



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02906

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On October 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 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 review on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated March 25, 2016. Applicant received the FORM on April 4, 2016. Applicant submitted a timely response to the FORM. The case was assigned to me on December 2, 2016. Based on the pleadings and exhibits, 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 Hearing Exhibit I 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. (Item 1)

Applicant was born in Colombia in 1984. He received his undergraduate and graduate degree in the United States. In 2014, Applicant received his doctorate. He automatically became a naturalized U.S. citizen when his parents became naturalized U.S. citizens in 2001. He is married to a Colombian citizen, who is a dual citizen with the United States. He completed a security clearance application in 2014.¹ He is an electrical engineer with his employer. (Item 3) He has never held a security clearance.

FOREIGN PREFERENCE

The SOR (Item 1) alleges under Guideline C that Applicant possesses a valid Colombian passport that was issued in July 2008 and expires in July 2018. (SOR 2.a)

Applicant possesses a Colombian passport. When he traveled to Colombia in 2006, 2007, 2008, 2010, 2011, 2012 and 2014, he visited family and friends using his Colombian passport. He maintains the Colombian passport for ease of travel to Colombia.

Applicant's 2014 security clearance application notes that he considered himself a dual citizen of Colombia and the United States. When asked if he would renounce his Colombian citizenship, he stated that he would. (Item 4) He understands that if he would travel to Colombia, he would need a Colombian passport. He has made no plans to renounce his Colombian citizenship or surrender his passport.

In his response to the FORM, Applicant states that he is unwilling to surrender the Colombian passport. He plans to stay in the United States, but is not willing to sacrifice his Colombian passport at this time because he wants to participate in family trips and celebrations in Colombia.

Applicant also loves his challenging work in the United States and plans to spend the rest of his life in the United States. He loves his life here, noting that he has spent 28 of his 31 years living in the United States, and professes his allegiance to the United States.

¹In that application, Applicant disclosed that while a student, he twice decrypted a neighbor's wifi key.

FOREIGN INFLUENCE

The SOR alleges under Guideline B (1.a-1.b) that Applicant's mother-in-law, father-in-law and sister are citizens and residents of Colombia. It also alleges that his wife owns property in Colombia. Applicant stated that this property has no effect on his financial status. (Item 4)

Applicant's mother-in-law is a citizen and resident of Colombia. She is a retired civil secretary who worked in the payroll department for the Colombian National Police. Applicant noted that she was not involved in police cases or investigations. He noted that his father-in-law is a citizen and resident of Colombia, but provided no additional information. Applicant stated in his answer to the FORM, that he is not interested in a relationship with his wife's family, only his wife. He acknowledged direct communication with his in-laws for special occasions. However, in his security clearance application, he listed contact with his father-in-law by phone and email on a weekly basis. (Item 3) Applicant stated that they do not know the nature of his work.

Applicant's spouse is a dual citizen of the United States and Colombia. She works at home. She has no affiliation with the Colombian government. She lives with Applicant in the United States. Applicant noted that his wife "keeps a boundary on what she mentions to her parents and sisters regarding Applicant's work and life in the United States."

Applicant's spouse is co-owner with her two sisters of an inherited property from her parents. The value of the property is about \$45,000 total and wife's share would be about \$15,000 . Applicant believes that this is not a large amount of money. This is the only property in Colombia that she co-owns. Applicant and his wife stay in the apartment when they visit Colombia. (Item 4)

Applicant's sister-in-law is a lawyer for a large city in Colombia. Her work is not military or intelligence related. He made a correction to the personal interview in the file that she has moved from Argentina to Colombia. (Response to FORM)

Applicant has no ties to the Colombian government. He has not served in the Colombian military. He has no financial interests in Colombia. He does not maintain contact with any other relatives in Colombia. He noted that Colombia has radicalized groups but his parents-in-law and sister-in-law are typical hard-working Colombians.

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 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

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.”

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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 2001. He used his Colombian passport when he has visited Colombia during the past years as recently as 2014. He continues to possess his Colombian passport. He also has a U.S. passport. AG ¶ 10(a)(1) and 10(b) 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.

Applicant possesses a valid Colombian passport, which he uses for ease of travel to Colombia to see family and friend. Applicant did not have a security clearance or have any reason to believe use of his Colombian passport raised a security concern. No one advised him that this could be an issue. I considered AG ¶ 11(a and b), but after being advised of the security concern regarding a clearance holder having a valid foreign passport, Applicant refused to surrender, destroy, or otherwise invalidate the foreign passport. In his response to the FORM, Applicant stated that now he refuses to relinquish the Colombian passport. Applicant has not mitigated the security concerns under the foreign preference guideline.

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-in-law, father-in-law, and his wife’s sisters are citizens and residents of Colombia. Applicant maintains some contact with them. Applicant’s wife lives with him in the United States. Applicant’s wife, who is a dual Colombian citizen, maintains some contact with her siblings. Applicant has traveled with his wife many times over the years to Colombia and stays with family. 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 spouse’s relatives in Colombia. Based on this evidence, AG ¶¶ 7(a) and 7(b) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a), 7(b) and 7(d), 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. Colombia is a country with strong, and cooperative ties with the United States.

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 parent-in-law, and sister-in-law have no connection to the Colombian government. Colombia is a republic, with strong and cooperative ties with the United States, especially in the area of counter-narcotics. 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, the evidence warrants partial application of AG 8(a).

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 has deep and longstanding ties to the United States. He is married to a Colombian woman who is a dual citizen. He has his profession here in the United States. He is a naturalized citizen. Applicant's allegiance to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are 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. The factors weighing towards approval of Applicant's security clearance are noteworthy. Applicant is a naturalized U.S. citizen. His mother and father are U.S. citizens. He has lived in the United States for 28 of his 31 years. He is married to a dual U.S and Colombian citizen. He was educated in the United States and received his doctorate in

2014. He is employed but does not have a security clearance. He has traveled many times to visit his wife's family in Colombia during the past years.

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-in-law, father-in-law and sisters 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 minuscule.

Applicant, however has not surrendered his Colombian passport. His latest response to the FORM notes that he is not willing to sacrifice the passport at this time so that he can freely travel to visit his wife's family.

Applicant has expressed his desire to live in the United States indefinitely and notes that 28 of his 31 years have been spent in the United States. He loves his life and work in the United States.

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 at this time are not mitigated. The Applicant has carried his burden to mitigate the security concerns under the Guideline B for foreign influence. 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 :	FOR APPLICANT
Subparagraphs 1.a-b:	For Applicant
Paragraph 2, Guideline C :	AGAINST APPLICANT
Subparagraph 2.a:	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