



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02648

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: Pro Se

11/16/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On November 14, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material, FORM, dated January 26, 2015.¹ Applicant received the FORM on February 10, 2016. Applicant did not respond to the FORM. The case was assigned to me on

¹The Government submitted four items for the record.

October 19, 2016. Based on a review of the case file, eligibility for access to classified information is denied.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Colombia. Applicant did not object, and the documents proffered in support of the request were labeled GX 4 and entered into the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline C and under Guideline B with explanations.

Applicant was born in Colombia in 1974. He received his undergraduate degree from a university in Colombia, and a graduate degree from an American university. In 2003, he came to the United States. He became a naturalized citizen in 2008. He is married to a woman who was born in Ecuador and is now a naturalized U.S. citizen. She lives with him in the United States. As a result of the marriage, he has one child. He completed a security clearance application in 2014. (GX 1)

FOREIGN PREFERENCE

The SOR alleges under Guideline C that Applicant possesses a current Colombian passport that was issued on August 2007 and expires on in August 2017. It further alleges that he exercised his Colombian citizenship by using his Colombian passport in 2009, 2011, 2013, and 2014.

Applicant possesses a Colombian passport which was renewed in Colombia in 2007. He has continued to use the Colombian passport for his travels. In 2008, he obtained a U.S. passport, which expires in 2018. Since coming to the United States in 2003, he has returned to Colombia almost yearly (and sometimes twice a year). This includes trips for which he used his Colombian passport before he had obtained a U.S. passport and trips using his Colombian passport after he obtained a U.S. passport. His last noted trip was in 2014. (Item 2)

Applicant's 2014 security clearance application notes that he considered himself a dual citizen of Colombia and the United States from his coming to the United States to the present. (GX 1) As a dual citizen of the U.S. and Colombia, he describes his loyalty as 50% for each country. (Item 3) He has chosen not to renounce his Colombia citizenship because he was born and raised there, and he is not willing to relinquish his Colombian passport because, as a Colombian citizen, he needs it to travel to Colombia.² He says he loves the United States because of the opportunities it has afforded him. (Item 3)

²Colombian citizens are required by Colombian law to present a Colombian passport to enter and exit.

FOREIGN INFLUENCE

The SOR alleges under Guideline B (1.a-1.d) that Applicant's mother, sister, and grandmother are citizens and residents of Colombia, as well as three friends. It alleges that his spouse is a dual citizen of Ecuador and the United States. Under SOR 1.d, and 1.e, it alleges that he owns an apartment in Colombia, worth approximately \$150,000, and land in Colombia with his mother and sister, worth an estimated \$1,500,000.

Applicant's mother, sister, and grandmother are citizens and residents of Colombia. (SOR 1.b) Applicant has weekly contact with his sister and daily contact with his mother. His mother is aware that Applicant is being considered for a security clearance. His father died in 2006. He visits his family, including his grandmother annually. (GX 1) He stated in an investigative interview that he has a "moral obligation to look after close family members residing in Colombia. (Item 3)

Applicant's wife, who lives with him in the United States, is a naturalized U.S. citizen, who maintains her Ecuadorian citizenship. She holds a U.S. passport and has not been to Ecuador in over a decade. Her mother, father, and siblings have lived in the United States for 35 years.

As to SOR 1.c, Applicant has remained in contact with three close friends from Colombia. He has known them since college. One of the friends now lives in the United States and is a U.S. citizen. Applicant's contact with them includes emails and phone calls. He describes one of them as his best friend. When they are in the United States for business, he sees them.

Applicant owns an apartment in Colombia, which is worth approximately \$150,000. He inherited this property in 2006 when his father died. (Item 3) He is currently attempting to sell it. Also, in 2006, Applicant and his mother and sister inherited land in Colombia, which is worth about \$1,500,000. They plan to sell the land, but the market has not been conducive to a sale. (SOR 1.d, 1.e)

Applicant did not note his financial worth in the United States. He noted that he does not have an interest in maintaining financial interests in Colombia. However, there is no information in the record concerning his U.S. finances.

ADMINISTRATIVE NOTICE

Colombia

Colombia is a constitutional, multiparty republic. Its last presidential election was considered by observers to be free and fair. There have been significantly fewer instances of security forces acting independently of civilian control than in past years. However, impunity and an inefficient justice system subject to intimidation limits Colombia's ability to prosecute individuals accused of human rights abuses. The availability of drug-trafficking revenue often exacerbates corruption.

The United States has long enjoyed favorable relations with Colombia. The United States provides substantial support to the Colombian government's counter-narcotics efforts, and encourages the government's efforts to strengthen its democratic institutions in order to promote security, stability, and prosperity in the region. Although the government's respect for human rights continues to improve, serious problems remain, including unlawful and extrajudicial killings, forced disappearances, insubordinate military personnel who collaborate with criminal groups, and mistreatment of detainees. Illegal armed groups and terrorists groups commit the majority of human rights violations, including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

Violence by narco-terrorist groups and other criminal elements continues to affect all parts of the country. Citizens of the United States and other countries continue to be victims of threats, kidnapping, and other criminal acts. The United States 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. The U.S. State Department has advised travelers (U.S. citizens) about the dangers of travel to Colombia, and specifically the potential for violence by terrorists groups and armed criminal gangs called "BACRIMS" in all parts of the country.

Any person born in Colombia may be considered a Colombian citizen, even if never documented as such, and dual U.S.-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, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known

as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect 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 as to the loyalty of the applicant concerned.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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 conditions that could raise a security concern and may be disqualifying:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

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

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a naturalized U.S. citizen in 2008. He used his Colombian passport before and after becoming a U.S. citizen. He visits Colombia almost annually. He will not renounce his Colombian citizenship. He describes his loyalty as 50% for each

country. He will not surrender his Colombian passport. AG ¶ 10(a)(1) and AG 10(d) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (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;
- (c) exercise of the rights, privileges, or obligations 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;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

None of the mitigating conditions apply in this case.

Guideline B, Foreign Influence

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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." AG ¶ 7(b). Finally, "sharing living quarters with a person, or persons, regardless of citizenship status, if the relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion" can be a disqualifying condition. AG ¶ 7(d)

Applicant's mother, sister, and grandmother are citizens and residents of Colombia. Applicant maintains close contact with them. He calls and visits them almost annually. Security concerns could arise in connection with the potential that hostile forces might seek classified information from Applicant by threatening harm or offering benefits to Applicant or his immediate family in Colombia. Based on this evidence, AG ¶¶ 7(a), 7(b) and 7(d) are raised.

Applicant also owns an apartment of substantial value and land in Colombia of substantial value. Thus, AG 7(e) is also raised. Together the property value is about \$1,650,000, triggering a foreign financial concern. While he has indicated a willingness to sell the property, it has not sold due to its "high market price." It is this sort of substantial property interest in a foreign country that subjects Applicant to a heightened risk of foreign influence or exploitation.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a), 7(b), 7(d), and 7(e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the Government does not have the initial burden of disproving mitigating conditions. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a prima facie security concern to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant’s mother, sister, and grandmother are aware of Applicant’s request for a security clearance. He has very close ties to them and over the years sees them. He also maintains ties with close friends. There is no evidence that Colombia is known to target U.S. citizens to obtain protected information. While there remains the possibility of terrorist activity it is of a magnitude in this situation to merit denial of Applicant’s security clearance. Applicant has acknowledged that his loyalty is divided equally between Colombia and the United States. This mitigating condition is not established.

Similarly, AG ¶ 8(b) can mitigate concerns when “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.” Applicant claims he is a dual citizen and has a strong sense of obligation to his family in Colombia. Terrorist groups operate within Colombia. They participate in kidnappings and other criminal activities. The risk of terrorism and crime present in Colombia are heightened in light of Applicant’s trips to Colombia and his sense of obligation to his family. In this case, Applicant has failed to demonstrate such deep and longstanding relationships and loyalties in the United States that would indicate that he would resolve any conflict of interest in favor of the United States. To the contrary, he has deep, long-standing ties that bind him to Colombia make him unwilling to relinquish his Colombian citizenship, whereas his love for the United States is based on the opportunities he has had here. Foreign Influence security concerns are not mitigated under AG ¶ 8(b).

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 an 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a naturalized U.S. citizen. He is married to a naturalized U.S. citizen and his child was born in the United States. However, he clearly stated that his loyalty is divided between Colombia and the United States. In light of the foregoing and, not incidentally, taking into account that the government of Colombia has been identified as committing human rights violations, a heightened risk is present.

A Guideline B decision concerning Colombia must take into consideration the geopolitical situation and dangers there. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007). Colombia is a friendly country with the United States; however, Colombia's government has to contend with the combined terrorist activities of left-wing guerillas, and drug cartels. Applicant's mother, sister and grandmother live in Colombia. They are citizens of Colombia. They are potential targets of terrorists who may attempt to pressure or coerce Applicant by threatening his relatives living in Colombia. I conclude that the possibility that terrorists in Colombia would coerce him into providing classified information, or he would provide classified information through affection for Colombia is not miniscule.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign preference concerns and foreign influence concerns are not mitigated. The Applicant has not carried his burden. Eligibility for 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 B :	AGAINST APPLICANT
Subparagraphs 1.a-e	Against Applicant
Paragraph 2, Guideline C :	AGAINST APPLICANT
Subparagraphs 2.a-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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge