as required by Mitigating Condition AG ¶ 11(e).

Applicant has repeatedly and credibly stated that he only considers himself an American citizen and is willing to renounce his Colombian citizenship. Mitigating Condition ¶ 11(b) applies to this case, "the individual has expressed a willingness to renounce dual citizenship." In addition, Mitigating Condition AG ¶ 11(a) also applies as his "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Guideline C is found for Applicant.

### **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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. The evidence shows that the Applicant is a patriotic American citizen. A family tragedy required him to spend part of his youth in Colombia, but he returned to the United States as soon as he could. Applicant eloquently testified about the importance to him of being a citizen of the United States, and his pride in being a member of the defense industry. Though he has never held a security clearance, he is knowledgeable about security and understands his responsibility. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign preference and foreign connections and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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.

WILFORD H. ROSS  
Administrative Judge