



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXXXXXXXXX	)	ADP Case No. 16-01895
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Robert B. Blazewick, Esquire, Department Counsel  
For Applicant: Eric A. Eisen, Esquire

03/28/2018

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant's eligibility for a public trust position.

On 16 September 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant alleging trustworthiness concerns under Guideline C,<sup>2</sup> Foreign Preference, Guideline E, Personal Conduct, and Guideline B, Foreign

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, hearing exhibit (HE) I, and Applicant exhibits A-C.

<sup>2</sup>At hearing, Department Counsel withdrew paragraph 1, which alleged passport-related conduct that was potentially disqualifying under the old guidelines, but which is not disqualifying under the new guidelines. I renumbered the remaining paragraphs (Tr. 4-5)

Influence.<sup>3</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 26 September 2017, and I convened a hearing 21 February 2018. DOHA received the transcript 3 March 2018, and the record closed.

### **Findings of Fact**

Applicant admitted the allegations of the SOR. He is a 45-year-old lead systems engineer employed by a defense contractor since April 2012. He has been employed in essentially the same position with two other defense contractors since February 2000.<sup>4</sup> This is a reinvestigation of the favorable public trust eligibility he was granted in May 2013, based on a December 2012 background investigation. He also had a favorable background investigation in June 2001, preparatory to his initial employment,<sup>5</sup> as well as a favorable background investigation by U.S. Citizenship and Immigration Services in October 2011, preparatory to his being granted U.S. citizenship in November 2011.

Applicant was born in Colombia in May 1972. He grew up there and was educated there until he was 19-years-old. In January 1992, he immigrated to the U.S. to attend college. He obtained his undergraduate degree in electrical engineering and computer engineering in May 1997; he obtained a graduate degree in engineering management in May 2000. He received a project management professional certificate in June 2005.

Applicant married another Colombian national in July 2007. They have two U.S.-born sons together, born in August 2012 and January 2014. Applicant became a naturalized U.S. citizen in November 2011, and obtained his U.S. passport in December 2011.

When Applicant immigrated to the U.S. in January 1992, he did so on a Colombian passport. As required by U.S. immigration law, he maintained that passport. At the time of his March 2015 application for a public trust position (GE 1), his most recent Colombian passport was issued in January 2008, to expire in January 2018. He used that passport to travel to Colombia 22 times between February 2008 and May 2012; he had used the previous edition of his Colombian passport to travel to Colombia seven times between July 2005 and January 2008 (GE 1).

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<sup>3</sup>DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

<sup>4</sup>He has also worked as a self-employed real estate investor since April 2001, and as a realtor since June 2008.

<sup>5</sup>Which was not formally adjudicated because he was not yet a U.S. citizen.

When Applicant was first granted eligibility for a public trust position in May 2013, he had surrendered his Colombian passport to his facility security officer (FSO), consistent with the then-applicable AG. Thereafter, he only used his U.S. passport for his foreign travel, including his travel to Colombia. Between December 2012 and December 2014, he used his U.S. passport eight times to travel to Colombia. However, on this last visit to Colombia, he was told by Colombian immigration authorities that he would be fined on future trips to Colombia if he did not use his Colombian passport. In January 2015, he retrieved his Colombian passport from his FSO, and used it to enter Colombia twice in January 2015, and in February 2015. These trips were associated with his father's final illness. In January 2015, Applicant's FSO submitted an incident report on this conduct, causing this reinvestigation (GE 2). Applicant renewed his Colombian passport in July 2015.

Applicant's 88-year old mother is a resident citizen of Colombia. She has never worked outside the home. His brother and half-brother are resident citizens of Colombia, as are his mother-, father-, and brothers-in-law. None of them are, or were, employed in positions related to the Colombian government. In addition, Applicant jointly owns—with his mother, brother, and half-brother—five residential properties in Colombia, valued at approximately \$2,800,000. Applicant's father founded a real estate company in Colombia, and when he purchased properties, he included his wife and sons as joint owners of the properties. The estimated value of Applicant's share is \$750,500 (AE B). He also has about \$6,000 in Colombian banks (Tr. 42), and derives some small income from the Colombian properties, one of which his mother lives in (Tr. 45). However, Applicant owns 14 properties in the U.S. valued at over \$14,000,000 (AE C). His equity share in these properties is over \$8,600,000. He also has about \$250,000 in a 401K account and another \$600,000 in an investment account in the U.S. (Tr. 33-34). Applicant reported his foreign birth, his foreign relatives, his foreign travel, and his foreign financial interests in great detail on his March 2015 application for a public trust position (GE 1).

Department Counsel proffered no documentation for official notice of the Government's view of U.S. relations with Colombia. Specifically, the Government presented no evidence that Applicant's contacts with Colombia created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, or that Colombia was associated with a risk of terrorism.

Applicant's past and present supervisors and coworkers, his friends and neighbors, and contracting-agency employees—several of whose contacts go back many years—praise his honesty and trustworthiness as well as his job performance, and attest to his commitment to the U.S. (AE A). None of his work contacts have noticed any improprieties handling sensitive information. All recommend him for his public trust position.

## Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline E (Personal Conduct) and Guideline B (Foreign Influence).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>6</sup>

## Analysis

The Government failed to establish a case for disqualification under Guideline E. The conduct complained of—regaining possession of his Colombian passport in January 2015, and renewing his Colombian passport in July 2015—is fully cognizable as an exercise of foreign preference under Guideline C, an allegation the Government withdrew at hearing. The disqualifying condition cited by the Government, ¶16 (d), is not satisfied.<sup>7</sup> Accordingly, I resolve Guideline E for Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a

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<sup>6</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup>¶16 (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable, judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This included but is not limited to consideration of: . . . (3) a pattern of . . . rule violations.

national security concern if 1) if they result in divided allegiance, 2) 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 3) otherwise make Applicant vulnerable to pressure or coercion by any foreign interest.

Assessment of foreign contacts and interests can and 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.<sup>8</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>9</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, that could subject the individual to heightened risk of foreign influence or exploitation.<sup>10</sup>

In this case, the government did not establish that Applicant's contacts with his family in Colombia created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. The government also did not establish that Applicant's financial interests in Colombia were sufficient to create a heightened risk of influence or exploitation.

Examining Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with family in Colombia. Applicant has resided in the U.S. over half his life, and most of his adult life. His most significant financial interests are all in the U.S. His contacts with his family in Colombia are routine. There is nothing in the circumstances of their being in Colombia, or in Applicant's contacts with them, to heighten the risk that he could be impelled or compelled to provide protected information to Colombia. Similarly, his property interests in Colombia amount to less than ten per cent of his net worth, not including savings and retirement funds, an amount I consider insubstantial under the circumstances of this case.

Even if I were to assume that the Government had established security concerns based on his contacts with Colombian nationals and his property interests there, I

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<sup>8</sup>AG, ¶6.

<sup>9</sup>AG, ¶7(a).

<sup>10</sup>AG, ¶7(f).

conclude that he has mitigated the trustworthiness concerns. His eight character references, comprising friends, neighbors, coworkers, and contracting-agency employees—many of which are long-standing—attest to his honesty, trustworthiness, and his commitment to his life in the U.S. His contacts in Colombia are routine, and none of his contacts in Colombia are, or have been, involved in activities that would make it likely that Applicant would have to choose between their interests or those of the U.S.<sup>11</sup> Similarly, both the value and nature of his property interests are such that they are unlikely to be used effectively to influence him.<sup>12</sup> The value is not significant, compared to his U.S. holdings. I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraphs a-e: For Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>11</sup>AG, ¶8(a).

<sup>12</sup>AG, ¶8(f).