



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-07427
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances by resolving most of his debts. His current finances are sound, he has incurred no new bad debt, and his past financial problems do not reflect adversely on his judgment. Available information is also sufficient to mitigate the security concerns about his close family ties to citizens and residents of Colombia. Clearance is granted.

Statement of the Case

On March 8, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew his eligibility for a security clearance. After reviewing the results of the ensuing background investigation, which included his

responses to interrogatories,¹ Department of Defense (DOD) adjudicators could not find that it is clearly consistent with the national interest to continue Applicant's access to classified information.² On June 12, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines³ for foreign influence (Guideline B) and financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 19, 2013, and I convened a hearing on September 18, 2013. DOHA received a hearing transcript (Tr.) on September 26, 2013. At hearing, Department Counsel presented Government Exhibits (Gx.) 1 - 10, which were admitted without objection. (Tr. 25 - 36) Department Counsel also requested that I take administrative notice of certain relevant facts. In support of that request, Hearing Exhibit (Hx.) 1 was proffered and admitted without objection. (Tr. 36 - 38). Applicant testified and proffered two exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A and B. (Tr. 40 - 42)

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$52,412 for 16 delinquent or past-due debts (SOR 1.a - 1.p). Under Guideline B, the Government alleged that Applicant's mother (SOR 2.a), father (SOR 2.b), two sisters (SOR 2.c), two brothers (SOR 2.d), mother-in-law (SOR 2.e), father-in-law (SOR 2.f), and one sister-in-law (SOR 2.g) are citizens of and reside in Colombia. It was further alleged that Applicant's other sister-in-law (SOR 2.h) and her children, Applicant's niece and nephew (SOR 2.i), are citizens of Colombia residing in the United States.

In response to the SOR, Applicant admitted in part, and denied in part, all of the Guideline F allegations. He also provided documents with his Answer that were included in the record without objection. At hearing, Department Counsel withdrew the allegations at SOR 1.a and 1.p. (Tr. 14, 80) As to Guideline B, Applicant denied, with explanations, all of the SOR 2 allegations. However, at the hearing it was determined that Applicant actually admitted the factual allegations, but denied the foreign preference security concern stemming from those facts. (Tr. 9 - 12) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 48 years old. He was born and raised in Colombia, and immigrated to the United States at age 20 to perform missionary work in a large city in 1985. He has lived here ever since. Applicant attended college in the United States and earned a

¹ Authorized by DOD Directive 5220.6, E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ DOD implemented the adjudicative guidelines on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

bachelor of science degree in electrical engineering (BSEE). He became a naturalized U.S. citizen in September 1995. Since 1996, he has worked for defense contractors as a systems engineer, and has held a security clearance throughout his career. Applicant was hired by his current employer in September 2012. Information about his foreign citizenship and his relatives in Colombia, discussed further below, was disclosed when he first applied for a security clearance and has been provided each time he has applied for re-investigation. (Answer; Gx. 1; Tr. 22 - 24, 75 - 76)

Applicant has been married twice. His first marriage began in March 1988 and ended by divorce in January 2002. He and his second wife have been married since January 2002. They have three children, ages 9, 8 and 3. (Gx. 1)

Applicant's wife also is a naturalized U.S. citizen. Her parents and one sister are Colombian citizens. Until 2011 they resided in Colombia, but are now permanent resident aliens living in the United States. Another of her sisters is a Colombian citizen residing in the United States. She and her two children have lived with Applicant and his wife since 2008. (Answer; Gx. 1; Gx. 2; Gx. 4; Tr. 61)

Applicant's parents live in a rural area of Colombia. Applicant's mother was a housewife and his father worked as a farmer and as a tailor. Applicant has usually called his parents monthly; however, the frequency of his contact with them has declined over the past year to about two or three calls. Applicant also has two sisters and two brothers who are Colombian citizens residing in Colombia. Three of his siblings are teachers. One brother works as a civilian fuel truck driver servicing the Colombian army. He is not directly employed by the Colombian military. Applicant traveled back to Colombia, solely to see his parents and siblings, in 2004, 2006, and 2012. He has never encountered any difficulties in Colombia because of his U.S. citizenship. (Answer; Gx. 1; Gx. 2; Gx. 4; Tr. 50 - 54)

In response to the Government's administrative notice request, I have considered the information about Colombia provided by Department Counsel (Hx. 1). *Sua sponte*, I also have considered information about Colombia contained in the Central Intelligence Agency World Factbook.⁴ Colombia is a parliamentary republic and one of the oldest democracies in the Western Hemisphere. The chief executive is elected by direct popular vote for a four-year term and constitutionally prohibited from seeking consecutive terms. Legislative authority is vested in a bicameral congress consisting of a senate and house of representatives, which are elected for four-year terms. An independent judiciary consists of a 24-member supreme court, and various national, provincial, and municipal courts.

The United States and Colombia established diplomatic relations in 1822. For the most part, the two countries share common international and economic interests. The

⁴ See <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>.

U.S. is Colombia's largest trading partner. For most of the past 50 years, Colombia has been engaged in armed internal conflict with various insurgent and paramilitary groups involved in international drug trafficking and other organized criminal activities. Three of those groups have been designated by the U.S. as Foreign Terrorist Organizations. Their activities include attacks on Colombian government personnel, facilities, and infrastructure. They also target persons of all nationalities for kidnapping to raise ransom money or for political leverage. The U.S. has advised its official personnel, as well as any U.S. citizens in the country, to conform their travels to and in Colombia to the various criminal and insurgent threats there. None of the information about Colombian terrorist organizations suggests that its activities are intended to obtain U.S. classified information. The Colombian government does not have a record of economic or industrial espionage against the United States.

In 2012, the Colombian government entered into peace talks with the Revolutionary Armed Forces of Colombia (FARC), the largest of Colombia's internal threats. The U.S. has provided large amounts of military advice and assistance to Colombia to suppress narco-terrorism and other destabilizing influences. An unfortunate by-product of the Colombian government's counter-insurgency efforts has been a degradation of human rights practices. The U.S. has expressed concern over the frequency of unlawful detention and extra-judicial killings in Colombia, but the judiciary still maintains its independence and effectively counterbalances abuses by law enforcement entities.

Applicant often travels overseas as part of his work. He lived and worked in the Far East between 2000 and 2001, and in 2003 and 2004. Since moving to his current location in 2008, Applicant has regularly worked for months at a time in other countries. He is sensitive to the need for operational security when he travels; he adheres to all reporting requirements for business and personal travel; and his family knows of his travels but not what he does for a living. (Answer; Gx. 1; Gx. 2; Gx. 4; Tr. 47 - 49, 56 - 59)

To obtain his BSEE, Applicant first attended a community college. He completed his studies at a four-year university between 1992 and 1995. He used student loans to support himself while at the community college. He also used student loans to pay his tuition at the four-year university. Some of the loans came directly from the school. Others were federally-subsidized student loans. After graduating in 1995, Applicant struggled to make his loan payments because of inconsistent income before he was hired by a defense contractor in 1996. Over several years, he managed to repay money he borrowed for community college. But it was not until 2001 and 2003 that he satisfied his loans from the university, which are alleged at SOR 1.b and 1.c and total \$18,424. (Answer; Gx. 1; Gx. 2; Gx. 3; Ax. A; Tr. 43, 63 - 68)

However, Applicant was never able to consistently repay five other federally-subsidized student loans. Those debts are alleged at SOR 1.f - 1.j. (The allegations at SOR 1.k - 1.o are duplicates of those debts and are resolved for Applicant.) He was unemployed after leaving his first Far East assignment in 2001. After moving to his

current location in 2008, Applicant was assigned to a long-term project in another part of the country. He understood that his employer would pay certain living expenses. But when he was not paid as expected, he experienced financial problems trying to support himself and his family in two separate residences. Over the years his remaining student loan debts were transferred several times among collection agencies until September 2010, when Applicant's pay was garnished to repay a total of \$24,522 at \$842 monthly. The total debt reflects penalties and interest added on by the collection agencies. In November 2012, Applicant completed a repayment agreement with the creditor whereby he has been paying \$260 monthly to satisfy his student loans as a single consolidated obligation. (Answer; Gx. 2; Gx. 3; Ax. A; Tr. 44, 69 - 71)

After he graduated from college in 1995, Applicant also incurred an unpaid debt for \$709, alleged at SOR 1.d, that was the subject of a civil judgment against him. The original debt arose from an unpaid retail electronics store account. Applicant satisfied that debt in 2001. (Answer; Tr. 44 - 45) Applicant also recently finished paying off a past-due furniture loan, alleged at SOR 1.e, that became delinquent because of his extended assignment in 2008. (Answer; Ax. B; Tr. 45)

In response to DOD interrogatories, Applicant provided a personal financial statement (PFS) that showed a positive monthly cash flow in excess of \$700 as of July 2012. With the addition of the \$260 student loan payment in November 2012, Applicant still has almost \$500 remaining each month. Aside from the lingering delinquency of the five student loans alleged at SOR 1.f - 1.j, Applicant has not recently incurred any new unpaid debts. He has been able to finance the purchase of two homes over the years. Applicant has generally been able to meet all of his routine financial obligations and provide for his family. (Gx. 2; Gx. 3; Gx. 7 - 10; Tr. 71 - 73, 83)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

⁵ See Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Financial Considerations

The Government established that Applicant accrued significant unpaid debt consisting primarily of delinquent student loans obtained in the early 1990s. Some of those student loans were not satisfactorily addressed until Applicant's pay was garnished in 2010. Available information about Applicant's history of unresolved indebtedness has raised a security concern, expressed, in relevant part, at AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant did not adequately address all of his student loan debts after repaying the direct loans from his college in 2001 and 2003. It was not until his pay was garnished in 2010 that he took meaningful steps to resolve his remaining student loan debt.

By contrast, most of the debt alleged in the SOR has either been satisfied, is now being repaid, or is resolved for the Applicant because the allegations were withdrawn or were shown to be duplicates. As to the remaining debts, Applicant established that he satisfied SOR 1.d in 2001, and SOR 1.e in 2012. He further showed that he repaid the student loans reflected in SOR 1.b and 1.c in 2001 and 2003. Finally, since November 2012, Applicant has been repaying the student loans reflected in SOR 1.g - 1.j through regular monthly payments and he is now in good standing on those accounts. Applicant's current finances are characterized by positive monthly cash flow and an absence of new unpaid debts. Applicant lives within his means and does not appear to be overly reliant on personal credit. Based on all of the foregoing, I conclude the following pertinent AG ¶ 20 mitigating conditions apply:

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

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

As to AG ¶ 20(d), the benefit from this factor does not apply regarding those student loans for which his pay was garnished. Nonetheless, the record as a whole supports a conclusion that Applicant's financial problems did not stem from misconduct or irresponsible spending, and his finances do not reflect adversely on his judgment or reliability. On balance, I conclude that he has mitigated the security concerns about his finances.

Foreign Influence

Available information also supports the Government's security concerns about Applicant's ties to relatives who are citizens of Colombia and who reside there. The facts established by Applicant's admissions and by the Government's information raises the following security concern addressed at AG ¶ 6:

[f]oreign 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.

More specifically, available information requires application of the following AG ¶ 7 disqualifying conditions:

- (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; 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 ties to his immediate family and to his wife's family create a heightened risk of coercion. Colombia is an ally of the United States and has an open society and democratically-elected government. However, there remain significant risks to all persons traveling there due to the activities of narco-terrorist and other insurgent groups. Kidnappings are not uncommon, and the U.S. State Department has strongly advised U.S. citizens to limit their travels and other activities in Colombia.

The record also supports application of the following AG ¶ 8 mitigating conditions:

(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

(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.

Applicant has resided in the United States for nearly 30 years. He has been a U.S. citizen since 1995. He has established himself here both personally and professionally. He has no overseas assets and has not returned to Colombia other than for brief family visits. Applicant has held a security clearance as an employee of U.S. defense contracting companies since 1996. He has complied with all foreign contact and foreign travel reporting requirements. It is well-established that the Government may re-evaluate a person's clearance suitability at any time. However, since Applicant first received a security clearance, there has been little change in the information about his foreign relatives. The only possible connection to the Colombian government stems from one brother's work supplying fuel to Colombian military vehicles. But that connection is tenuous and does not pose a security concern in light of all available information. Applicant's other relatives are teachers, farmers, tailors, and housewives with no official connections. Over the years, Applicant regularly has called his parents, but of late the frequency of contact has lessened. His wife's family, to whom it is presumed he is close, are now permanent resident aliens of the U.S. and likely to remain here.

As to the risk to U.S. citizens and their relatives in Colombia, there is little doubt that insurgent violence and kidnappings are commonplace. Available information also shows this to be an internal condition aimed at extracting money and political concessions rather than foreign classified or sensitive information. Colombia's government is not actively involved in espionage against the United States. Nonetheless, Colombia is not a safe country and the presence of Applicant's relatives there presents a heightened risk that his access to classified information could be exploited through pressure on his relatives. However, in consideration of Applicant's long and uneventful record of access to classified information, as well as his established personal and professional loyalties to the United States as a long-time U.S. citizen, Applicant's foreign relatives do not present an unacceptable security risk. The Guideline B allegations are resolved for the Applicant.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines B and F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 48 years old and presumed to be a mature, responsible adult. His long career as a cleared defense contractor, and the productive life he has led since arriving in the United States support that presumption. Applicant generally showed good judgment in handling his financial problems, which did not arise from misconduct or irresponsible spending. His only remaining unpaid debt consists of student loans, which he is now repaying, and his current finances are sound. As to possible foreign influence, he has always disclosed the facts related to his Colombian relatives. The record as a whole shows that he is discrete about his work when he is in contact with them, and that his foreign ties do not present an unacceptable security risk. A fair and commonsense assessment of all available information shows that Applicant has satisfied the security concerns raised by the Government's information.

Formal Findings

Formal findings 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 F:	FOR APPLICANT
Subparagraphs 1.a, 1.p:	Withdrawn
Subparagraphs 1.b - 1.o:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.i:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge