



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



In the matter of:)
)
) ADP Case No. 15-07101
)
Applicant for Public Trust Position)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the trustworthiness concerns about his connections to Colombia under Guideline B, foreign influence and Guideline C, foreign preference, and about his finances under Guideline F, financial considerations. Applicant's eligibility for access to sensitive information is granted.

Statement of the Case

On April 16, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under foreign influence, foreign preference, and financial considerations. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on June 24, 2016, and requested a hearing. The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017, scheduling the hearing for September 14, 2017. The hearing convened as scheduled. Government Exhibits (GE) 1-5 were admitted into evidence without objection. Applicant and his brother testified. Applicant's Exhibits (AE) A and AE B were marked and admitted without objection. I held the record open until September 25, 2017, to allow Applicant to submit additional information. He timely submitted two documents, which were marked as AE C and AE D and admitted without objection. DOHA received the hearing transcript (Tr.) on September 22, 2017.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs apply to all adjudicative decisions issued on or after June 8, 2017.¹ Any changes resulting from the issuance of new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b, 1.c, 2.a, 2.b, 2.c, 3.a-3.d, and 3.f. He denied ¶¶ 1.a, 1.d, 3.e, and 3.g, with explanations. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He was born in Colombia in 1985. He came to the United States with his family in 2002. They applied for political asylum because they had been religiously persecuted. Applicant graduated from high school in the United States in 2003. He earned an associate's degree from a community college in 2006. He then attended a state university (2007-2010), earning a bachelor's degree. He became a U.S. citizen in October 2010. (Tr. 66-73; GE 1, GE 5)

In 2009 and 2010, Applicant attempted to found an internet start-up company with college friends. This was not successful. He then worked remotely, from the United States, for another friend with a business in Colombia, in 2010 and 2011. In May 2011, Applicant moved to Colombia to work for the same company, as an analyst. He lived and worked in Colombia for over three years, until September 2014. (SOR ¶ 3.c) (Tr. 73-74; GE 1)

At some point in 2010, Applicant met his future wife on-line. In December 2010, he went to Colombia to visit her. He used his U.S. passport to do so, since his Colombian passport had expired. However, in order to exit Colombia, he needed to renew his Colombian passport. (SOR ¶ 2.a) Applicant testified he used his U.S. passport to re-enter the United States. He used his Colombian passport for international travel between 2011 and 2014, when he was living there. (SOR ¶ 2.b) Applicant

¹ Applicant received a copy of the new AGs along with the Notice of Hearing. I also provided him a copy at the hearing. Tr. 16-17.

submitted documentation from his employer's facility security officer that his Colombian passport was destroyed in May 2015. (Tr. 94-101, 118-120, 133-134; GE 5, AE C)

In September 2014, Applicant returned to the United States with his wife. In December 2014, he began working as a software developer for his current employer, a defense contractor. He submitted an application for a position of public trust in January 2015. (Tr. 78, GE 1, GE 5) Applicant disclosed that at that time, his wife was in the United States on a tourist visa. He testified that his wife remains a Colombian citizen, but is now a permanent resident of the United States. (¶ 1.a) (Tr. 80-81)

In March 2016, Applicant's wife gave birth to twins. One of the twins was born with a serious medical condition. Applicant's wife went to Colombia to seek medical treatment for the child in summer 2017. His wife and the twins remained there for a month. Applicant travelled to Colombia for a week in July 2017, before returning with his family. He used his U.S. passport during this trip. (Tr. 88-94, 109-110, 133-134)

Applicant also disclosed on GE 1 that his wife is a former employee of the Colombian government. She formerly worked for a Colombian congressman (SOR ¶ 1.c), and also for a former minister of a Colombian government agency. On his application and in his background interview, Applicant indicated that his wife and the congressman remained in contact, as they had a "long-standing friendship." (GE 1 at 42, GE 5 at 5). He testified that he has met both the congressman and the minister, but his wife had very little current contact with either of them. Both men are now out of office. Applicant's wife has not worked since 2014, and now raises their children at home. (Tr. 84-86, 121-124)

Applicant's mother-in-law and father-in-law are citizens and residents of Colombia. (SOR ¶ 1.b) They live in a major city. Applicant's mother-in-law used to manage a small grocery store but is now retired. His father-in-law is a retired police officer, and Applicant testified that he believes his father-in-law has a pension. Applicant testified that he and his wife have a close relationship with her parents. Her parents came to the United States after their twins were born, and Applicant's wife stayed with her parents when she was in Colombia seeking medical care for her sick child. (Tr. 86-94; GE 1, GE 5)

Applicant also disclosed on his application that his wife maintains a bank account in Colombia for her use when she is there. (SOR ¶ 1.d) He reported that the account had about US \$20,000. (GE 1 at 40; GE 5) Applicant testified that his wife used some of the funds when she moved to the United States with Applicant in 2014. She also used most of the funds for their child's medical treatment in 2017. Applicant testified that the account remains open but is really more for emergency purposes (for a "rainy day"). Applicant testified that the account has less than \$10,000. (Tr. 90-92, 129-130) Applicant and his wife own no real estate or other property in Colombia. (Tr. 134-135)

Applicant's parents are citizens and residents of the United States. (Tr. 66-68, 102-104, 113; GE 1 at 31-33) His brother, who testified at the hearing, is a U.S. citizen.

He is a DOD employee, and has also served in the U.S. Air Force and Air National Guard for about 10 years. He currently has a security clearance. He owns his own home. (Tr. 53-65, 110-111, 124, 129-132)

Applicant's delinquent debts in the SOR total about \$16,500. All are consumer debts, and most are credit cards. He initially incurred the debts when he was in college. Applicant was unable to pay his debts due to the limited income he earned in his post-college years, both in the United States and in Colombia. (Tr. 107-110; GE 1 at 50-52)

SOR ¶¶1.a (a \$2,953 judgment) and 1.b (\$3,587, charged off) are owed to the same credit card company. They are the same debt. SOR ¶¶ 1.c (\$1,846), 1.d (\$3,054) and 1.f (\$2,101) are also credit-card debts. SOR ¶ 1.e (\$2,911) is a credit-card debt in collection). SOR ¶ 1.g is a charged off debt related to a repossessed auto, but no delinquent amount is alleged. The debts are all listed on Applicant's January 2015 credit report (GE 2). All but the repossessed auto are listed on his March 2016 credit report (GE 3). Three of the accounts (¶¶ 1.a, 1.c and 1.d) remain on a credit report from September 2017, the month of the hearing. (GE 4)

Applicant submitted one document with his answer. The document was largely in Spanish, but the names of the creditor bank and the collection agency are both in English. The account number is listed, and the amount owed on the debt is \$0. The document was not admitted since it is otherwise in Spanish, though it remains in the record as part of the answer. However, Department Counsel agreed that the document established that SOR ¶ 1.e had been paid. (Answer; Tr. 22-26) Applicant also provided two documents resolving two other debts to the same collection agency (debts which were not alleged in the SOR). (Tr. 50-52, 128; AE A, AE B)

Applicant testified that he began paying off his debts in January 2016, after he began working full time at his current job. His twin girls were born in March 2016. The fact that one of them was born with a serious medical condition led to two hospital visits, and increased medical costs. This impacted his ability to pay his other debts. (Tr. 108-110)

To help limit expenses, Applicant and his family moved in with his brother in June 2017. He does not pay rent to his brother, but contributes to household expenses. Applicant earns an annual salary of \$92,000. He testified that he plans on continuing to pay his delinquent debts "one by one" as best he can. Applicant testified that, particularly due to his connections with his brother, and his infant daughter's need for specialized medical care, he intends to remain in the United States with his family. (Tr. 80, 108 -110, 124-125, 135)

In a reference letter, Applicant's program manager stated that Applicant is a tireless and dedicated worker. She trusts him to complete whatever tasks he is assigned. He is a consistent member of the team, and he now has expertise in his job that he can share with others since he has been there for three years. (AE D)

Colombia

The Government did not request that I take administrative notice of any facts about Colombia, or about the United States' diplomatic relationship with the country. Nevertheless, I take administrative notice of the following facts, from information currently available on the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence.²

In its most recent Travel Warning for Colombia, issued on June 16, 2017, the U.S. Department of State warns U.S. citizens about the dangers of traveling there.³

Organized political and criminal armed groups are active throughout much of the country. Their methods include the use of explosives and bomb threats in public spaces. Violence associated with the armed groups occurs in rural areas, as well as in Colombia's major cities, including in the capital. These groups are heavily involved in the drug trade, extortion, kidnapping, and robbery.

On November 30, 2016, the Colombian government approved a peace accord with the largest guerrilla group, the Revolutionary Armed Forces of Colombia (FARC). The peace agreement is in the process of being implemented and does not include other active armed groups.

Violent crime is a threat throughout Colombia. Kidnapping remains a threat, although U.S. citizens are not specifically targeted. Violent political groups and other criminal organizations occasionally kidnap and hold civilians, including foreigners, for ransom.⁴

Policies

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust.⁵ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security [and trustworthiness] determinations should err, if they must, on the side of denials."⁶

² ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

³ <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/colombia-travel-warning.html> (U.S. State Department Travel Warning for Colombia, as of June 16, 2017).

⁴ See *id.*

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁶ 484 U.S. at 531.

The adjudicative 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the trustworthiness concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations

such as whether it is known to target U.S. citizens to obtain sensitive or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a trustworthiness concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, 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 or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared 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

(f) substantial business, financial or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”⁷

AG ¶¶ 7(a), 7(e) and arguably, 7(f), each require evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

The Government did not ask at hearing that I take administrative notice of any facts about Colombia to support a finding that it is a “heightened risk” country. Nor did the Government argue for application of either AG ¶¶ 7(a) or 7(e). Nevertheless, since a State Department travel warning for Colombia remains in effect, I find that at least some

⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

elements of heightened risk exist. AG ¶ 7(a) therefore applies, as does AG ¶ 7(e), since Applicant's wife (with whom he shares living quarters) is a Colombian citizen.

Applicant's wife maintains some money in a Colombian bank account. Even if the "heightened risk" element were not shown, this is enough to raise at least the potential for a "personal conflict of interest" under AG ¶ 7(f).

Applicant's personal and family connections to Colombia include his in-laws, and his wife's friendship with a former Colombian congressman. These connections raise a "potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology" under AG ¶ 7(b).

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) 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;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests or threats from persons, groups or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant disclosed his wife's former Colombian government employment on his SCA and in his background interview. AG ¶ 8(e) applies. She maintains some contact with her former employer, a former Colombian congressman, and Applicant acknowledged that they have a "longstanding friendship." There is no evidence that the

former congressman (who is now out of office) has sought to exert undue influence over her as a result of their friendship. Applicant also testified that his wife's current contact with him is now quite limited since she moved to the United States. AG ¶ 8(c) applies to him. It does not apply to Applicant's in-laws in Colombia, because their contact with Applicant and his wife is neither casual nor infrequent.

Applicant testified credibly that the funds in his wife's bank account have been depleted in recent years. His wife used some of the funds to finance her move to the United States, and for the medical expenses resulting from their daughter's serious medical condition. Applicant estimated that only about \$10,000 remains in the account. This pales in comparison to Applicant's \$92,000 annual salary. AG ¶ 8(f) applies.

There is no indication in the record that either Applicant, his wife, or her family, have been adversely affected by the ongoing risks of violence, crime and kidnapping in Colombia that are reflected in the current State Department travel warning. Indeed, Applicant returned to Colombia to live and work there for three years, without incident, before re-settling in the United States. While some elements of heightened risk exist, Applicant's personal circumstances significantly lessen the risk that he might be subject to exploitation, coercion, or duress through his relationship with his Colombian in-laws. AG ¶ 8(a) therefore applies.

Applicant was born in Colombia. He also lived and worked there for three years, and was married there, before returning to the United States with his wife in 2014. He was educated in the United States and has been a U.S. citizen since 2010. His immediate family, including his parents and the brother he now lives with, are all naturalized U.S. citizens who reside here. Applicant and his wife are raising their family here. While they have understandably strong connections to her parents in Colombia, Applicant testified credibly that his life is here and he intends to remain here. Applicant can therefore be expected to resolve any conflict of interest in favor of the best interests of the United States. Applicant met his burden of persuasion in establishing that AG ¶ 8(b) applies to mitigate the foreign influence trustworthiness concerns arising in this case.

Guideline C, Foreign Preference

AG ¶ 9 expresses the trustworthiness concern regarding foreign preference:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or

privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 describes conditions that could raise a trustworthiness concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(c) failure to use a U.S. passport when entering or exiting the U.S.; and

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

In analyzing the Guideline C allegations in this case, it is important to note that the SOR was issued under an earlier version of the adjudicative guidelines (as cited on page 1 of this decision). Under the prior version, an Applicant's "possession of a current foreign passport" was a disqualifying condition.⁸ Similarly, Applicant's renewal of his Colombian passport, and his use of that passport for international travel (SOR ¶¶ 2.a, 2.b), were also disqualifying, since both actions occurred after he became a U.S. citizen in October 2010.⁹

Under the new AGs, however, an applicant's renewal, use and possession of a foreign passport is not disqualifying, as long as: a) it is properly disclosed to appropriate security officials; and b) an applicant uses his or her U.S. passport when entering or exiting the United States. There is no allegation (or evidence) that Applicant ever failed to disclose his Colombian passport to proper U.S. security authorities at any time, and he disclosed it on his application. Applicant used his Colombian passport to travel internationally when he was living in Colombia. But he also testified that he used his U.S. passport when entering and exiting the United States. AG ¶ 10(c) is not established.

Further, the issue is moot, because Applicant's Colombian passport was destroyed in May 2015. This action mitigates SOR ¶¶ 2.a and 2.b under AG ¶ 11(e), "the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern." There is no evidence that Applicant has ever used his Colombian citizenship to protect financial or business interests in another country in violation of U.S. law. AG ¶ 10(e) does not apply.

This leaves only SOR ¶ 2.c, which alleges a foreign preference trustworthiness concern because Applicant returned to Colombia to live and work there shortly after becoming a U.S. citizen, in 2010. While this is true, it must also be noted that Applicant did so due to two understandable circumstances: a job and a relationship. There is no Guideline C disqualifying condition in the June 2017 AGs which applies to this conduct.

⁸ See September 1, 2006 Directive at ¶ 10(a)(1).

⁹ See September 1, 2006 Directive at ¶ 10(b) ("action to acquire or obtain recognition of a foreign citizenship by an American citizen").

An applicant does not express a “foreign preference” simply by taking a job in a foreign country, even one he began shortly after becoming a U.S. citizen.

Furthermore, even if this did constitute a Guideline C trustworthiness concern, that concern is rendered moot by the fact that Applicant returned to the United States in 2015 (with his wife), got a job, and renewed his life here. He also credibly expressed a clear intention to remain here with his family. The Guideline C trustworthiness concerns in this case are therefore fully resolved.

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁰

AG ¶ 19 provides conditions that could raise security concerns under the financial considerations guideline. The following are potentially applicable: ¶¶ 19 (a) inability to satisfy debts; and 19 (c) a history of not meeting financial obligations.

Applicant accrued multiple financial delinquencies during and after college. He denied SOR ¶ 3.g, a debt that was charged off, but no ongoing delinquency was either alleged or established by the record, so that account is not proven as an ongoing debt. The SOR debts are otherwise proven by Applicant's admissions and by the credit reports in the record. The above disqualifying conditions apply.

¹⁰ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant fell behind on repaying his debts when he was working in Colombia after college, earning limited income. To some extent, this was a circumstance beyond his control, though it was also his choice to live and work there. I give greater weight, however, to the unforeseeable circumstance that his wife gave birth to twins, including one with a serious medical condition requiring ongoing and costly treatment and care. Applicant testified that he began to pay down his debts once he found full-time employment in his current position. However, his ability and efforts to follow through on that plan were understandably sidetracked after the birth of his children. AG ¶ 20(b) therefore applies.

Applicant paid SOR ¶ 1.e and two other debts to that collection agency (not alleged). Two of the accounts (SOR ¶¶ 1.a and 1.b) are the same, so only one may be considered.¹¹ One account (¶ 1.g) has a zero balance. This leaves only SOR ¶¶ 1.a, 1.c, 1.d and 1.f, for a total of \$9,954. Applicant's debts are dated but they are also ongoing. AG ¶ 20(a) therefore does not apply.

However, the Appeal Board has held that it is not necessary to pay off all the debts alleged in the SOR, nor is it required that they be paid off in any particular way. What is required is only that an Applicant have a reasonable plan to pay off his debts, and have taken some steps towards execution of that plan.¹² I find that the record evidence supports this conclusion here, even if Applicant had to stop making payments on his debts after the birth of his children. AG ¶ 20(d) therefore applies.

¹¹ When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

¹² See, e.g., ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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(d):

(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(a), the ultimate determination of whether to grant eligibility for a determination of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant presented a credible case in mitigation and in support of his application for access to sensitive information. I observed Applicant's demeanor, and that of his brother, while they testified. I found both men to be honest and credible witnesses. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), I find that Applicant mitigated the trustworthiness concerns raised by his family connections to Colombia, his exercise of Colombian citizenship and about the state of his finances. The record evidence leaves me without questions or doubts as to his eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising in this case.

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 B:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Paragraph 3, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to sensitive information. Eligibility for access to sensitive information is granted.

Braden M. Murphy
Administrative Judge