



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



In the matter of:)
)
) ISCR Case No. 14-05703
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Gregory Greiner, Esq.

09/14/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign preference and foreign influence security concerns raised by her former possession of a Columbian passport, and her relatives who are Columbian citizens and/or residents. Clearance is granted.

Statement of the Case

On December 12, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, foreign influence, and C, foreign preference. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on February 6, 2015, admitting all of the allegations, and requesting a decision based on the written record. It is unclear whether

she later changed her mind and requested a hearing, or whether Department Counsel requested a hearing. The case was assigned to me on June 8, 2015. On July 16, 2015, a notice of hearing was issued scheduling the case for August 5, 2015. The hearing was conducted as scheduled. I admitted two Government exhibits marked as Government Exhibits (GE) 1 and 2, and four Applicant exhibits marked as Applicant Exhibits (AE) A through D. Also, Applicant and two character witnesses testified. At Department Counsel's request, I took administrative notice of facts about Columbia contained in seven documents marked as Hearing Exhibits (HE) I through VII. DOHA received the transcript (Tr.) on August 13, 2015.

Findings of Fact

Applicant is a 41-year-old married woman. She has been married since 2013. She was married previously, from 2004 to 2010. Her first marriage ended in divorce. (GE 1 at 29) Her current husband owns a landscaping business.

Applicant was born, raised, and educated in Columbia. She earned a bachelor's degree in civil engineering in 2003 and a master's degree in environmental studies in 2004. (Tr. 26). After she met her first husband, a U.S. Marine, she married him and moved to the United States. Shortly after immigrating to the United States, Applicant enrolled in English lessons at the local community college. She "couldn't say a word in English" when she first arrived from Columbia. (Tr. 52) She has been a naturalized U.S. citizen since June 2008. (Answer at 3)

When Applicant immigrated to the United States, she was working as a project engineer for a civil engineering firm in Columbia. After relocating, she spent a few years working, at different times, as a department store sales clerk and a waitress. (Tr. 28; GE 1 at 22) As Applicant's command of the English language improved, her job options increased, enabling her to obtain a job in her field in 2007. (GE 1 at 21) She has been working for her current employer as a civil engineering project manager since 2012. (GE 1 at 17) Applicant has no contacts from her job in Columbia. (Tr. 74)

Per the company president, Applicant is among an elite group of employees whom he considers the "whole package, i.e. treat[ing] their professional discipline as a vocation, [giving] 100% to the client . . . [and] working hard to participate in the culture and adhere to the policies of the company." (AE D at 2) Per the vice president of the company where Applicant works, she is highly regarded by their client. The quality of her work product and the positive client feedback consistently demonstrate her professionalism and trustworthiness. (Tr. 21) Applicant is a member of several professional trade organizations. (Tr. 48)

Applicant's parents are citizens and residents of Columbia. Her father owned a pharmacy before retiring. (Tr. 39) He is in ill health, suffering from dementia. Applicant's mother is a homemaker. She spends her time caring for Applicant's father. (Tr. 40) She communicates with her parents regularly. This past summer, Applicant's mother visited her in the United States. (Tr. 44)

Applicant's older brother is a citizen and resident of Columbia. He is a psychiatrist. (Tr. 42) As a member of a professional organization of psychiatrists, based in the United States, he travels here frequently. (Tr. 43) Applicant's brother does contract work for several entities in Columbia, including the Columbian army. He counsels soldiers struggling with post-traumatic stress disorder. (Tr. 44) Applicant talks with her brother approximately once per week.

Applicant's younger brother is a dual citizen of Columbia and Spain. He married a Spanish native citizen several years ago, then relocated there. Recently, they moved to Canada. Applicant is not close to her younger brother and does not communicate with him frequently. (Tr. 46)

Since immigrating to the United States, Applicant has travelled to Columbia approximately twice per year to visit her family. Despite acquiring a U.S. passport when she became a U.S. citizen, Applicant continued to use her Columbian passport to enter and exit Columbia. She renewed it in 2010. She continued to use her Columbian passport because she was told by a Columbian customs officer, during one of her trips, that she was obligated, as a Columbian citizen to use her Columbian passport when entering the country, and that if she did not, she may not be allowed to leave the country. (Answer at 1; Tr. 34)

In January 2015, upon becoming aware of the implications of possessing a Columbian passport, Applicant surrendered it to her security manager. (Answer, Enclosure 1) Also, she renounced her Columbian citizenship. (Answer, Enclosure 2) After becoming a U.S. citizen, Applicant never used her Columbian passport to travel anywhere other than Columbia. (Tr. 20)

Having worked in Columbia before immigrating to the United States, Applicant accrued retirement benefits. They total \$400. (Tr. 74) She closed her Columbian bank account when she immigrated. Applicant's has approximately \$70,000 invested in her U.S. retirement account. Applicant and her husband own the home where they live. (Tr. 75-77)

Applicant is active in her community. She is an avid runner who participates in charity races. Also, she volunteers at a nursing home, working with residents with dementia, and she is involved in "therapeutical horse riding," an avocation that enables disabled children to learn horseback riding. (Tr. 48)

For nearly 50 years, the Columbian government has been engaged in an intense armed conflict with insurgent and paramilitary groups involved in widespread, illegal drug production and trafficking. (HE I at 1) On November 14, 2014, the U.S. Department of State issued a travel warning to U.S. citizens about the dangers of travel to Columbia, and specifically, the potential for violence by terrorists and armed criminal gangs. (HE IV at 1) Terrorists and other criminal organizations continue to kidnap and hold people of all nationalities and occupations for ransom. (HE VII at 2-3)

The United States is Columbia's largest trade partner. (HE I at 1) The United States supports Columbia's ongoing progress in addressing its security, economic development, and governance challenges.*(Id.)*

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline C, 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 be prone to provide information or make decisions that are harmful to the interests of the United States" (AG ¶ 9). Here, Applicant's possession of a Columbian passport, and use of it to travel to Columbia after she became a U.S. citizen triggers the application of AG ¶ 10(a), "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member."

Applicant used her Columbian passport to enter the country because she was instructed to do so by a Columbian customs officer. Moreover, she was not aware of the

adverse security implications involved with travelling with a foreign passport until she began the security clearance process. Since then, she has renounced her Columbian citizenship and surrendered her Columbian passport to her office's security manager. AG ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," applies. Applicant has mitigated the Guideline C security concern.

Guideline B, Foreign Influence

The security concern under this guideline is set forth, as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6)

Columbia is plagued by narco-terrorists and other criminal gangs that have been known to engage in extortion and kidnapping. The problem is so pervasive that the United States issued a travel warning in November 2014. Under these circumstances, Applicant's close relationship with her parents and older brother, with whom she visits in Columbia twice per year, trigger the application of AG ¶ 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."

Applicant's older brother, a psychiatrist, is not an employee of the Columbian National Army. Rather, he has a contract with them, together with several other entities, to provide counseling. I conclude that this business relationship does not augment the heightened risk.

Applicant is not close to her younger brother, a Columbian citizen who lives in Canada. Her communication with him is infrequent. AG ¶ 8(e), "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," applies.

Applicant has been living in the United States for more than ten years, and has been a U.S. citizen for seven years. When she married her first husband and decided to immigrate, she spoke no English. However, her desire to assimilate was so strong that she was willing to leave a professional job in Columbia to come to the United States and work as a mall sales clerk and waitress, while she learned English. Now, she is again working in her professional field of expertise. She is a talented, hardworking employee

who has developed a network of friends and contacts in the U.S. through her membership in professional organizations, and her active participation in charitable activities. Together with her husband, she is a homeowner, and she has a generous amount of money invested in her retirement account. Any remaining financial interests in Columbia are nominal, Under these circumstances, I am confident that given her deep and longstanding relationships and loyalties in the United States, she can be expected to resolve any conflict of interest in favor of the U.S. interest. (AG ¶ 8(b)) Applicant has mitigated the foreign influence security concern.

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(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Since immigrating to the United States and becoming a U.S. citizen, Applicant's career has flourished and she has thoroughly immersed herself in the community. I conclude Applicant's relationships and loyalties in the United States outweigh the heightened risk generated by her relatives who are citizens and residents of Columbia.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1(a):	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a - 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge