



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-01024

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel

For Applicant: *Pro se*

11/30/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for foreign influence under Guideline B and foreign preference under Guideline C. Eligibility for access to classified information is denied.

Statement of the Case

On September 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 2) On November 2 and 21, 2014, Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Item 3) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 27, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on October 26, 2015, admitting all allegations under both guidelines with explanation. She elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on February 23, 2016. Applicant received a complete file of relevant material (FORM) on February 26, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any additional information in response to the FORM. I was assigned the case on November 14, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 3) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the PSI to make it clear and accurate, and could object to the admission of the PSI as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the PSI, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI. Applicant did not reply to the FORM, so she did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact. Applicant is 36 years old and has been employed as an engineer by a defense contractor since January 2009. Prior to working for the defense contractor, she worked for a private company as a qualify engineer from July 2007 until January 2009. She was born in Colombia, came to the United States on a student visa in August 2005, and became a United States citizen in February 2014. She made three trips of approximately 21 days each to Colombia in 2008, 2010, and 2012. She received an associate's degree in 2008 from a community college in the United States, a bachelor's degree in electrical engineering from a United States university in May 2012, and a master's degree in electrical engineering from the same university in 2014. She married a United States citizen in June 2006. She has no children. (Item 2, e-QIP, dated September 8, 2014; Item 3, PSI, dated November 3 and 21, 2014)

Applicant admits the two foreign influence allegations in the SOR. She admits that her mother, father, and brother are citizens and residents of Colombia. She also admitted that she sent approximately \$400 monthly to her father for the past five years. Applicant has a United States passport issued in June 2014. She also admitted that she

still possesses a Colombian passport issued in 2008 with an expiration date of November 10, 2018. She has not taken any steps to renounce her Colombian citizenship.

Applicant's mother is 75 years old and a stay-at-home mother. She is a citizen and resident of Colombia. Applicant has daily phone or electronic contact with her mother. She last saw her mother in the summer of 2013. Applicant's father is 78 years old and a citizen and resident of Colombia. He is now retired. Applicant has daily phone or electronic contact with her father. She saw him last in the summer of 2013. Applicant's brother is 49 years old and employed as a manager of the collision repair shop for a car dealer. Applicant has telephone contact with him two or three times a year. She last saw her brother in the summer of 2013. Applicant also has a 36-year-old brother who is a dual citizen of Colombia and Canada and resides in Canada. Applicant has daily phone or electronic contact with him and last saw him in July 2014. He is employed as a logistics analyst for a Canadian company. Her contact and relationship with this brother is not alleged as a security concern. (Item 3, PSI, dated November 3, 2014)

Colombia is one of the oldest democracies in Latin America. It is a constitutional multi-party republic. The U.S. and Colombia established diplomatic relations in 1822. Colombia held free and fair presidential elections in June 2016. The United States and Colombia have signed agreements on trade, environmental protection, asset sharing, chemical control, ship-boarding, renewable and clean energy, science and technology, and civil aviation. The United States is Colombia's largest trading partner. Approximately 250 U.S. businesses conduct operations in Colombia. Colombia and the U.S. belong to the same international organizations, including the United Nations, Organization of American States, International Monetary Fund, World Bank, and World Trade Organization.

Colombia has experienced more than half a century of conflict with illegal armed groups, including Marxists guerillas and international criminal organizations involved in illegal drug trafficking. The U.S. has designated two Colombian groups, The Revolutionary Armed Forces of Colombia (FARC), and The National Liberation Army (ELN) as Foreign Terrorists Organizations. The Government of Colombia and FARC announced they reached a final peace accord on August 24, 2016, after four years of negotiations. However, ELN continues to engage in terrorist attacks, extortion, kidnapping. The ELN also continues to condemn any U.S. influence in Colombia.

In June 2015, the U. S. State Department issued a warning about the dangers of traveling in Colombia as well as the potential for violence by terrorist groups and armed criminal gangs involved in narcotics trafficking. No one in Colombia is immune from kidnapping on the basis of occupation, nationality, or other factors. Colombia's National Consolidation Plan seeks to re-establish state control and legitimacy in strategically important area previously dominated by illegal armed groups through a phased approach that combines security, counter-narcotics, and economic and social development initiatives. U.S. policy supports the Colombian government's effort to

strengthen its democratic institutions, promote respect for human rights, the rule of law, foster socio-economic development, address immediate humanitarian needs, and end the threats to democracy posed by narcotics trafficking and terrorism.

The Colombian government continues to prosecute and punish perpetrators who commit abuses, including members of the security services, yet such abuses persist. The most serious human rights problems include impunity, an ineffective judiciary, extrajudicial and unlawful killings, forced displacement, corruption due to the availability of drug trafficking funds, and societal discrimination.

Any person born in Colombia may be considered a Colombian citizen, even if never documented as such. Dual U.S. and Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 for obtaining 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.

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant's mother, father, and brother are citizens and residents of Colombia. Applicant has extensive and close contact with her family in Colombia. She has almost daily telephone or electronic contact with her mother and father, and phone or electronic contact with her brother a few times a year. As a further indication of her close contact with her parents, she admits sending approximately \$400 monthly to help support her father for the last five years after he became ill and could no longer work. Her parents' and brother's residence and citizenship in Colombia raises the following Foreign Influence Disqualifying Conditions 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
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an

applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress.

The existence of armed Marxist guerillas, the influence of strong organized criminal gangs involved in international drug trafficking, and a poor human rights record in Colombia places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(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

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these mitigating conditions apply. There is a rebuttable presumption that a person has ties of affection for, or obligation to immediate family members. Applicant did not present any information that rebuts this presumption. These facts show a close and continuing contact between Applicant and her parents and brother creates a security concern. Applicant did not present any information that would negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the presence of the family members in Colombia and the existence and activities of Marxist guerillas and narcotic terrorists' activities. Even though her family members appear to be just ordinary citizens, the situation in Colombia is such that

anyone living in Colombia is vulnerable to be exploited, pressured, or induced to provide protected information by guerillas and narcotic terrorists. Accordingly, Applicant has not met her heavy burden to show that her relationships with her family members in Colombia are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence.

Guideline C, Foreign Preference

When an individual who acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant was born in Colombia, came to the United States on a student visa in 2005, and became a United States citizen in 2014. She has a Colombian passport issued in 2008 that does not expire until November 2018. She has not taken any action to renounce her Colombian citizenship. These facts raise Foreign Preference Disqualifying Condition AG ¶ 10(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.)

I considered Foreign Preference Mitigating Conditions under AG ¶ 11:

- (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligation of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

These mitigating conditions do not apply. While Applicant's dual citizenship with Colombia and the United States is based on her birth in Colombia, she has not taken any action to renounce her Colombian citizenship once obtaining U.S. citizenship in February 2014. Applicant still has possession of her current Colombian passport that

does not expire for a few more years. Applicant has not mitigated security concerns for foreign preference.

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. 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

The presence of Applicant's parents and brother in Colombia creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by Colombia guerillas and narcotic criminals against the interest of the United States. Applicant's dual citizenship with Colombia and possession of a current Colombian passport shows there may be a preference for Colombia over the United States. While access to classified information is not based on a finding of loyalty to the United States, Applicant shows a potential divided loyalty to Colombia and the United States. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated her foreign preference and foreign influence concerns relating to Colombia. Because Applicant has not mitigated the security concerns arising from foreign preference and foreign influence, access to classified information is denied.

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

Paragraph 2, Guideline B: AGAINST APPLICANT

 Subparagraphs 2.a – 2.b: 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.

THOMAS M. CREAN
Administrative Judge