

SYNOPSIS

Applicant was born and raised in Ecuador to parents of Ecuadoran descent. Since immigrating to the U.S., Applicant has become a naturalized U.S. citizen, and established himself as a reliable and trusted production machinist with a U.S. defense contractor. Applicant's birth parents and two sisters are citizens of Ecuador, reside in Ecuador, and are demonstrably close to Applicant. None of his immediate family members remain in a position that could realistically make them vulnerable to coercion or pressure that could implicate Applicant and compel him to make decisions about competing loyalties. Applicant mitigates potential risks to undue foreign influence concerns caused by the status of his parents and siblings being citizens and residents of Ecuador. Clearance is granted.

STATEMENT OF THE CASE

On March 15, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 17, 2007, and requested a hearing. The case was assigned to me on June 12, 2007, and was scheduled for hearing on July 24, 2007. A hearing was convened on July 24, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on two witnesses (including himself) and three exhibits. The transcript (R.T.) was received on August 3, 2007.

Besides its two exhibits, the Government requested administrative notice of five documents: U.S. Department of State, Bureau of Western Hemisphere Affairs, *Background Note: Ecuador* (January 2007), U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet on Ecuador* (June 12, 2006); Excerpt from, U.S. Department of State, Office of the Coordinator of Counterterrorism, *Country Reports on Terrorism, Chapter 2-Country Reports: Western Hemisphere Overview* (April 30, 2007); U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Ecuador: Country Reports on Human Rights Practices-2006* (March 6, 2007); and U.S. Department of Defense, Defense Security Service Training Office, *Recent Espionage Cases: Summaries and Sources* (July 1997).

For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Ecuador. Administrative notice was extended to the documents themselves in accordance with the provisions of Rule 201 of F.R. Evi. Administrative notice was accorded the documents themselves, but the notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Ecuador's current state.

PROCEDURAL ISSUES

_____ At the outset of the hearing, Department Counsel requested leave to strike sub-paragraphs 1.d and 1.e of the SOR. There being no objections, and good cause being demonstrated, Department Counsel's request was granted.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged (a) to have a father (who currently serves in the Ecuadorian Army with the rank of Sub-officer first), mother and two sisters who are citizens and residents of Ecuador, (b) to have a friend who is a citizen of Venezuela and resides in the U.S., and (c) to have traveled to Mexico in 2005. For his answer to the SOR, Applicant admitted each of the allegations in the SOR without any explanation.

FINDINGS OF FACT

_____ Applicant is a 34-year old production machinist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant is married with two adopted children (ages and 7). His wife and children are U.S. citizens by birth. After completing three years of college in Ecuador, Applicant emigrated from his birth country Ecuador to the U.S. in February 2000 following his marriage in February 1999 to his current spouse (*see ex. A*; R.T., at 46-47, 52-53). Upon establishing residency in the U.S., he immediately applied for U.S. citizenship. He was granted U.S. citizenship in April 2005, and was given an interim clearance with his current employer the same month.

Applicant's father and mother are citizens and residents of Ecuador (*see ex. 2*). His father serves in the Ecuadoran Military Academy as a supervisor with the rank of sub-officer first (R.T., at 32-35, 55) His mother is a homemaker (R.T., at 34, 54). Applicant regularly stays in touch with his parents. His contacts vary from weekly to monthly, but mostly bi-weekly (R.T., at 34). Applicant's parents are in good shape financially and receive no financial assistance from him. Applicant's father (age 54) is a member of his Army volleyball team and has no Ecuadoran security clearance (R.T., at 35, 55). The father expects to retire soon and is eligible to receive both retirement and medical benefits (R.T., at 56). While Applicant's parents are generally aware of the former's employment by his current defense contractor and his work on missiles, they are not aware of any of the specifics of his work or that possesses a security clearance (R.T., at 57).

Besides a brother who is a naturalized U.S. citizen, Applicant has two sisters who are citizens and residents of Ecuador (*ex. 2*). One sister is married and a homemaker; her husband works in the transportation sector. This sister has never been in the U.S. Applicant speaks to twice a year and has e-mailed her on a couple of occasions (R.T., at 58).

Applicant's other sister is a college student majoring in mathematics. She, too, has never traveled to the U.S., and is unmarried. Applicant and this sister exchange e-mails several times a year (R.T., at 59).

Applicant traveled to Ecuador on one occasion since immigrating to the U.S. in 2000. He traveled to Ecuador in 2004 on his Ecuadoran passport, which has since expired (R.T., at 59-60). Both his wife and children accompanied him on this trip to Ecuador, using their U.S. passports (*see ex. C*; R.T., at 62-63). He has sent money to both sisters on a couple of occasions. His remittances vary in amounts, ranging from \$60.00 to \$150.00 (R.T., at 67-68)). Applicant has since applied for a U.S. passport and awaits a State Department response (R.T., at 60). Neither Applicant nor any of his U.S. based family members have traveled to Ecuador since their last trip in 2004, and they have no current intentions to do so in the future.

Applicant's wife applied for Ecuadoran citizenship in 1999 and was granted her citizenship. She has never applied for or received an Ecuadoran passport (R.T., at 64-65). Applicant's parents plan to visit Applicant in Summer 2007, following the father's retirement from the Ecuadoran military (R.T., at 65-66).

Applicant has no intent to return to Ecuador to live and has no reason to believe any family member in Ecuador is at risk to pressure, coercion, or compromise (R.T., at 68). Among his U.S. located assets is his established 401(k) retirement account with a reputable U.S. investment firm (*see ex. C*). Neither he nor his wife have any assets in Ecuador (R.T., at 51).

Applicant regularly attends church with his local friends (R.T., at 73-75). He is credited by one friend, with whom he has attended church with over the past two years, with exceptional character and willingness to assist others (R.T., at 74).

Ecuador's country status

Ecuador is a constitutional republic with a population of 13.5 million (*see U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Ecuador: Country Reports on Human Rights Practices-2006*, at p. 1 (March 6, 2007)). The government is democratically elected and includes a president with 15 cabinet ministers, a unicameral legislature, and a court system that includes a supreme court and provincial courts (*see State Department Background Note: Ecuador*, pps. 1-4 (March 2007)). Ecuador's political parties have historically been small, loose organizations that depend more on populist, charismatic leaders to retain support than on programs or ideology (*see id.*, at p. 4). Of political interest, none of the last three democratically elected presidents finished their terms because of political instability. Ecuador's most recent president (Rafael Correa), running on an anti-establishment reform platform bested his opponent (Gustavo Noboa) in a second round presidential runoff in November 2006 that is generally considered to have been free, fair and transparent by election observers (*see id.*, at p. 3). Correa was sworn in as Ecuador's new present in January 2007 (*id.*)

By Latin America standards, Ecuador has a fairly decent record for respecting human rights (*see State Department Country Report on Human Rights Practices in Ecuador-2006*, pps. 2-15 (March 2007)). Ecuador's constitution bars torture and similar forms of intimidation and punishment, as well as arbitrary arrest and detention. Its constitution also provides for an

independent judiciary. And the country's laws prohibit incommunicado detention (see *id.*; R.T., at 42). Still, human rights organizations report incidents of police torture and other cruel, inhumane, or degrading treatment or punishment. Criminal kidnaping for profit has continued to be a problem in certain regions of the country, and there have reported cases of arbitrary arrest and detention. Political and economic pressures and corruption in the national police and the courts have also been reported and remain a source of continuing U.S. concern. These reports cover specifically cited instances of human right deprivations, including improper conduct by security forces, criminal activity in the National Police, corruption, and due process denials in the courts (*see id.*).

Ecuador has a mixed record, too, on its historical protection of foreign property rights. Twice in the last half-century, it has nationalized the property of U.S. firms. In 1970, it nationalized the local interests of an ITT subsidiary, and more recently (in May 2006), it seized the assets of Occidental Petroleum (at the time the country's largest U.S. investor). Ecuador, though, has historically been a party to bilateral investment treaties with the U.S. that include dispute mechanisms for resolving commercial disputes through international arbitration. With its acceptance of arbitration of the Occidental case, Ecuador exhibits its sustaining commitment to the rule of contract, a formative prerequisite for continuing investment partnering with U.S. firms (*see Background Note: Ecuador, supra*, at pps. 4-5).

For many years, the U.S. and Ecuador have maintained close ties based on a shared interest in maintaining democratic institutions, combating narco-trafficking, building trade, investment and financial relationships, cooperating in fostering Ecuador's economic development, and participating in inter-American organizations. Ecuador stresses its multilateral approaches to resolving hemispheric and international issues and is a member of both the United Nations and the Organization of American States (OAS), along with such regional groups as the Rio Group, the Latin American Economic System, the Latin American Energy Organization, and the Andean Pact (*see Background Note: Ecuador, id.*, at pps. 5-6; R.T., at 37-38).

Despite its strong regional standing in the Americas, Ecuador has experienced major border disputes with two of its neighbors over the past century. A border dispute with Peru spanned over 50 years (1942 to 1997) and occasionally entailed armed hostilities between the two countries (*see Background Note: Ecuador, id.*, at pps. 5-6). A significant espionage case arose out of this border dispute that enveloped U.S. intelligence interests. These issues have subsided, however, and appear to have resolved themselves.

Of more pressing security concern to Ecuador is its ongoing border conflict with Colombia along its 450-mile-long northern border. This conflict involves counter terrorism and security threats from Colombian foreign terrorist organizations, frequently lined with narcotics trafficking organizations, along its northern border (*see Excerpt from U.S. Department of State, Office of the Coordinator of Counter terrorism, Country Reports on Terrorism, Chapter 2-Country Reports: Western Hemisphere Overview*, at p.6 (April 2007)). Members of the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) were reported to be widely present on the Colombia side of the border and regularly entered Ecuadorian territory (generally as unarmed civilians) for rest and resupply. *See id.*

Border instability attributable to frequent encroachment by Colombian guerillas into Ecuadorian territory has prompted Ecuador's army to deploy more troops to the region (*see*

Background Note: Ecuador, supra, at p 5). Although Ecuadorian officials have publicly deplored Colombian guerilla activity and amassed armed forces along the border to interdict guerilla bands from Colombia, encroaching guerillas have been known to extort and intimidate local populations, and raises some security concerns for U.S. citizens residing in Ecuador (*id*). For the record, some 10 U.S. citizens have been kidnaped near Ecuador's border with Colombia since 1998 (*see* U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet on Ecuador*, at p.2 (June12,2006).. One of these kidnaped victims was reportedly murdered by the kidnappers holding him for ransom (*see id.*)

Ecuador has continued to work closely with the U.S. and other donors, though, to promote lawful economic activity and development in the north, and Ecuador's Congress has ratified the Inter-American Convention against Terrorism (*see Excerpt from U.S. Department of State, Office of the Coordinator of Counter terrorism, Country Reports on Terrorism, Chapter 2-Country Reports: Western Hemisphere Overview, supra*, at p. 6; R.T., at 38-40). All in all, Ecuador remains a friendly country with democratic institutions and strong inter-governmental relations with the U.S. Historically, the country has shown little inclination to coerce or pressure U.S. citizens to provide classified or proprietary data, or in any way attempt to compromise sensitive and classified US. Information.

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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 the this Guideline can and should considered 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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant was born in Ecuador to parents of Ecuadoran descent and immigrated to the U.S. in 2000. He became U.S. citizen in 2005, and is a highly regarded production machinist for a U.S. defense contractor. Security issues of concern to the Government focus on members of Applicant's immediate family (his birth parents and two sisters) who are citizens and residents of Ecuador, a country not historically unfriendly to the U.S., but one with reported instances of human rights abuses, destabilizing border disputes, and occasional engagement in economic data collection in the U.S.

Government urges security concerns over risks that Applicant's immediate family members that are citizens and residents of Ecuador might be subject to undue foreign influence by Ecuadorian authorities to access classified information in Applicant's possession or control. Because Applicant's birth father (who currently serves in the Ecuadorian Army with the rank of sub-officer first), birth mother, and two siblings are citizens of and reside in Ecuador, they present potential security risks covered by Disqualifying Condition (DC) 7(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*) of the Adjudication Guidelines for foreign influence.

The citizenship/residence status of Applicant's immediate family members residing in Ecuador pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. DC 7(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) has possible application due to the presence of Applicant's immediate family members in Ecuador, and his father's current service in the Ecuadorian Army.

From what is known from the accounts of Applicant, neither Applicant nor his parents and siblings have any (a) current financial or political affiliations with the Ecuadorian government, (b) history of being subjected to any coercion or influence, or (c) apparent exposure to coercion or influence. While it is not clear whether his father's service in the Ecuadorian Army has been as an officer or enlistee, his rank and participation on the Ecuadorian volleyball team does not suggest any military or political connections that could afford him any kind of special access and connections with high level Ecuadorian political, intelligence, or military officials.

Mitigation is certainly present based on the presented record. Both Applicant's relationships with his family members and political conditions on the ground in Ecuador suggest no heightened risks of compromise that could put Applicant's relationships with his immediate family members at risk to a potential hostage situation. Ecuador's political and security conditions, while problematic at times, considering the reports of its recurrent border disputes, data collection activities, and human rights deprivations, remain essentially stable. Security risks extant due to Applicant's having immediate family members who are citizens and residents of Ecuador remain manageable ones. Applicant, accordingly, may take advantage of one important mitigating condition: MC 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.*).

Ecuador is a country that in the past has targeted the U.S. for economic and proprietary data collection, but is a country with a long history of democratic institutions and constitutional protections of personal and property rights. While there have been reports of human rights violations by the security forces and national police, nationalization of U.S. property interests, and destabilizing border disputes with Peru and Colombia, Ecuador's public institutions and jurisprudential development has generally reflected a basic respect for the rule of law by most published accounts. Ecuador still continues to maintain strong diplomatic interests with the U.S., and has shown its disposition to participate in multilateral institutions that include the U.S. and its hemispheric partners and friends, and to be helpful in strategic efforts to promote security and development in the Americas.

The revised Adjudicative Guidelines governing collateral clearances still do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. But they do place major emphasis on the status of the foreign country of concern.

As for security concerns associated with the presence of Applicant's immediate family members in Ecuador, security risks of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant is remote at present, given the demonstrated track records of Applicant and his family members and the status of Ecuador as a constitutional democracy.

Overall, considering both the guidelines and whole person assessment of Applicant in juxtaposition to one another, potential security concerns attributable to Applicant's immediate family members (*viz.*, his birth parents and sisters) are sufficiently mitigated at this time to satisfy minimum requirements for security clearance. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in E2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance.

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Sub-para. 1.a:	FOR APPLICANT
Sub-para. 1.b:	FOR APPLICANT
Sub-para. 1.c:	FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge