



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 15-06894

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

April 5, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 13, 2015. (Government Exhibit 1.) On June 16, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 8, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on

September 5, 2016. The case was assigned to me on September 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 13, 2016. I convened the hearing as scheduled on October 26, 2016. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits I through XXI. Department Counsel had no objection, and the exhibits were admitted into the record. DOHA received the transcript of the hearing (Tr.) on November 3, 2016. Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Colombia (Colombia). (Tr. 16, 69-70.) The request and the referenced documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 35, single, and has a bachelor's degree. He has been employed by a defense contractor since 2015, and seeks a security clearance in connection with his employment in the defense industry. This is his first application for a security clearance. Applicant admitted all the allegations in the SOR. Those admissions are findings of fact. He also provided additional information to support his request for eligibility for access to classified information.

Paragraph 1 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign connections that may show divided loyalties, or make him vulnerable to pressure or coercion.

Applicant was born in Colombia in 1980. He moved to the United States in 2000 to attend college. He became a naturalized American citizen in 2008. (Tr. 30-33; Government Exhibit 1 at Section 9.)

Applicant's parents are both Colombian citizens and reside there. His father is a semi-retired teacher. Applicant's mother owns a small shop. Applicant has one sister, who lives permanently in the United States with her American husband and child. (Tr. 36-40.)

Applicant has visited his parents about five or six times in Colombia since he came to the United States. The last time was in June 2015. His parents travel to the United States about once a year to see Applicant, as well as their daughter and grandchild. Applicant's parents plan on moving to the United States full-time once Applicant's father retires. (Tr. 35-36, 39-40, 47.)

Applicant has an American-born girlfriend. He has substantial assets in the United States, as opposed to none in Colombia. He testified, "I never had a bank account, never worked in Colombia, don't have anything that really - - any attachments." He also states, "I lived almost half of my life here [the United States]. Everything I've done, my professional career, my education, everything is here." (Tr. 41, 52, 70-72.)

Applicant has no plans to move back to Colombia. The United States is his home, and he knows that his work in the defense industry is making a difference for the national defense. (Tr. 51-52, 66-67.)

Paragraph 2 (Guideline C – Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

As stated, Applicant did not work in the defense industry before 2015. In addition to his American passport, he had a Colombian passport that was due to expire in 2018. The Colombian passport was required by Colombian authorities for travel there, even for naturalized American citizens. (Tr. 44-46.)

Once Applicant received the SOR he learned of the security clearance regulations concerning possession of a foreign passport. At that point he immediately surrendered his passport to his Facility Security Officer (FSO), who provided written documentation of that fact. (Tr. 43-44, 49; Applicant Exhibits III and IV.)

On September 16, 2016, Applicant formally renounced his Colombian citizenship, through the Colombian consulate. His petition for renunciation was granted. He no longer possesses Colombian citizenship. As a result, his Colombian passport has been invalidated. (Tr. 46, 49-52; Applicant Exhibits V, VII, and VIII.)

Mitigation

Applicant is a highly-respected person and employee. His direct manager submitted a letter on Applicant's behalf. (Applicant Exhibit X.) The manager states, "[Applicant] is always very respectful of privacy, classified information, rules and restrictions."

In September 2016 Applicant received a “High Potential Retention Award” from his current employer. This is a cash-based incentive award offered to a small number of non-executive employees who commit to stay with the company for several years. (Applicant Exhibit XI.) He has received other recognition from his current employer, and his evaluations show an employee of considerable talent and potential. (Applicant Exhibits XII through XV.)

Though he does not currently have a security clearance, he has taken classes that have taught him how to work with sensitive information in the government realm. (Applicant Exhibits XVI through XXI.) His corporate FSO submitted a letter indicating that Applicant did not have any security incidents or security violations in his file. (Applicant Exhibit IX.)

Administrative Notice

Applicant has contacts with Colombia. Accordingly, it is appropriate to discuss the situation in Colombia at this time.¹ Colombia is a constitutional multiparty democracy, and a close ally of the United States. The country has had major problems with terrorism and narco-terrorism. However, a peace accord with the major insurgent group shows promise for a more peaceful future for Colombia. The Department of State noted on April 5, 2016, “Security in Colombia has improved significantly in recent years.” (Administrative Notice Document IV at 1.)

Policies

Security clearance decisions are not made in a vacuum. 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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Paragraph 1 (Guideline B – Foreign Influence)

The concern under Guideline B is styled as follows at 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.

Applicant has family connections to Colombia, specifically his parents, which can be viewed under a heightened risk standard because of the general security situation in Colombia. The following Disqualifying Condition applies to this case 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.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this case, given his particular background:

(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.; 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 interest in favor of the U.S. interest.

Applicant proved that he is a conscientious and patriotic American citizen, and member of the defense industry. He has demonstrated that, while he is in contact with his parents in Colombia, there is no conflict of interest, because his sense of loyalty or obligation to Colombia is minimal. Further, he has deep and longstanding loyalties to the U.S. He has lived in the United States permanently since he was 19, graduated from college here, and has shown himself to be an able and talented employee of great potential. He plans to remain in the United States permanently. He has formally renounced his Colombian citizenship by actively taking steps through the Colombian consulate to have it rescinded. Applicant presented evidence of substantial ties to the United States. He can be expected to resolve any conflict of interest in favor of the U. S. interest. Guideline B is found for Applicant.

Paragraph 2 (Guideline C – Foreign Preference)

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Colombia and the United States, and that he had a valid Colombian passport.

Applicant has mitigated the Government's concerns about his dual citizenship with Colombia, and his possession and use of a Colombian passport while an American citizen. The concern is stated thus under this Guideline at 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. One 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 foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

Applicant was a dual citizen of the United States and Colombia. He possessed and used his Colombian passport that he renewed after becoming a U.S. citizen. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Three are 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, who was born in Colombia, exercised Colombian citizenship by renewing that passport after becoming a U.S. citizen. He used it to travel to Colombia several times because the Colombian government did not permit dual citizens to enter the country without possessing a Colombian passport. However, he has surrendered that passport to his FSO, and officially renounced his Colombian citizenship. All three mitigating conditions are applicable to his situation. Paragraph 2 is found for Applicant.

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 pertinent facts and circumstances surrounding this case. I specifically considered the situation in Colombia. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign connections and foreign preference, and is eligible for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge