



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00097

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2017

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He has family who are citizens and residents of Colombia and he had an interest in real estate there. Additionally, eight years ago he actively sought to obtain Colombian citizenship. Applicant has mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

**History of the Case**

On August 21, 2015, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued a Statement of Reasons (SOR) detailing foreign preference and foreign influence security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On September 25, 2015, Applicant answered the SOR and requested a hearing. (Answer) On February 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on February 25, 2016.

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

At the hearing, Government's Exhibits (Ex.) 1 and 2 and Applicant's Exs. A, B, and C were admitted without objection. Applicant testified at the hearing. The record was kept open to allow Applicant to present additional documents. In March 2016, an additional document was received and admitted as Ex. D. On March 4, 2016, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted he acquired Colombian citizenship in 2010, that he had extended family members who were citizens and residents of Colombia, and that he had an interest in real estate in Colombia worth approximately \$40,000. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, submissions, and transcripts, I make the following additional findings of fact.

Applicant is a 29-year-old systems engineer who has worked for a defense contractor since April 2014, and he seeks to obtain a security clearance. (Ex. 1) His annual salary is \$76,300. (Ex. A, Tr. 32) In March 2015, he received a \$250 incentive award for his exceptional teamwork. (Ex. B) His most recent performance evaluation rates him as "Exceeded Commitments." (Ex. C) His work is outstanding. (Ex. C)

In November 1987, Applicant was born in the United States. His mother was born in Colombia and in 1994 or 1995, she became a naturalized U.S. citizen. His father is a retired insurance salesman who is a native-born U.S. citizen. (Tr. 26) In September 2008, while he was a college student and 20 years old, he obtained a Colombian passport, which was destroyed in July 2014. (Tr. 23, 58) It was destroyed by a member of his company's security office. (Ex. 1, Tr. 17, 24) He has no intentions of renewing his Colombian passport. (Ex. 2) He is willing to renounce his Colombian citizenship if requested. (Tr. 24)

Applicant's mother encouraged him to obtain the Colombian passport to facilitate travel to Colombia, and Colombian citizenship would facilitate the transfer and inheritance of property in Colombia. (SOR Answer, Ex. 2, Tr. 23) Applicant's grandparent's home in Colombia is worth approximately \$600,000. (Ex. 2) The home is currently used by his relatives as a week-end, vacation home. (Ex. 2, Tr. 41) No one lives in the home permanently nor is it used as rental. (Tr. 42) In 2012, Applicant took possession of a share (1/15<sup>th</sup>) of real estate, which he received through his mother. (Answer) His mother maintained management and control of his share of the property. (Tr. 25) He considered the property as being his mother's property. (Tr. 39)

Applicant never considered the interest in the home a significant portion of money. (Tr. 20) He considered the interest in the home an inheritance that he never expected to receive. (Tr. 20) He considered it of little financial importance. (Tr. 25) In March 2016, he signed a power of attorney to allow the transfer of his interest in the home to his mother. (Ex. D)

Applicant's mother has four siblings and he has seven cousins who are citizens and residents of Colombia. (Tr. 25) He has an aunt, uncles, and cousins with whom he exchanges pleasantries and well wishes on special occasions. (Ex. 1, Answer) None of his extended family work for the Colombian government. Other than when he is in Colombia, he has telephone contact with his aunt and uncle once a quarter and with one cousin monthly and another cousin each quarter. (Ex. 2) He has weekly contact with a cousin who lives near him in the United States. (Ex. 2, Tr. 30) One uncle became a U.S. citizen 15 years ago and lives in Florida. (Tr. 30) Most of his mother's siblings are retired. (Tr. 30)

Applicant's mother travels to Colombia frequently both for business and personal reasons. (Tr. 34) Applicant travels to Colombia every two or three years. (Tr. 28) During March and April 2011 and July and August 2013, he visited Colombia for less than 20 days on each visit. (Ex. 1) In 2015, he traveled to Colombia on his U.S. passport. (Tr. 24) Other than Applicant obtaining his now surrendered passport and his possible inheritance, Applicant has not exercised any rights or benefits afforded him through his Colombian citizenship.

Applicant obtained his bachelor's and master's degrees in the United States. (Tr. 19) He also went to grade school and high school in the United States. (Tr. 27) His wife, a native-born U.S. citizen, is in pharmacy school. (Tr. 33) He has \$60,000 in his 401(k) retirement plan. (Tr. 32) The fair market value of his home is \$150,000 on which he owes \$100,000. (Tr. 33) Applicant stated his job and career path are very important to him. (Tr. 58)

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning the Colombia. (Tr. 14; Administrative Notice Request, November 30, 2015) Department Counsel provided supporting documents to show "verification, detail and context" for these facts in the Administrative Notice request. *Id.* Applicant did not object to me taking administrative notice of all of the facts in all of the documents. (Tr. 14) See the Colombia section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Colombia.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

## **Colombia**

The United States is Colombia's largest trading partner. However, for nearly 50 years, Colombia has experienced conflict with illegal armed groups, including Marxist guerillas and transnational criminal and narcotics trafficking organizations. The Revolutionary Armed Forces of Colombia (the FARC) and the National Liberation Army have been designed by the U.S. Secretary of State as terrorist organizations. U.S. travel warnings for Colombia warn U.S. citizens of the danger of traveling to Colombia and especially the potential for violence by terrorists groups and armed criminal gangs, who routinely kidnap individuals and hold them for ransom. Serious human rights problems exist in Colombia.

## **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 must be considered 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.

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 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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**

### **Foreign Preference**

AG ¶ 9 describes the foreign preference security concern stating, “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.”

AG ¶ 10 describes a condition that could raise a security concern and may be disqualifying in Applicant’s case:

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in the United States and lived his entire life in the United States. His mother, who was born in Colombia, has been a naturalized U.S. citizen for more than 20 years. In 2008, when Applicant was a 20-year-old college student, his mother influenced him to obtain Colombia citizenship, which he did. For a period of time, Applicant had a Colombian passport<sup>2</sup> which he surrendered and it has been destroyed. AG ¶ 10(b) applies.

AG ¶ 11 provides conditions that could mitigate the security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country; and

(b) the individual has expressed a willingness to renounce dual citizenship.

Applicant’s Colombian citizenship was the result of his mother being a Colombian citizen. However, he chose to take steps to obtain his citizenship. He offered

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<sup>2</sup> Applicant had already surrendered his Colombian passport. Had it been listed as a concern in the SOR, AG ¶ 11(e) “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” would have negated the security concern.

to renounce his Colombian citizenship. AG ¶ 11(b) applies and foreign preference concerns are mitigated.

## **Foreign Influence**

AG ¶ 6 explains the Government's security concern regarding 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.

AG ¶ 7 describes three conditions that could raise a security concern and may be disqualifying 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;<sup>3</sup>

(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

(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 an aunt and uncle and six cousins who are citizens and residents of Colombia. He has in-person contact with his Colombian relatives when he visits every two or three years and quarterly telephone contact with others. He had an interest in his grandparent's home, which he has now taken action to transfer his interest to his mother.

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<sup>3</sup> The mere possession of close family ties with a person 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 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Four of the mitigating conditions under AG ¶ 8 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

(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.

Applicant's contact with his relatives in Colombia is infrequent and sufficiently casual that the contact does not create any risk of foreign influence. None of those relatives are in positions connected with the Colombian government or engaged in activities that would likely cause Applicant to be exploited or placed in a position of having to choose between them and the United States. He also has an uncle who is a naturalized U.S. citizen living in the United States and a cousin who also lives in the United States. AG ¶¶ 8(a) and (c) apply.

Applicant established the application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of U.S. interests. He was born, raised, and educated in the United States. His father and wife are native-born American citizens. His mother was born in Colombia, but became a naturalized U.S. citizen more than 20 years ago. In contrast, his ties to Colombia have always been minimal. He has passed his interest in his grandparent's home to his mother and, therefore, has no property or financial interest in Colombia. Applicant never considered the interest in the house as an intricate part of his finances. His annual salary and retirement balance countered any concern he had in the Colombian property before he took action to surrender the property to his mother. AG ¶¶ 8(b) and (f) apply.

### **Whole Person Concept**

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all

available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the “whole person” analysis. Under AG ¶ 2(c), 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. An administrative judge must evaluate an appellant’s security eligibility by considering the totality of the appellant’s conduct and all the relevant circumstances including 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.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). Substantial mitigating evidence weighs towards granting Applicant’s security clearance. Applicant is a mature person. He has lived in the United States his entire life as have his father and wife. He attended grade school, high school, obtained his bachelor’s degree, and earned an advanced degree from U.S. institutions. He takes his loyalty to the United States seriously, and surrendered his Colombian passport to his employer. There is no derogatory information about him in the record.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign preference and foreign influence.<sup>4</sup> Overall, the record evidence leaves me without questions as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

### **Formal Findings**

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

Paragraph 1, Guideline C, Foreign Preference: FOR APPLICANT

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<sup>4</sup> I conclude that the whole person analysis weighs heavily toward approval of Applicant’s security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.



Subparagraph 1.a: For Applicant

Paragraph 2, Guideline B, Foreign Influence: 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.

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CLAUDE R. HEINY II  
Administrative Judge