



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



In the matter of:)
)
) ISCR Case No. 12-03849
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel

For Applicant: *Pro se*

10/10/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for foreign influence and foreign preference. Accordingly, Applicant's request for a security clearance is granted.

Statement of the Case

On May 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference) of the Adjudicative Guidelines (AG).¹ Applicant signed her notarized Answer to the SOR on June 7, 2012, in which she admitted two of the three allegations under Guideline C, and the single allegation under Guideline B. She also requested a hearing before an administrative judge.

¹ See Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

Department Counsel was prepared to proceed on July 6, 2012, and the case was assigned to me on July 16, 2012. DOHA issued a Notice of Hearing on July 30, 2012, and I convened the hearing as scheduled on August 29, 2012. Department Counsel offered two exhibits, which I admitted as Government Exhibits (GE) 1 and 2. Applicant testified and offered the testimony of five witnesses. She offered 12 exhibits, which I admitted as Applicant Exhibit (AE) A through L. DOHA received the transcript (Tr.) on September 7, 2012.

Procedural Rulings

I take administrative notice of facts relating to Colombia. They are set forth in documents offered by Department Counsel, marked as Hearing Exhibit (HE) I, and Applicant, marked as HE II. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 34 years old, was born in Colombia, and earned a bachelor's degree in industrial engineering there in 2000. She moved to the United States in 2001, and married a U.S. citizen in 2005. Her one-year-old daughter was born in the United States, and Applicant has not applied for Colombian citizenship for her. Applicant has worked for defense contractors since 2001. She is currently a senior systems engineer and program manager. In November 2010, she applied for her first security clearance. (GE 1, 2; AE B, C; Tr. 24-26, 64-67)

In November 2009, after becoming a U.S. citizen in June 2009, Applicant renewed her Colombian identity (ID) card at her local Colombian consulate. In December 2009, when she traveled to Colombia, she tried to enter using her U.S. passport. and was informed that Colombian citizens were required by law to use a Colombian passport to enter. She used her foreign passport, and later, she renewed it because the expiration date was approaching. On her trips to Colombia between December 2009 and April 2012, she used her Colombian passport for each entry. She had never held a security clearance and was unaware of the security implications of possessing, renewing, and using a foreign ID card and passport. She has used her U.S. passport for all other foreign travel since becoming a U.S. citizen. (GE 2; AE C; Colombian laws 43 of 1993, 757, and 999; HE I, II; Tr. 26-30, 58, 63-64, 108-109)

Applicant's company did not inform her about the security implications of possessing or using a foreign passport or ID card. When she received the SOR in May 2012, Applicant realized that these documents presented a concern, and she contacted her facility security officer (FSO) and company management to determine how to

remedy the situation. On May 29, 2012, she surrendered her Colombian passport to her FSO. The FSO provided a letter confirming the surrender, and noting that if she requests the passport, the FSO will report the request. During her security interview, Applicant expressed her willingness to surrender her Colombian passport, and to renounce her Colombian citizenship. She provided evidence showing that she formally renounced her foreign citizenship in August 2012. Based on her renunciation, her Colombian ID card is no longer valid. Applicant has never voted in Colombia. She provided a copy of her U.S. state voter registration card. (GE 2; AE A, J, L; Tr. 26-30, 40)

Applicant's parents are citizens of Colombia and reside there. Her mother is a homemaker and her father is the sales director for a private automotive company. They do not own property in Colombia, and Applicant has no expectation of inheriting property there. Her parents have no connection to the Colombian government. Applicant testified that they live in a safe area of a large city. The city is 18 hours travel time from the areas where kidnapping generally occurs, and 8 to 18 hours away from other dangerous areas. In more than 30 years in the city, they have not experienced violent crime. They are not politically active. Applicant talks with her father about once per week, and with her mother every few days. She visits them approximately annually. However, she also stated that, "My parents travel frequently to the U.S. As I mentioned, they love it, especially my mom. You know, she is always here and since they have their grand-daughter, they come to visit her quite a bit since. I, bottom line, do not need to go to Colombia to visit them." (AE K; Tr. 31-34, 38-39, 41-42, 106)

Applicant has a brother² who works for a private company that manufactures elevators. The company transferred him to Mexico, where he currently lives. She speaks with him every month or two. He has visited her in the United States but she has not visited him in Mexico. She also has a half-brother who lives in Colombia, but Applicant is unaware of his profession, and has no contact with him. Applicant has an aunt and uncle who live in Colombia. Her aunt is a homemaker and her uncle is a sound technician. She is not in touch with them, but does see them if she visits Colombia for annual holidays. She has ten other aunts, but does not keep in touch with them or see them, because they live in areas distant from her parents. She has a cousin who lives in Colombia and is a student, but Applicant is not in touch with her. Applicant does not have friends in Colombia, although she has friends who are from Colombia but live in the United States. (Tr. 43-54)

Applicant has no financial or property interests in Colombia. She and her husband bought their current home in the United States in 2006, and it is worth approximately \$350,000. They have home and automobile loans with U.S. companies. Their joint bank and investment accounts total approximately \$37,000. Applicant's 401(k) account has a balance of approximately \$75,000. (AE E – I; Tr. 39-40, 65-66)

² Applicant's relationships with her brother, half-brother, aunts, uncle, cousin, and friends were not alleged in the SOR, and therefore, I do not rely on these relationships to reach my conclusions under Guideline B.

Applicant's supervisor has worked with her on a daily basis since November 2010. He noted in his letter that she has earned the trust and respect of her superiors and her Department of Defense customers. Because of his strong confidence in her abilities, he has promoted her to lead their primary contract. He served as a military officer for 20 years, and finds Applicant "qualified for the highest levels of public trust." (AE D)

Applicant's witnesses included her project lead, who has complete confidence in her judgment and integrity. A former supervisor noted that Applicant has handled proprietary and sensitive information with care and is trustworthy and dependable. The aunt and uncle of Applicant's husband also testified. His aunt is a retired intelligence officer for a U.S. agency, where she worked and held a top secret clearance with special access. She is aware of the security issues, but opined that Applicant is "absolutely" trustworthy and appropriate to hold access to classified information. Her husband, a retired lieutenant general, continues to work for high-level DoD officials. He has held a security clearance since the 1970s. He testified that he has known Applicant for nine years, and has met her parents. He is aware of the allegations, and knows of no evidence of a security risk. (Tr. 69-93)

Applicant's husband has held a security clearance for two years. He testified that he has traveled five times to the city where Applicant's parents live in Colombia. Because he found it to be pleasant and safe, he had no concerns when his daughter traveled there with Applicant. He describes his wife as professional and honest. (Tr. 93-107)

Administrative Notice

I take administrative notice of the following facts.³ Colombia is a constitutional, multiparty democracy with a population of approximately 44.8 million. Dual U.S.–Colombian citizens must present a Colombian passport to enter and exit Colombia.

The State Department warns U.S. citizens of the dangers of travel to Colombia because violence by narco-terrorist groups continues to affect some cities and rural areas. While security in Colombia has improved significantly in recent years, terrorists and other criminal organizations kidnapped and held persons of all nationalities and occupations. The incidences of kidnapping in Colombia have diminished significantly in recent years.

The Colombian government's respect for human rights continues to improve. However, human rights violations continue, committed primarily by illegal armed groups and terrorist groups. These violations include political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

³ The facts cited concerning Colombia derive from Hearing Exhibits I and II.

The U.S. 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. In 2009, these groups carried out bombings and other attacks in and around major urban areas, including against civilian targets.

The United States remains fully committed to supporting the Colombian government in its efforts to defeat Colombian-based foreign terrorist organizations. The Colombian government continues vigorous law enforcement, intelligence, military and economic measures against the FARC, ELN, and AUC. The Colombian government has also increased its efforts with neighboring countries to thwart terrorist expansion, investigate terrorist activities inside and outside Colombia, seize assets, secure hostage release, and bring terrorists to justice. Colombia provided anti-terrorism training to nations in the region. The government continues to seek enhanced regional counterterrorism cooperation to target terrorist safe havens in vulnerable border areas. The United States–Colombia extradition relationship remains the most successful and comprehensive effort in the world.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the (AG).⁴ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to 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. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to applicants to refute, extenuate, or mitigate the government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁶ A

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest 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 to classified information in favor of the government.⁷

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then she or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, and find that the following is relevant to the 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.

At the time Applicant applied for her security clearance in 2010, she possessed a valid foreign passport. AG ¶ 10(a)(1) applies.

I have considered the mitigating conditions under AG ¶ 11, especially the following:

(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.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Applicant's foreign citizenship results from her birth in Colombia. She not only expressed willingness to renounce her Colombian citizenship, but followed through by formally renouncing it in August 2012. She provided supporting documentation. AG ¶¶ 11(a) and 11(b) apply.

Mitigating condition AG ¶ 11(e) also applies. Applicant had never held a clearance and did not understand the security implications of her foreign passport and ID card. Her FSO did not inform her that possessing or using an ID card or foreign passport was a security concern. When Applicant learned that her Colombian passport was a concern, she surrendered it to her FSO, who provided documentation confirming it. Her Colombian ID card is also invalid, based on her renunciation of her Colombian citizenship.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern related to foreign influence:

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 following disqualifying conditions under AG ¶ 7 are relevant:

(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

Applicant's parents are citizens and residents of Colombia. Her relationship with these immediate family members raises security concerns about a heightened risk of foreign exploitation or a possible conflict of interest. Disqualifying conditions AG ¶ 7(a) and (b) apply.

The foreign influence guideline also includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

(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 United States; and

(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.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁸ The nature of the foreign country must be considered in evaluating the likelihood of exploitation. Although terrorist groups operate in Colombia, and kidnappings occur, the Colombian government continues its vigorous law enforcement, as well as intelligence, military, and economic measures against these groups. The United States and Colombia share a strong relationship and cooperate on numerous fronts including energy, trade, counter-narcotics, and the environment. The evidence does not indicate that the Colombian government targets U.S. classified information. Applicant's father works in private industry and her mother is a homemaker; neither have connections to the Colombian government or military. Her parents have never experienced violence in the many decades they have lived in a large city in Colombia which is many hours away from the areas where suspect groups operate. It is unlikely that Applicant would have to choose between the interests of her parents and the interests of the United States. AG ¶ 8(a) applies.

Applicant's connections in the United States weigh in her favor when evaluating the question of exploitation or potential conflicts of interest based on ties to Colombia. She has been in the United States since 2001, working throughout that time for defense contractors. She is a naturalized U.S. citizen, and her husband and daughter are native-born U.S. citizens. She has close ties to her parents, and their contacts are frequent. However, neither of them have connections with the Colombian government or military. Because her parents visit the United States frequently, especially since the

⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 09-0424 (App. Bd. Feb. 8, 2001).

birth of their granddaughter, Applicant anticipates little need to visit Colombia in the future. She has no financial interests in Colombia, but has substantial financial assets in the United States, including bank accounts, a retirement account, and her home. She expressed her willingness to renounce her Colombian citizenship throughout the investigative process, and formally renounced it in 2012. She surrendered her foreign passport, once she learned that it presented a security concern. I conclude that Applicant would choose her strong U.S. ties over her foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's foreign passport and ID represented a security concern, but Applicant did not hold a security clearance when she used her foreign passport, and did not know that such documents constituted a security concern. Moreover, when she became aware of the concern, she surrendered her passport and renounced her Colombian citizenship. Applicant's parents in Colombia also raised a security concern because of the potential for conflicts of interest and exploitation. However, they have no connections with the Colombian government or military. Although some areas of the country are plagued by terrorists and narco-terrorism, Applicant's parents live many hours away from such areas, and the Colombian government is engaged in vigorous efforts against these groups. Applicant's ties to her parents in Colombia are outweighed by her strong ties to the United States, including husband and daughter, her years of supporting the government through her work on defense projects, and her substantial financial assets in the United States. Applicant's history, conduct, and

strong U.S. ties show that she is unlikely to make decisions that would harm the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline C	FOR APPLICANT
Subparagraphs 1.a – 1.c	For Applicant
Paragraph 2, Guideline B	FOR APPLICANT
Subparagraph 2.a	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge