



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03792

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

10/05/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns, but he did not mitigate the foreign preference security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 10, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May

20, 2016, scheduling the hearing for June 20, 2016. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on June 28, 2016.

## **Procedural and Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that were marked Applicant's Exhibit (AE) A and admitted without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Colombia. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. I have taken administrative notice of the facts contained in HE I over Applicant's objection. Of note is that Colombia is one of the oldest democracies in Latin America. The United States is Colombia's largest trading partner. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems. Any person born in Colombia may be considered a Colombian citizen, and dual U.S.-Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

## **Findings of Fact**

Applicant is a 49-year-old engineer employed by a defense contractor. He has worked for his current employer since about 2006. He seeks to retain a security clearance, which he has held for about 20 years. He has a bachelor's degree that was awarded in 2003. He married in 1988 and divorced in 2011. He married his current wife in 2012. He has two adult children.<sup>1</sup>

Applicant was born in Colombia to Colombian parents. His mother came to the United States when Applicant was about 12 years old. She brought Applicant and his brother to the United States when Applicant was about 16 years old. Applicant became a U.S. citizen in 1993. His brother and mother also apparently became U.S. citizens, although at his hearing Applicant stated that he was unsure if his mother was a U.S. citizen or a permanent resident. She retained her Colombian citizenship. She now spends about eight to nine months of the year in Colombia.<sup>2</sup>

Applicant's children are native-born U.S. citizens. His wife is a Colombian citizen living in the United States as a permanent resident. Applicant's in-laws and extended family members are citizens and residents of Colombia. There is no indication that any

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<sup>1</sup> Tr. at 17-21, 29, 32-34; GE 1.

<sup>2</sup> Tr. at 30, 38-41; Applicant's response to SOR; GE 1.

of Applicant's family members have ties to the Colombian government, narcotics trafficking, or criminal gangs.<sup>3</sup>

Applicant is a dual citizen of the United States and Colombia. He obtained a U.S. passport after he became a U.S. citizen. Before 2006, he used his U.S. passport for foreign travel, including visits to Colombia. He stated that he was treated rudely by the Colombian border and customs officials and asked why he was not using a Colombian passport. He stated they told him that the next time he attempted to enter the country, he would be turned away if he did not have a Colombian passport. They told him his only other option was to renounce his Colombian citizenship.<sup>4</sup>

Applicant obtained a Colombian passport in March 2006. He informed his company's facility security officer (FSO) that he had the passport. He stated that the FSO told him that he could not have a foreign passport while holding a security clearance. He gave the Colombian passport to the FSO. Applicant was told that if he needed the passport for travel purposes, he could retrieve the passport after providing the FSO with his itinerary and the reason he needed the passport.<sup>5</sup>

Applicant retrieved his Colombian passport from the FSO in 2012 and used it to travel to Colombia to marry his wife. Applicant stated that he had no problems with Colombian officials, but he was detained by U.S. immigration officials for several hours upon his return to the United States. Applicant believed he was detained because he held a security clearance. He stated that he "did not appreciate this treatment and it strongly made [him] consider no longer wanting to have a security clearance."<sup>6</sup>

Applicant did not return his Colombian passport to his FSO when he returned from his 2012 Colombian trip. He stated that his FSO told him that the requirement for them to hold the passport had changed and that it was enough that the company knew he had a passport and that he had possession of it. He was also reminded that he had to inform the FSO of all foreign travel and if he used the Colombian passport. He wrote in May 2013 that "in order to continue to hold a security clearance, if it was required of [him], [he] would be willing to surrender [his] Colombian passport to the appropriate authorities without expectation that it be returned to [him]." He further wrote that "if it is [a] requirement for continuing to hold [his] security clearance, [he] would be willing to renounce his citizenship with Colombia."<sup>7</sup>

Since his 2012 marriage, Applicant has traveled to Colombia about once a year using his Colombian passport, most recently about a month before the hearing. He renewed the passport in March 2015, and it will not expire until March 2025. He has a

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<sup>3</sup> Tr. at 33, 41-45, 51, 63; Applicant's response to SOR; GE 1.

<sup>4</sup> Tr. at 24, 26-29; Applicant's response to SOR; GE 1, 2.

<sup>5</sup> Tr. at 22-23, 32, 35; Applicant's response to SOR; GE 1, 2.

<sup>6</sup> Tr. at 23; Applicant's response to SOR; GE 2.

<sup>7</sup> Tr. at 23-24, 36; GE 2.

small house and several lots in Colombia, which he valued at about \$21,000. He has two properties in the United States. With his children in the United States, he indicated that it was unlikely that he would retire in Colombia, but he did not rule out the possibility because of the cost of living. He reiterated at his hearing that he would be willing to renounce his Colombian citizenship if that is required for him to have a security clearance. He stated that his company would not hold his passport.<sup>8</sup>

Applicant “surrendered” his Colombian passport to his FSO on June 21, 2016. The FSO noted that DOHA will immediately be notified if Applicant retrieves the passport.<sup>9</sup>

## **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 are to be used 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, administrative judges apply the guidelines 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.”

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 the 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

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<sup>8</sup> Tr. at 25, 27, 31-38, 46-48, 51-52.

<sup>9</sup> AE A.

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 EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern for foreign preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

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

Applicant obtained and possessed a Colombian passport while a U.S. citizen. AG ¶ 10(a) is applicable. The renewal of the Colombian passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his Colombian citizenship.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

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

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

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant exercised his Colombian citizenship by obtaining a Colombian passport while a U.S. citizen. Therefore, his dual citizenship is not based solely on his parents' citizenship or birth in a foreign country. AG ¶ 11(a) is not applicable. Applicant "surrendered" his Colombian passport to his FSO in 2006. He retrieved it in 2012 to travel to Colombia and marry his wife. He did not return it to the FSO, and used it to annually travel to Colombia. He once again surrendered the passport to his FSO the day after the hearing.

Applicant stated that he is willing to renounce his Colombian citizenship if that is required for him to have a security clearance. However, he was informed in about 2006 by Colombian border and customs officials that he would not be required to have a Colombian passport to enter the country if he renounced his Colombian citizenship. He has taken no action to do so. There is every indication that he will use his FSO to hold his Colombian passport until he takes his next annual trip to Colombia. AG ¶¶ 11(b) and 11(e) have some applicability, but they are not enough to mitigate all the foreign preference concerns created by Applicant's dual citizenship and what is expected to be ongoing use of a Colombian passport.

## **Guideline B, Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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;

(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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife, in-laws, and mother are Colombian citizens. It is unclear whether his mother is a dual U.S.-Colombian citizen or a U.S. permanent resident. His in-laws are Colombian residents and his mother spends about eight to nine months of the year in Colombia. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is 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.

I considered the totality of Applicant's ties to Colombia. Colombia has significant problems, but it is also one of the oldest democracies in Latin America, and the United States is Colombia's largest trading partner. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Colombian government, a terrorist group, a criminal organization, or a drug cartel. AG ¶ 8(a) is applicable.

### **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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis.

I considered Applicant's ties to Colombia as well as his relationships in the United States. Applicant has possessed and annually used a Colombian passport since 2012. He surrendered it to his FSO the day after the hearing. While he expressed a willingness to renounce his Colombian citizenship if that is required for him to have a security clearance, he has taken no action to do so. It appears that he will use the FSO to hold his Colombian passport until he retrieves it to take his annual trip to Colombia.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns, but he did not mitigate the foreign preference security concerns.

### **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:	For Applicant
Subparagraphs 2.a-2.c:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge