



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



In the matter of:

ISCR Case No. 15-08705

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

January 24, 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 raised by his previous possession of a Columbian passport. He has formally renounced his Columbian citizenship and his Columbian passport has been invalidated. Further, he mitigated the foreign influence concerns raised by his wife's family and property in Columbia. He can be expected to resolve any conflict in favor of the United States. His request for a security clearance is granted.

Statement of the Case

On May 31, 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 17, 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 one exhibit, marked Applicant Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. The record was left open for receipt of additional documentation until close of business January 16, 2017. Applicant presented two post-hearing exhibits, marked AE B and AE C¹, and they were admitted. 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 I. 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, 2.c, 2.d, 2.e, and 2.f. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He has been employed with the defense contractor since 2010. His work aids the U.S. fighting narco-terrorism abroad. He served on active duty with the Army from 1984 to 1991 and held a top secret security clearance during that time. He served on active reserve status with the Army from 1991 to 1995. He achieved the rank of captain. He received an honorable discharge. (GE 1; AE A; Tr. 58.)

Applicant was born in Colombia. He lived in Colombia until he was five years old. He immigrated to the United States in 1966 with his parents and siblings. His entire immediate family became U.S. citizens together in 1980. He earned a bachelor's degree from a U.S. university in 1983. He has two children, ages 18 and 14. They are solely U.S. residents and citizens, although they were born in Mexico. He owns a home in the United States, which he purchased in 2012. He also has a 401(k) investment plan. He estimated his assets in the United States to total "a half million dollars." (GE 1; Tr. 32, 58.)

¹ AE C is a certified English translation of AE B. Department Counsel originally objected to the consideration of AE B, before a certified translation was provided. Department Counsel had no objection to AE C. Both were admitted under the doctrine of completeness, after the translation was entered into evidence.

Applicant's job with a defense contractor requires extensive travel in Latin and South America. He frequently travels to Colombia. In June 2012, Applicant acquired a Colombian passport because it became an immigration requirement of the Colombian authorities for Colombian-born individuals to enter and exit Colombia using Colombian passports. Prior to 2012, Applicant traveled to Colombia using his U.S. passport only. However, the Colombia immigration authorities became stringent with the regulations and would not permit him to leave Colombia without obtaining a Colombian passport. He did so, and has been using his Colombian passport since that time on his monthly business trips to Colombia. (Tr. 48-54, 59-61.)

Applicant petitioned the Colombian government to renounce his dual Colombian citizenship. On December 15, 2016, his petition was granted, and his Colombian citizenship was formally renounced. His Colombian passport was surrendered to the Colombian government, with his application to renounce his Colombian citizenship. (AE B; AE C.)

Applicant married his wife in August 2011. They met in 2008. She is 49 years old. Applicant resides in the United States with his wife and 18-year-old stepson. His wife and stepson are legal permanent residents in the United States and possess Colombian citizenship. They have both resided in the United States with Applicant for the past four years. His stepdaughter is a citizen and resident of Colombia. She is entirely supported by her father. Applicant does "not consider her a stepdaughter because I don't give her any support whatsoever, nor do I report her on my taxes." She is approximately 24 years old and attends graduate school. Applicant has infrequent contact with her. (AE A; Tr. 28, 35-37, 58.)

Applicant also has an uncle that is a citizen and resident of Colombia. He is a retired senior citizen in his early 70's. He worked as a "bank official at the National Bank of Colombia," which is state run. He is supported by a pension from the Colombian government. (Tr. 28, 38-39, 58.)

Applicant's mother-in-law is in her 70's and has always been a homemaker. She is supported by Applicant's wife and possibly by a government pension. When Applicant met his wife, she owned a taxi business valued at \$25,000 and a condominium in Colombia valued at \$90,000. The taxi business consists of one vehicle and one employee, a driver. It is used to supplement the income of Applicant's mother-in-law. His mother-in-law resides in the condominium. The condominium is paid in full and generates no rental income. His wife pays property taxes on the condominium to the Colombian government each year. Applicant's wife also sends money to her mother on occasion. Applicant was unsure of the frequency or amounts. Applicant is not sure if his wife has any bank accounts in Colombia. Applicant testified he gets "no monetary compensation from either asset." He has no property interest in either asset, as they belong solely to his wife. He does not stay at the condominium when he travels to Colombia. (AE A; Tr. 27-28, 38-44, 63-66.)

Applicant testified his monthly travel to Columbia is for work purposes. He explained:

I work very closely with the U.S. Government and what we're doing in Colombia and I'm also very sensitive to the presence of the elements that are -- have interest against the United States like the FARC, the ELN or any other criminal bands there. Usually when I go somewhere, I have to make sure that I have plenty of security. On occasion I've even been assigned up to 25 police bodyguard detail. If I go to certain parts of the country like the jungle, certain parts of the jungle, obviously there's no command and control there. So I'm provided enough security. The U.S. Embassy will usually on occasion send their own aircraft to take me to certain locations, and I'm always usually in the company of either Colombian Army or Colombian police or some security detail that's managed by, if not the Colombians, by the U.S. government. (Tr. 55.)

When asked what he would do if he, his wife's family, or his wife's property would be threatened, he replied:

Well, I've made it very clear I think to my wife or to my family -- my family certainly knows my service to my country and my patriotism. Unfortunately, I would have to let the legal authorities in Colombia manage that type of activity. I would not get involved whatsoever. . . . But so I'm very sensitive to the political situation and what's happening in Colombia. I'm obviously very sensitive to putting my person or people close to me in jeopardy. I have, for example, have told my children -- my children were born in Mexico, and I told them they cannot travel to certain parts of Mexico because of my position with the [name omitted] Corporation. And the same for Colombia, you know, they cannot travel to the rural areas or parts of the country. I wouldn't allow them to, unless, you know, they were provided the same security precautions that I take, and they obviously will not be provided the security precautions. (Tr. 56-57.)

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 I.)

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 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 was a dual citizen of the United States and Columbia. 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 Columbia 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:

(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 surrendered his Colombian passport when he submitted his request to renounce his Colombian citizenship. The request has been approved and he is now solely a U.S. citizen. AG ¶¶ 11(b) and 11(e) provide mitigation with respect to this guideline.

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. Four 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;
- (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; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's stepdaughter, mother-in-law, and uncle are citizens and residents of Colombia. His wife and stepson are citizens of Colombia and reside with Applicant in the United States. His wife owns a condominium and taxi business in Colombia. To be fully applicable, AG ¶¶ 7(a), (d), and 7(e) require 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 Columbia. The evidence is sufficient to

raise these disqualifying conditions. AG ¶¶ 7(b), 7(d), and 7(e) also apply due to Applicant's close connections to his wife and her property and connections to her family in Colombia. There is no evidence that Applicant has any financial or property interests in Columbia independent of those owned by his wife and discussed above.

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

(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 mother-in-law, stepdaughter, and uncle are not close. However, his wife clearly has close ties of affection to both her mother and daughter. She supports her mother through the taxi business and provides her a condominium in Colombia. The value of his wife's assets in Colombia is significant, even in light of his net worth of half of a million dollars in the United States. However, 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 been in the United States since the age of five. He served in the U.S. Army from 1984 to 1995 and achieved the rank of captain. He has built a life in the U.S. His children are citizens and residents of the United States. He has formally renounced his dual citizenship with Colombia. He owns his home in the U.S., and all of his personal net wealth is invested here. He testified he has no interest in his wife's properties. He intimately understands the risks involved in criminal factions active within Colombia, and always travels with U.S. security forces when traveling in there. He indicated that he would respond to any threats or coercion by notifying the proper authorities. Applicant can be expected to resolve any conflict of interests in favor of the U.S. interests. As a result, the above mitigating condition was persuasively established.

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.

While Applicant was born Columbia, he is an American by choice. He has been residing in the United States since 1966. His parents, siblings, and children are all U.S. citizens and residents. He is not close to any of his relatives in Columbia and he has no personal property interest in his wife's investments there. He no longer has a Colombian passport and he has formally renounced his Colombian citizenship. He served honorably in the U.S. Army. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties and dedicated service 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 Influence and 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:	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
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	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