DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-08411
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Douglas R. Velvel, Esquire, Department Counsel
For Applicant: *Pro se*

12/14/2016

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence and foreign preference. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On March 4, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On March 16, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September

[1] GE 1 (e-QIP, dated March 4, 2015).

1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), and detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on March 30, 2016. In a sworn statement, erroneously dated March 31, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge.[2] Department Counsel indicated the Government was prepared to proceed on May 6, 2016. The case was assigned to me on June 6, 2016. A Notice of Hearing was issued on June 28, 2016, and I convened the hearing, as scheduled, on July 14, 2016.

During the hearing, 3 Government exhibits (GE 1 through GE 3) and 14 Applicant Exhibits (AE A through AE N) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on July 26, 2016. I kept the record open to enable Applicant to supplement it. She took advantage of that opportunity and timely submitted an additional document, which was marked and admitted as AE O, without objection. The record closed on August 11, 2016.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of Colombia (Colombia) appearing in six U.S. Government publications which were identified but not attached to the request. They were subsequently furnished to me. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Colombia in publications of the U.S. Department of State.[3]

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,[4] as set forth below under the Colombia subsection.

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[2] Applicant's Answer to the SOR, erroneously dated March 31, 2015. It should be noted that the affidavit form upon which Applicant was to choose either a hearing or a decision based upon the administrative record, and list her contact information, and which the notary public was to sign, was a boilerplate preprinted form with "2015" furnished by the DOD CAF. The correct date should be "2016."

[3] U.S. Department of State, Bureau of Western Hemisphere Affairs, *U.S. Relations With Colombia, Fact Sheet,* dated July 27, 2015; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2014 - Colombia*, undated; U.S. Department of State, Bureau of Counterterrorism, *Western Hemisphere Overview, Country Reports on Terrorism 2014*, *Chapter 2* (extract), dated October 14, 2015; U.S. Department of State, Bureau of Consular Affairs, *Colombia Travel Warning*, dated April 5, 2016; U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations, Chapter 6* (extract), dated October 14, 2015; U.S. Department of State, Bureau of Consular Affairs, *Colombia*, dated December 10, 2014.

[4] Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to foreign influence and foreign preference in the SOR (¶¶ 1.a., 2.a., and 2.b.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a defense contractor. She has been serving as an industrial engineering manager since July 2002.[5] She received a bachelor's degree in industrial engineering August 2002, and a master's degree in industrial engineering in December 2015.[6] Applicant has never served in the U.S. military or any other military.[7] She held a secret security clearance from July 2008 until July 2012, when it was "downgraded" as no longer required for the position.[8] Applicant was married the first time – to a native-born U.S. citizen – in 1997 and divorced in 2002.[9] She married again – to a native-born U.S. citizen – in 2005.[10] She has two children born in the United States: a son born in 2008 and a daughter born in 2012.[11]

Foreign Influence and Foreign Preference

Applicant was born and raised in Colombia. She entered the United States in 1997, and in 2006, she became a naturalized U.S. citizen. She has been a dual citizen of the United States and Colombia since 2006. Nevertheless, she considers herself as an American, and she has no other allegiances to any other country.[12] If required, she is willing to renounce her Colombian citizenship.[13] Her mother is a Colombian-born citizen

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at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. *See, e.g*. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

[5] GE 1, *supra* note 1, at 14.

[6] GE 1, *supra* note 1, at 13; AE M (Official Transcript, dated December 28, 2015).

[7] GE 1, *supra* note 1, at 16.

[8] GE 1, *supra* note 1, at 40; AE C (Security Clearance Correspondence, various dates).

[9] GE 1, *supra* note 1, at 19.

[10] GE 1, *supra* note 1, at 18: AE L (Marriage Record, dated September 6, 2005); AE I (U.S. Passport, dated April 18, 2011).

[11] GE 1, *supra* note 1, at 26-27; AE K (Certification of Birth, dated August 8, 2008); AE J (Certification of Birth, dated May 3, 2012).

[12] GE 1, *supra* note 1, at 5, 7; AE H (Colombian Passport, dated January 27, 1997); GE 3 (Personal Subject Interview, dated May 27, 2008), at 1; Tr. at 31.

[13] Applicant's Answer to the SOR, *supra* note 2.

of Columbia, legally residing in the United States with her second husband, a native-born United States citizen.[14] Formerly an employee of a supermarket in the United States, she is now a full-time homemaker.[15] Because they live within relatively close proximity, Applicant sees her mother every weekend.[16] Applicant's father is a Chinese-born citizen of the Republic of China (Taiwan) who was legally adopted when he immigrated to Colombia at the age of nine.[17] He has resided in Colombia ever since his arrival, and he has never returned to Taiwan. Formerly a restaurant employee and manager, he owns a fleet of taxis and owns other businesses.[18] Applicant's relationship with her father is distant and somewhat strained, essentially because with her parents' divorce, Applicant's father also decided to "divorce" the rest of the family, and there is no continuing close relationship.[19] Although they speak from time to time ("every six months or so") by telephone, she has not seen him in person for a decade.[20]

Applicant has one sister, born in Colombia, but a dual citizen of Colombia and the United States. Her sister immigrated to the United States at the age of 17, and she eventually became a naturalized U.S. citizen. She is employed by a U.S. financial institution in the United States, and she has resided in the United States for the past 17 years. Applicant's relationship with her sister is close, and they have weekly telephone contact and periodic direct contacts.[21]

Applicant's mother has a sister, brother-in-law, a nephew, and a niece who are Colombian citizens-residents.[22] Applicant's aunt was an employee of a large retail store, but is now retired. She has had a U.S. tourist visa for many years and periodically visits Applicant's mother in the United States. As of May 2008, Applicant used to speak with her aunt every few months, and they would see each other during Applicant's trips to Colombia and her aunt's visits to the United States. In March 2015, Applicant reported that she had monthly contact with her aunt.[23] Applicant's uncle is physically challenged. While he has traveled to the United Sates on a few occasions, and Applicant has visited with him and her aunt when she traveled to Colombia, Applicant's contacts with him are

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[14] GE 1, *supra* note 1, at 20-21, 26; GE 3, *supra* note 12, at 1.

[15] GE 3, *supra* note 12, at 1; Tr. at 58.

[16] Tr. at 58.

[17] Tr. at 38-39; AE B (Taiwanese Passport, dated May 19, 1997); AE A (Taiwanese Passport, dated April 21, 2003; GE 3, *supra* note 12, at 1.

[18] Tr. at 38-40.

[19] Tr. at 41, 56.

[20] Tr. at 41; GE 1, *supra* note 1, at 23.

[21] Tr. at 45-46; GE 3, *supra* note 12, at 1.

[22] GE 1, *supra* note 1, at 28-31. It should be noted that although Applicant has two cousins, the SOR focused on only one cousin, and there is no indication which cousin was the one raising a security concern.

[23] Tr. at 48; GE 1, *supra* note 1, at 28; GE 3, *supra* note 12, at 1-2.

much less frequent. She estimated that she has annual contact with him.[24] One of Applicant's two cousins is an industrial engineer for a retail store. While Applicant used to have contact with him much as she did with his parents, they no longer maintained contact after he was married.[25] Her other cousin is a physician employed by an insurance company. Applicant has seen her during her visits to the United States, and they generally have telephone contact on an annual basis.[26] Applicant's parents and her extended family members have had no relationship with the Colombian government or its military or intelligence services.[27] Likewise, there is no evidence that any family member has ever been approached or threatened by a terrorist or anyone affiliated with the Colombian government, its military, or intelligence services.

When Applicant's parents were divorced, they gave title to the family residence in Colombia to Applicant and her sister to insure that it was made a part of their inheritance. At the time the residence was initially acquired, it was worth an estimated $70,000. By 2008, the value of the property had increased to approximately $100,000. Applicant and her sister sold the property in March 2012.[28] Applicant no longer maintains any financial interests or assets in Colombia.[29]

When Applicant arrived in the United States, she used a Colombian passport that had an expiration date of January 27, 2007.[30] When she became a naturalized U.S. citizen, she allowed that passport to expire, because she already had a U.S. passport that had been issued in June 2006.[31] However, when a decision was made by Applicant and her sister to sell the family residence in Colombia, Applicant renewed her Colombian passport for the sole purpose of having documentation to enable her sister to sell the residence using Applicant's power of attorney and her Colombian passport.[32] That Colombian passport was not expected to expire until March 2022.[33] The Colombian passport was destroyed by Applicant in the presence of her corporate security analyst on July 18, 2016.[34]

[24] Tr. at 49; GE 1, *supra* note 1, at 30-31; GE 3, *supra* note 12, at 2.

[25] Tr. at 50; GE 3, *supra* note 12, at 2.

[26] Tr. at 50; GE 1, *supra* note 1, at 29-30.

[27] GE 3, *supra* note 12, at 2.

[28] GE 1, *supra* note 1, at 32-33; GE 3, *supra* note 12, at 3; AE N (Dissolution and Liquidation of the Community Property, dated August 18, 2006).

[29] GE 1, *supra* note 1, at 33.

[30] AE H, supra note 12.

[31] AE F (U.S. Passport, dated June 17, 2006).

[32] Tr. at 32-33; AE G (Colombian Passport, dated March 12, 2012).

[33] AE G, *supra* note 31.

[34] AE O (Memorandum of Record, dated July 18, 2016).

Work Performance

Applicant's most recent performance review highlighted several positive areas of performance:[35]

> [Applicant] entered the 2015 performance period as a talented manager and has significantly exceeded my expectations. She has established herself as a leader with strong ethical traits, attention to detail, a caring personality, passion for execution and ability to build an engaging team. She is well respected by the team leaders she supports, peer managers and team members. She has met all of her performance goals and exhibits special leadership characteristics. . . . Her integrity is unwavering and she insists upon doing things right the first time. . . . [Applicant] is truly a role model to her peers and subordinates.

Colombia

Formerly under the control of Spain, Colombia's independence was recognized in 1822. It has common borders with Venezuela and Brazil on the east, Ecuador and Peru on the south, and Panama and the North Pacific Ocean on the west, with the Caribbean Sea on the north. It is a middle-income country and one of the oldest democracies in Latin America. For the past 50 years, Colombia has been engaged in intense armed conflict with insurgent and paramilitary groups perpetuated by their involvement in widespread illegal drug production and trafficking, along with criminal and narcotics trafficking organizations. Peace talks between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC) began in October 2012, and are close to being finalized. Long-term U.S. interests in the region include promoting security, stability, and prosperity in Colombia, and according to the U.S. Department of State, Colombia has made progress in addressing its security, development, and governance challenges.

The Secretary of State has designated three organizations operating within Colombia as foreign terrorist organizations: the leftist FARC, the leftist National Liberation Army (ELN), and the demobilized rightist paramilitary United Self Defense Forces of Colombia (AUC). Colombia has experienced a number of terrorist attacks by the FARC and the ELN, with the most notable 2011 incidents directed primarily at Colombian National Police and the Colombian Army, with a number of civilians also killed or wounded. The AUC membership dwindled, and while it remained inactive as a formal organization, some former members continued to engage in criminal activities, mostly drug trafficking, in newly emerging criminal organizations known as Bacrim. The ELN has a dwindling membership with diminished resources and reduced offensive capability, but has continued to inflict casualties through the use of land mines and ambushes, and continues to fund its operations through drug trafficking. The FARC has been weakened significantly by the government's military campaign against it. Nevertheless, FARC remains responsible for terrorist attacks, extortion, and kidnappings. The incidence of

[35] AE E (Performance Review, undated), at 1.

kidnapping in Colombia has diminished significantly from its peak at the beginning of the decade, but kidnappings and holding civilians for ransom or as political bargaining chips continues. No one is immune from kidnapping on the basis of occupation, nationality, or other factors.

Overall law enforcement cooperation between Colombia and the United States has been outstanding, and Colombia has extradited more people to the United States than any other country. Although the Colombian Government has continued to address human rights abuses, significant problems remain. Extrajudicial killings, insubordinate military collaboration with members of illegal armed groups, forced disappearances, overcrowded and insecure prisons, harassment of human rights groups and activists, violence against women, trafficking in persons, illegal child labor, societal discrimination against indigenous persons, corruption, and an overburdened and inefficient judiciary are but a few of the continuing issues. On August 20, 2012, the Department of State certified to Congress that the Colombian Government and armed forces are meeting statutory criteria related to human rights.

Tens of thousands of U.S. citizens safely visit Colombia each year for tourism, business, university studies and volunteer work. Security in Colombia has improved significantly in recent years, but violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. There have been no reports of U.S. citizens being targeted because of their nationality.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[36] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[37]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are

[36] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[37] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[38] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[39]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[40]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[41] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

[38] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[39] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[40] *Egan*, 484 U.S. at 531.

[41] *See* Exec. Or. 10865 § 7.

Analysis

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline 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 mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[42] Applicant's somewhat longstanding distant relationship with her father and one cousin, as well as her closer relationships with her aunt, uncle, and one cousin, all of whom are residents of Colombia, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is "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." In addition, it is potentially disqualifying under AG ¶ 7(b) where there are "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(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

> 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

[42] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

> 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.

In addition, AG ¶ 8(c) may apply where "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation."

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.[43] In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."[44]

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, the United States and Colombia share a strong relationship and cooperate on numerous matters. The evidence does not indicate that the Colombian government targets U.S. classified information. To the contrary, it appears that the Government's main concern is not the actions of the Colombian government, but rather the actions of criminals, terrorists, and narco-terrorists in conducting illegal terrorist attacks, extortion, and kidnappings. Applicant maintains a distant and rather infrequent relationship with her father and one cousin. She maintains a somewhat closer relationship with her aunt, uncle, and other cousin. They all maintain a low profile in Colombia. They have all worked in private industry and none of them have connections to the Colombian

[43] *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

[44] ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

government or military. Her family members have never experienced violence since they have lived there. It is unlikely that Applicant would have to choose between the interests of her family and the interests of the United States.

Tens of thousands of U.S. citizens safely visit Colombia each year for a variety of reasons, including tourism, business, university studies, and volunteer work. Security in Colombia has improved significantly in recent years. Nevertheless, violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. In some ways, the risk of residing in Colombia is somewhat similar to the risks of residing in Boston, New York City, Chicago, Detroit, Washington, D.C., Orlando, Dallas, San Bernardino, Oklahoma City, or other metropolitan areas in the United States that have experienced substantial criminal or terrorist-related incidents. There is always the possibility of kidnappings, drug-related violence, or terrorist attacks, against otherwise innocent individuals. Moreover, there have been no reports of U.S. citizens being targeted in Colombia because of their nationality.

Applicant's father and extended family members still reside in Colombia and there is some risk – perhaps a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance because of her continuing relationship with them. However, because Applicant's mother, sister, husband, and children all reside in the United States, the impact of her father's citizenship and residence, as well as the citizenship and residence of her more distant relatives (aunt, uncle, and cousins) is considerably diminished and there is little continuing substantial risk of any kind of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. Under the circumstances, there is little likelihood that those "foreign" relationships could create a risk for foreign influence or exploitation. I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that she has "such deep and longstanding relationships and loyalties in the U.S., that [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(c) apply.

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(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" is potentially disqualifying. This includes AG ¶ 10(a)(1), "possession of a current foreign passport," which may raise security concerns. Applicant was initially issued a Colombian

passport when she was a child, and she subsequently renewed it. That Colombian passport was not expected to expire for several more years. There is no evidence that she was ever advised or asked to relinquish her Colombian passport. By her actions in continuing to possess her Colombian passport after she became a naturalized U.S. citizen, Applicant exercised the rights and privileges of foreign citizenship. AG ¶ 10(a)(1) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(a), the disqualifying condition may be mitigated where the "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Similarly, AG ¶ 11(b) may apply where "the individual has expressed a willingness to renounce dual citizenship." In addition, AG ¶ 11(e) may apply where "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Applicant, a naturalized U.S. citizen, was born of a Colombian mother and Taiwanese father in Colombia, and her Colombian citizenship was based solely on those factors. Dual citizenship, by itself, is not an automatic bar to a security clearance. It is only a security concern if the individual has actively exercised the rights and privileges of the foreign citizenship after becoming a U.S. citizen. Applicant explained that her only motivation for renewing her Colombian passport was not an indication of a preference for Colombia over the United States, but rather solely to enable her sister to sell her share of the family residence in Colombia. Such action, since 2006, has security significance. Applicant stated unequivocally that she is willing to renounce her Colombian citizenship and relinquish her Colombian passport. In fact, the Colombian passport was destroyed by Applicant in the presence of her corporate security analyst on July 18, 2016. Thus, as to Applicant's dual citizenship, and her possession of the Colombian passport after becoming a naturalized U.S. citizen, considering Applicant's explanations, and her subsequent actions, I find ¶¶ 11(a), 11(b), and 11(c) apply.

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 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[45]

There is some evidence against mitigating Applicant's situation, because her father remains a Taiwanese citizen and Colombian resident, and members of her extended family remain Colombian citizen-residents. Everyone, including residents and visitors, could possibly be the intended or unintended victims of kidnappings, drug-related violence, or terrorist attacks.

The mitigating evidence under the whole-person concept is more substantial. Applicant declared that her life is here in the United States and that she loves this country and has started a family here. Her mother and sister are here. Applicant is fully aware of the risks to her mother and extended family members in Colombia to the possibility of kidnappings, drug-related violence, or terrorist attacks. These risks increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her.[46] Moreover, while the "heightened risk" of terrorist activities occurring in Colombia is of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a substantial risk here as well. Considering Applicant's varied relationships with those family members remaining in Colombia, there is a minimal risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Overall, the record evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her foreign influence and foreign preference. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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

[45] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

[46] *See* ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

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.

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ROBERT ROBINSON GALES
Administrative Judge