DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-07290
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

November 29, 2012

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Decision

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a citizen of Columbia and possesses a Columbian passport, both of which he is unwilling to relinquish. He also has a mother-in-law, father-in-law, and high school friends in Columbia. Security concerns raised under Foreign Preference and Foreign Influence are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference and Foreign Influence. 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 for cases after September 1, 2006.

Applicant answered the SOR on July 31, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2012. DOHA issued a notice of hearing on October 16, 2012, scheduling the hearing for November 5, 2012. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. The Government also offered documents pertaining to Columbia, marked GE I, for administrative notice. Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant called one witness, and testified on his own behalf. The record was left open until November 19, 2012, for Applicant to submit additional exhibits. However, on November 20, 2012, he submitted a letter, marked AE D, indicating he had no further evidence to offer. DOHA received the transcript of the hearing (Tr.) on November 13, 2012.

Findings of Fact

Applicant admitted the SOR allegations 1.a, 1.b, 2.a, 2.b, and 2.c. He denied allegation 1.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 55 years old. He was born in Columbia and immigrated to the United States in 1980. He became a U.S. citizen in 1998. He is married to a naturalized U.S. citizen who was also born in Columbia. They have one son, age 23, who is solely a U.S. citizen. Applicant works as a professor at a prestigious university and seeks a security clearance in connection with his research programs. (GE A; GE B; AE 1; AE 2; AE 3; Tr. 35-36, 48.)

Applicant possesses a valid Columbian passport, which he recently renewed. He testified that all people born in Columbia are considered by the Columbian government to be Columbian citizens and they are only permitted to travel into Columbia on a Columbian passport. He learned of this requirement when he first traveled back to Columbia, after becoming a United States citizen. (GE 2; Tr. 29-32, 46.)

In the past five years, Applicant has traveled to Columbia three times. Twice, he went to visit his in-laws, and the third trip was to teach a two-week course at his college alma mater. On each trip, he used his Columbian passport to enter and exit Columbia. He intends to continue his travels to Columbia and has no intent to surrender his Columbian passport or to relinquish his Columbian citizenship. He presented copies of two U.S. passports and an expired Columbian passport to show that he only uses his Columbian passport to travel to Columbia, but uses his U.S. passport for all other international travel. (GE 1; GE 2; Tr. 29-33, 44-47.)

Applicant contacts his in-laws approximately every three months by telephone. He and his wife send his mother-in-law and father-in-law $4,000 monthly to help support them. Applicant's parents-in-law are retired and receive a meager pension from the Columbian government. Applicant's father-in-law was a salesman for a shoe factory and his mother-in-law was a homemaker, prior to retirement. They now care for Applicant's brother-in-law, who suffers from a debilitating illness and cannot work. (GE 1; GE 2; Tr. 41-42, 50-52.)

When Applicant visits Columbia, he reconnects with high school friends who reside in Columbia. They are now professionals and Applicant enjoys visiting them to reminisce about their youth. He testified that none of his friends have ties to the Columbian government. Further, he never discusses his work with his friends in Columbia. (GE 2; Tr. 34-35, 43-44.)

Applicant is well respected by the witness who testified on his behalf. Applicant was said to have "extremely high integrity" and strong ties and roots to both the community and the university." (Tr. 22-28.)

Applicant testified that he owns no property and has no bank accounts in Columbia. However, he owns two properties in the United States. Applicant has not voted in a Columbian election since becoming a U.S. citizen. (Tr. 33, 36-37, 53.)

The Department of State warns U.S. citizens of the dangers of travel to Colombia. U.S. Department of State documentation verifies that any person born in Columbia may be considered a Columbian citizen, even if never documented as such, and dual U.S.-Columbian citizens are required to present a Columbian passport to enter and exit Columbia. A February 21, 2012 travel warning issued by the U.S. Department of State warns U.S. citizens about the dangers of traveling to Columbia. Dangers in Columbia include: potential for narco-terrorist violence in some rural areas and cities; the potential for violence by terrorists and other criminal elements in all parts of the country; terrorists and criminal organizations kidnap and hold persons of all nationalities; and human rights violations. Three Columbian organizations have been placed on the Foreign Terrorist Organizations list maintained by the Secretary of State. (GE I.)

Policies

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 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.

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 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. Decisions include, by necessity, 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.

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 B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in 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 guideline notes several conditions that could raise security concerns under AG ¶ 7. One is 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.

Applicant's mother-in-law and father-in-law are citizens and residents in Columbia. He also has high school friends living in Columbia. Applicant keeps in contact with his in-laws and friends, visiting them when he travels to Columbia. However, to be fully applicable, AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Columbia. They participate in kidnappings and other criminal activities. Further, the government of Columbia has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise the above disqualifying condition.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

> (a) the nature of the relationship 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 interests in favor of the U.S. interests; and
>
> (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.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations and he has failed to produce sufficient mitigating evidence. Here, the primary concern is Applicant's relationships with his mother-in-law, father-in-law, and friends, and their ties to Columbia. The risks of terrorism, kidnappings, and crime present in Columbia are significant in light of Applicant's strong sense of obligation to his foreign in-laws, as demonstrated by his significant monthly financial support of them. He also has ties that draw him back to his Columbian college alma mater and high school friends. While he testified about the assets he owns in the United States, he failed to demonstrate such deep and longstanding relationships and loyalties in the U.S. that would result in any conflicts of interest being resolved in favor of the United States.

To the contrary, he has deep, long-standing ties that bind him to Columbia and make him unwilling to relinquish his Columbian citizenship. His contact with his in-laws and friends has been ongoing over the years, such that it cannot be construed to be casual or infrequent. None of the above mitigating conditions apply.

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:

> (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:
>
> > (1) possession of a current foreign passport.

Applicant is a dual citizen of the United States and Columbia. He possesses a valid Columbian passport. He recently renewed his Columbian passport, after becoming a U.S. citizen, in order to travel to Columbia. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Three are potentially applicable:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship; and
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is not only based upon his birth in Columbia, but also upon his decision to actively renew his Columbian passport, thereby exercising Columbian citizenship. He chose to obtain a Columbian passport and travel to Columbia, after he became a U.S. citizen. While the Department of State notes that people born in Columbia are required by the Columbian government to travel to Columbia on a Columbian passport, it also warns of the dangers present in traveling to

Columbia. The choice to travel to Columbia was Applicant's alone. He has not destroyed, invalidated, or otherwise surrendered his Columbian passport. Instead, he intends to continue using the passport to enter and exit Columbia. He is unwilling to relinquish his Columbian citizenship. AG ¶¶ 11(a), 11(b) and 11(e) are inapplicable, and fail to mitigate the security concerns raised by his exercise of Columbian citizenship rights.

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 relevant 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 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 B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his colleague who testified on his behalf. However, his ties to Columbia are strong and unwavering. He asserted his unwillingness to surrender his Columbian passport and relinquish his Columbian citizenship. He plans on continuing to travel to Columbia to visit his in-laws, friends, and to teach there. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Preference 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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein
Administrative Judge