



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



In the matter of:

ISCR Case No. 15-06171

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Jim Green, Esq.

January 20, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign preference and foreign influence raised by his previous possession of a Colombian passport (which has been destroyed) and his contacts in Colombia. His request for a security clearance is granted.

Statement of the Case

On May 19, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on June 28, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

August 24, 2016, scheduling the hearing for September 21, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection, and Hearing Exhibits (HE) I and II. Applicant presented eight exhibits, marked Applicant Exhibit (AE) A through H, which were admitted without objection. He testified on his own behalf and called one witness. DOHA received the transcript of the hearing (Tr.) on September 30, 2016.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Colombia. Department Counsel provided a five-page summary of the facts, supported by six Government documents pertaining to Colombia, identified as HE II. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.a, 2.a, 2.b, and 2.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 49-year-old employee of a defense contractor. He has been employed with the defense contractor since 2003. He has had a security clearance since 2004. He earned a bachelor's degree in from a U.S. college in 2002. He currently provides for his eldest niece, a natural-born citizen, who lives with Applicant in the United States. (GE 1; Tr. 21-22, 30-31.)

Applicant was born in Colombia. He lived in Colombia until he was 18 years old. He immigrated to the United States 31 years ago. He became a U.S. citizen in July 1991. His mother and brother are citizens and residents of the United States. He testified that his loyalties lie solely with the United States. (AE F; Tr. 16-19, 29, 31.)

Applicant's first trip to Colombia after immigrating to the United States was in 1995. After that, he returned to Colombia approximately every two years. He notified his facility security officer (FSO) of each trip. Applicant was largely raised by his grandparents, who continued to reside in Colombia after he immigrated to the United States. They were ailing and Applicant wanted to support them. He traveled back to Colombia to see them frequently as their health declined. (Tr. 22-28, 38-39.)

In 2012 Applicant experienced difficulties with the Colombian authorities when entering Colombia, because they claimed he needed to use a Colombian passport to enter Colombia as a natural-born Colombian citizen, despite his naturalization as a U.S. citizen. He paid fines as a result. Upon his return to the United States, Applicant discussed his situation with his FSO. He presented documentation of the Colombian policy at the hearing (AE H.) His FSO at that time told Applicant that he could obtain a

Colombian passport as long as every time he was finished using it, he would surrender it to the security officer at the company for safekeeping. Applicant complied with this instruction, and only obtained a Colombian passport after his FSO gave him verbal authorization in September 2012. The passport was scheduled to expire in September 2022. When he wanted to travel to Colombia, he would notify his FSO of impending travel to Colombia, the passport would be returned to him for his trip, and then re-secured by the FSO after Applicant's travel was completed. However, when that FSO left the company in 2013, the passport was returned to Applicant. Applicant offered to surrender it to the company's new FSO, but the new FSO would not accept it. The new FSO refused to accept Applicant's Colombian passport until Applicant's attorney requested that the FSO destroy the passport. (GE 2; Tr. 23-27, 36-50.)

Applicant no longer has a Colombian passport. It was destroyed, as documented in a September 16, 2016 letter from his current FSO. He does not intend to get another Colombian passport. He has not returned to Colombia since his grandfather's funeral in September 2014. He does not intend to travel to Colombia again. He does not own any property, nor have any business interests in Colombia. He is willing to renounce his dual citizenship with Colombia, but does not know how to do that. (GE 2; AE G; Tr. 26-29, 38-41.)

Applicant's grandparents are now deceased. His father, stepmother, half-brother, and half-sister, are all citizens and residents in Colombia. He communicates with them infrequently. Applicant "never talk[s] to [his] stepmother." He speaks to his father every three-to-six months, and explained he "wasn't very close to [his] parents growing up. So distance has made it just worse." His father is 72 years old and works with heavy equipment doing freelance jobs. His step-mother is a homemaker. His half-brother works as a laborer for a telephone company. His half-sister is an accountant. He has not spoken to or seen his halfsiblings in three years. He also has extended family members in Colombia, and two childhood friends in Colombia that he communicates with infrequently, mainly through social media. None of his Colombian friends or relatives work for the Colombia government or know what Applicant does for a living. Applicant does not support any of his Colombian relatives or friends. (Tr. 20, 28-35, 42.)

Applicant owns three investment properties in another state, and his current residence. He estimated his net worth to be approximately \$800,000. (Tr. 32, 42.)

Applicant's direct supervisor, who works with Applicant on a daily basis, testified on Applicant's behalf. He testified that Applicant is an excellent, honest employee that performs well above average. He was aware that Applicant checked in with the security team at their company regarding his travel issues. (Tr. 51-55.) Applicant also presented five character reference letters, which indicated Applicant is a dedicated employee and is involved in his community through soccer. (AE A; AE B; AE C; AE D; AE E.) He "is one truly outstanding Employee, he performs sensitive tasks flawlessly, and with the greatest of attitudes." (AE B.) His chief operating officer noted in a letter that Applicant "closely follows our DoD compliant policies for declaring intent to travel overseas with the security officer and all security procedures." (AE C.)

The Department of State warns U.S. citizens of the dangers of travel to Colombia. Dangers in Colombia include: potential for narco-terrorist violence in some rural areas and cities; the potential for violence by terrorists and other criminal elements in all parts of the country; terrorists and criminal organizations kidnap and hold persons of all nationalities; and human rights violations. Two Colombian organizations have been placed on the Foreign Terrorist Organizations list maintained by the Secretary of State. (HE II.)

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 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." 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 B, Foreign Influence

The security concern relating to the guideline 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. Two 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; 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.

Applicant's father, step-mother, half-brother, half-sister, aunts, and uncle are all citizens and residents in Colombia. He also maintains contact with two childhood friends that are citizens and residents of Colombia. To be fully applicable, AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. In this instance, a heightened risk is present because of the terrorists and criminal organizations at work in Colombia. The evidence is sufficient to raise this disqualifying condition. AG ¶ 7(b) also applies as potential conflicts are created by these connections.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (a) the nature of the relationship 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.; and
- (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 interests in favor of the U.S. interests.

Applicant's ties to his family and friends in Colombia are not close. He has lived in the United States for all of his adult life. He was raised by his grandparents in his youth and had a strong bond to them. However, his ties to his father, step-mother, half-brother, and half-sister, have dissipated over time and distance. He does not intend to return to Colombia to visit them. The nature of his relationships with his family and friends in Colombia, and their lack of any connection to government or terrorist organizations there, are unlikely to place Applicant in a position where he would have to choose between the interests of those foreign individuals and the interests of the U.S. Additionally, Applicant's strong sense of loyalty to the United States indicates he would resolve any conflict of interest in favor of the United States. He has built a life in the U.S. His brother and niece are here. He owns four properties in the U.S. and all of his net wealth is invested here. As a result, the above mitigating conditions were established.

Guideline C, Foreign Preference

The security concern relating to the guideline 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 is 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.

Applicant is a dual citizen of the United States and Colombia. He exercised his Colombian citizenship when he acquired the Colombian passport, despite that fact that he was a United States citizen at that time and had a U.S. passport. He used that passport to travel to Colombia on numerous occasions. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Two are potentially applicable:

(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.

Applicant surrendered his Colombian passport to his facility security officer. It has been destroyed and he will not travel to Colombia in the future. Although his use of the Colombian passport while holding a security clearance is of concern, Applicant attempted to follow proper protocol, and did what he was advised by his FSO. He believed his FSO to be his cognizant security authority. His former FSO misunderstood the requirements about securing Applicant's Colombian passport. Now that Applicant is aware of the concerns relating to holding a foreign passport, he has complied with the security requirements and surrendered it for destruction by his FSO. AG ¶¶ 11(d) and (e) provide mitigation with respect to this guideline.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by his witness and those who wrote letters of recommendation. He performs well at his job. While he was born Colombia, he is an American by choice. He has been residing in the United States for the past 31 years. His closest familial ties are with his brother and niece. They are American citizens and residents. His remaining contacts in Colombia are not close. He no longer has a Colombian passport and will not travel to Colombia again. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Preference and Foreign Influence 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge