



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



In the matter of:)
)
) ISCR Case No. 15-07845
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2018

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns relating to his connections to Colombia. He provided his Colombian passport to his security officer. He has strong connections to the United States. Eligibility for access to classified information is granted.

Statement of the Case

On June 10, 2015, Applicant completed and signed a Questionnaire for National Security Position (SF-86). On April 19, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines B (foreign influence) and C (foreign preference).

On May 11, 2016, Applicant responded to the SOR and requested a hearing. On June 30, 2016, Department Counsel was prepared to proceed. On August 4, 2016, the case was assigned to me. On September 28, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 27, 2016. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits; Applicant offered two exhibits; there were no objections, except for Department Counsel's objection to documents in Spanish; and all other proffered exhibits were admitted into evidence. (Transcript (Tr.) 10-12, 71-74; GE 1-2; Applicant Exhibit (AE) A-B) Applicant's exhibits in Spanish were admitted subject to inclusion of post-hearing translations of exhibits from Spanish into English. (Tr. 75) Applicant provided a certified translation after his hearing. (AE C) On November 4, 2016, DOHA received a copy of the transcript of the hearing. On December 9, 2016, Applicant provided one exhibit, which was admitted without objection. (AE C) The record closed on December 15, 2016. (Tr. 69, 74, 81-82)

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Ruling

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Colombia. (Tr. 11; HE 4) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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). Applicant did not object to me taking administrative notice of the proffered documents. (Tr. 11) Department Counsel's request for administrative notice is granted. The "Colombia" section in this decision is quoted verbatim from Department Counsel's administrative notice request without footnotes, quotation marks, and bullets for each

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

paragraph. However, portions of the administrative notice are out of date given positive changes that have taken place within Colombia since this hearing was held.

Findings of Fact²

Applicant's SOR alleges foreign preference security concerns because Applicant possesses a valid Colombian passport with an expiration date in April 2017 (§ 1.a), and he used that passport in lieu of his U.S. passport in October 2011, December 2011, and March 2014 (§ 1.b). Applicant's SOR alleges foreign influence security concerns because his mother (§ 2.a), father (§ 2.b), and sister (§ 2.c) are citizens and residents of Colombia. Applicant admitted the SOR allegations. (HE 2) He also provided mitigating information. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor who has been employed as a technical manager since 2003. (Tr. 11-12) He was born in Colombia. (Tr. 13) In 1991, he graduated from high school in Colombia, and in 1997, he received a bachelor's degree in mechanical engineering in Colombia. (Tr. 14) In 1997, he immigrated to the United States on a student visa. (Tr. 25) In 1999, he completed a master's degree in business administration in the United States. (Tr. 23-24) He has not served in the Colombian or U.S. armed forces. (Tr. 23) In 2011, he became a U.S. citizen, and he received a U.S. passport. (Tr. 26-27) His two children are ages five and seven. (Tr. 38) A security clearance is not essential to his continued employment. (Tr. 13) There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or violated any of his employer's rules.

Applicant and his spouse vote in U.S. elections. (Tr. 33) He has not voted in Colombian elections after becoming a U.S. citizen. (Tr. 39) His spouse was born in the United States. (Tr. 33) She is not of Colombian descent. (Tr. 34) Her parents and siblings reside in the United States. (Tr. 34-35) Applicant's children were born in the United States. (Tr. 33)

Applicant's father is employed in the importation and sales of specialized consumer products. (Tr. 15-17) His mother is not employed outside her home. (Tr. 17) He communicates with his parents on a weekly basis, and they visit Applicant's family in the United States annually. (Tr. 22, 64) His grandparents and 10 aunts and uncles live in Colombia. (Tr. 50-51) When he travels to Colombia, he visits various family members. (Tr. 49-50) None of his relatives in Colombia are affiliated with, or employed by, the Colombian Government. (Tr. 17, 52-53) He sends about \$250 annually to one of his aunts who is living in Colombia. (Tr. 53)

Applicant's younger sister is a citizen and resident of Colombia. (Tr. 20; SOR response) She does not work outside her home. (Tr. 20) Her husband is employed in the private sector, and he is not associated with the Colombian Government. (Tr. 21) He

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

communicates with his sister about once a month, and she has visited Applicant's family in the United States a "few times" in the last five years. (Tr. 23, 65) In 2011, Applicant sponsored her for permanent residency in the United States. (Tr. 65-66)

Applicant's older brother is a permanent resident of the United States. (Tr. 17-18) His spouse and two children live in the United States. (Tr. 19-20) The net worth of Applicant's property in the United States, including his home, bank accounts, and 401(k) account is about \$700,000. (Tr. 30-33, 36-37) He has a Colombian pension plan valued at about \$4,000 from his employment in college before he moved to the United States. (Tr. 33, 39-40)

Applicant offered to renounce his Colombian citizenship. (Tr. 28, 79) At the time of his hearing, he had retained an active or unexpired Colombian passport because a Colombian passport was required for any Colombian citizen to travel to Colombia. (Tr. 29, 44) He used his Colombian passport on a number of trips from 2008 to 2016 to travel to Colombia. (Tr. 46-47; GE 1; GE 2) He traveled to Colombia for a wedding, an anniversary, and birthdays for family in Colombia. (Tr. 47-49) All of his travel to Colombia was to visit his family. (Tr. 47) He planned to travel to Colombia using his Colombian passport in November 2017. (Tr. 70-71) In 2010 and 2011, he went to Brazil, and he used his Colombian passport. (Tr. 55) He traveled to Brazil for business, and he needed to use his Colombian passport because he did not need a visa to travel to Brazil. (Tr. 55) For his most recent travel overseas, he used his U.S. passport. (Tr. 56) At his hearing, he said he planned to give his Colombian passport to his security officer. (Tr. 29) On December 2, 2016, he provided his Colombian passport to his security officer. (AE C) His security officer indicated if Applicant asked for his Colombian passport, he would file an "incident report" to DOD. (AE C)

When Applicant traveled to Colombia after 2009, he did not take his spouse or children with him because of the high levels of crime in Colombia. (Tr. 63-64) Some of his family in Colombia have been the victims of crimes such as car theft. (Tr. 63-64)

Character Evidence

Applicant's overall excellent performance evaluations, a 2008 award, emails in March 2014, and photographs of aircraft his employer provided to an ally establish Applicant's important contributions to the U.S. national security and our allies. (AE A; AE B) Applicant is a diligent and dedicated employee of a defense contractor. (AE A; AE B) A manager described Applicant as loyal to the United States, dedicated, diligent, honest, patriotic, and trustworthy. (AE C)

Colombia

For nearly 50 years, Colombia has experienced conflict with illegal armed groups, including Marxist guerillas and transnational criminal and narcotics trafficking organizations.

The Secretary of State has designated two Colombian groups - the Revolutionary Armed Forces of Colombia (FARC), and the National Liberation Army (ELN), as Foreign Terrorist Organizations. Peace talks between the Government of Colombia and FARC began in October 2012, and are ongoing. The FARC and ELN focused on low-cost, high-impact asymmetric attacks, as they did in 2014, and both groups continue to condemn any U.S. influence in Colombia.

In its most recent Travel Warning for Colombia, issued on April 5, 2016, the U.S. Department of State warns U.S. citizens about the dangers of travel to Colombia, and specifically the potential for violence by terrorist groups and armed criminal gangs called "BACRIMs" in all parts of the country. BACRIMs are heavily involved in narco-trafficking, extortion, kidnapping, and robbery, and violence associated with their activities has spilled over into many major metropolitan areas.

Terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for ransom. No one is immune from kidnapping on the basis of occupation, nationality, or other factors.

According to the U.S. Department of State's 2015 Human Rights Report, the Colombian government continued efforts to prosecute and punish perpetrators of abuses, including members of the security services. The most serious human rights problems were impunity, an inefficient judiciary, forced displacement, corruption, and societal discrimination. Other problems included extrajudicial and unlawful killings; insubordinate military collaboration with members of illegal armed groups; forced disappearances; overcrowded and insecure prisons; harassment and attacks against human rights groups and activists, including death threats and killings; violence against women and girls; trafficking in persons; and illegal child labor. Illegal arms groups--including the FARC and the National Liberation Army (ELN), as well as organized crime groups (some of which contained former paramilitary members) -- committed numerous abuses, including the following: political killings; killings of members of the public security forces and local officials; widespread use of land mines and improvised explosive devices (IEDs), kidnappings and forced disappearances; sexual and gender-based violence; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment and use of child soldiers; attacks against human rights activists; and killings, harassment, and intimidation of teachers and trade unionists.

All U.S. citizens who do not also hold Colombian citizenship must present a valid U.S. passport to enter and depart Colombia. U.S. citizens traveling to Colombia do not need a Colombian visa for a tourist/business stay of 90 days or less.

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 has two conditions that could raise a security concern and may be disqualifying in this case:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect 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.

Applicant has frequent contacts with his parents and sister who are citizens or residents of Colombia. His contacts with family are a manifestation of his affection for them. His communications and relationships with his relatives in Colombia are sufficient to raise a security concern.

The mere possession of close family ties with one or more family members living in a foreign country is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002).

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Colombia with the United States, and the situation in Colombia places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Colombia do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Colombia.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives, criminals, or terrorists from foreign countries seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Colombia has problems with terrorism and widespread crime. Applicant's relationships with relatives who are living in Colombia create a potential conflict of interest because terrorists or criminals could place pressure on his family living in Colombia in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's contacts and relationships with family residing in Colombia. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited application, and 8(b) applies. Applicant frequently communicates³ with his parents and sister who are citizens and residents of

³ The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

Colombia. He frequently visited Colombia and his Colombian relatives have often visited Applicant. His relationships with family members residing in Colombia are sufficient to cause security concerns. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 1997, Applicant immigrated to the United States, and in 2011, he became a U.S. citizen. He is married to a U.S. citizen; his two children are U.S. citizens; and his brother is a U.S. permanent resident.

Applicant's years of support to a DOD contractor weigh towards mitigating security concerns. He has shown his patriotism, loyalty, and fidelity to the United States during his employment.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Colombia. His relatives living in Colombia are at risk from terrorists and criminals, and Applicant's access to classified information could theoretically add risk if the terrorists or criminals discover he has relatives in Colombia.

In sum, Applicant's connections to his relatives living in Colombia are less significant than his connections to the United States. His employment in support of the U.S. Government, his investments of about \$700,000 in the United States, his U.S. residence and citizenship of his spouse and children, and his U.S. citizenship are important factors weighing towards mitigation of security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B. Even if foreign influence security concerns were not mitigated under Guideline B, they would be mitigated under the whole-person concept, *infra*.

Foreign Preference

AG ¶ 9 explains the security concern about foreign preference stating:

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 lists conditions that could raise a security concern and may be disqualifying including:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

AG ¶ 10(c) applies. Applicant used a Colombian passport to enter Colombia and leave Colombia every year from 2011, when he became a U.S. citizen, to November 2017. As a Colombian citizen, he had to use a Colombian passport to enter and exit Colombia, even though he was also a citizen of the United States. It is unclear whether he used a U.S. passport to enter or leave the United States. At the time the hearing was held, the disqualifying condition focused on possession of a foreign passport and not on whether it was used to enter or leave the United States. I will assume for purposes of this decision that he used his Colombian passport to enter and exit the United States.

AG ¶ 11 describes conditions that could mitigate security concerns including:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
- (c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;

(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk;

(g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law; and

(h) any potentially disqualifying activity took place after receiving the approval by the agency head or designee.

AG ¶¶ 11(a), 11(c), 11(e), and 11(f) apply. Applicant has expressed a willingness to renounce his Colombian citizenship. He provided his Colombian passport to his security officer. Colombia and the United States maintain a positive relationship and any foreign preference, if detected, poses a low national security risk. Foreign preference security concerns are mitigated.

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(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(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B and C are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 42-year-old employee of a defense contractor who has been employed as a technical manager since 2003. He was born in Colombia. He graduated

from high school and received a bachelor's degree in mechanical engineering in Colombia. In 1997, he immigrated to the United States on a student visa. In 1999, he completed a master's degree in business administration in the United States. In 2011, he became a U.S. citizen, and he received a U.S. passport. His net worth in the United States is about \$700,000. His spouse and two children were born in the United States.

Applicant's character evidence establishes Applicant's important contributions to the U.S. national security and our allies. He is a loyal, dedicated, diligent, honest, patriotic, and trustworthy employee of a defense contractor.

Applicant's parents, sister, and 10 aunts and uncles are citizens and residents of Colombia. He frequently communicates with his parents and sister. He frequently travels to Colombia to visit family, and his parents and sister have visited Applicant in the United States. He held and used a Colombian passport to enter and exit Colombia until December 2, 2016. Any relationships with citizens and residents of Colombia and possession and use of a foreign passport raise important security concerns, and they must be balanced against his connections to the United States.

A Guideline B decision concerning Colombia must take into consideration the geopolitical situation and dangers there.⁴ Colombia is a dangerous place because of violence from terrorists and criminals. These entities continue to threaten the Colombia Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Colombian Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Colombia Governments are allies in the war on terrorism and in their efforts to suppress illegal drugs from entering the United States.

In 1997, Applicant immigrated to the United States, and in 2011, he became a U.S. citizen. When he became a U.S. citizen, he took an oath of allegiance to the United States. He offered to renounce his Colombian citizenship, and he gave his Colombian passport to his security officer. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or violated any of his employer's rules.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and foreign preference security concerns are mitigated.

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

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
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Subparagraphs 1.a and 1.b:	For Applicant
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Paragraph 2, Guideline B:	FOR APPLICANT
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Subparagraphs 2.a, 2.b, and 2.c:	For Applicant
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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.

Robert Tuider
Administrative Judge