



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



In the matter of:)	
)	
)	ISCR Case No. 15-00458
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: William Savarino, Esq.

02/19/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On July 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 28, 2015. A notice of hearing was issued on November 12, 2015, scheduling the hearing for December 11, 2015. Government Exhibits (GX) 1 - 3 were admitted into evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant Exhibits (AX) A-G, which were admitted without objection. The transcript was received on December 22, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Colombia. Applicant did not object, and the documents proffered in support of the request were labeled Hearing Exhibit I and entered into the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline C and under Guideline B with explanations.

Applicant was born in Colombia in 1985. He received his undergraduate degree from a university in Colombia. In 2009, he came to the United States. He became a naturalized citizen in 2010. He studied at an American community college for a time. He is married to a Colombian citizen, who is a permanent resident, and lives with him in the United States. He completed a security clearance application in 2014. He is a software developer with his employer. (GX 1)

FOREIGN PREFERENCE

The SOR alleges under Guideline C that Applicant possesses a current Colombian passport that was issued on November 11, 2008 and expires on November 13, 2018. It further alleges that he used the Colombian passport on two separate occasions between May and December 2011, after having become a naturalized citizen in 2010.

Applicant possesses a U.S. passport which was issued in 2010. He also had his Colombian passport when he came to the United States. When he traveled to Colombia in May and December of 2011, he used his Colombian passport. (Tr. 49) The purpose of the two trips was to see the woman who would become his wife and his family. At the time, he had both passports. He stated that he presented both to the Immigration Officer and was told that he only needed the Colombian passport. (Tr.50). At the time, he did not have a security clearance or a pending application for a security clearance. He had no idea that using the foreign passport could be a significant issue at a later time. After receiving the SOR, Applicant was advised that he should destroy his Colombian passport. Applicant has now surrendered his Colombian passport to the Facility Security Officer (FSO)

Applicant's 2014 security clearance application notes that he considered himself a dual citizen of Colombia and the United States from 2009 to the present. (GX 1) When asked if he would renounce his Colombian citizenship, he stated that "absolutely" he would. (Tr. 52) He understands that if he would travel to Colombia, he would need a Colombian passport. He has no plans to do so. If he wants to see his mother, he would request that she visit him in the United States. (Tr. 66)

FOREIGN INFLUENCE

The SOR alleges under Guideline B (1.a-1.c) that Applicant's mother, step-father, and his half-brother are citizens and residents of Colombia. Under SOR 1.d, it alleges that his spouse is a citizen of Colombia.

Applicant's mother is a citizen and resident of Colombia. She was not married to Applicant's biological father. She is now married to Applicant's stepfather. She works in her home now. She retired after working for a furniture company. Applicant provided his mother with some money to help her remodel her house last year and he believes it was about \$5,000. That was a one-time occurrence. In years past, he gave her about \$200 or \$300 a month. (Tr. 55) In the past, he called her daily. He has reduced the contact with his mother. (Tr. 58)

Applicant's stepfather is retired due to an eye injury. (Tr. 57) He never worked for the Colombian government. He knows nothing about Applicant's work. Applicant does not contact him. If he calls his mother and his stepfather answers, he would say hello, but does not engage in a lengthy or substantial conversation. Applicant's half brother has no contact with Applicant. Applicant spoke to him once on the phone. (Tr. 61)

Applicant's spouse is a permanent resident and plans to apply for U.S. citizenship as soon as is allowed by law. She married Applicant in 2012 and believes that she can submit her application for U.S. citizenship next year. (Tr. 45) Her family lives in Colombia. She has two brothers and two sisters in Colombia. Her parents are deceased. (Tr. 62) Applicant's wife does not speak regularly to her siblings. None of them are involved with the Colombian government. Applicant's wife may call them once a month. They have never visited the United States. Neither Applicant or his wife provide any financial support for them. (Tr. 63)

Applicant's father is a U.S. citizen who lives in the United States. He sponsored Applicant to come to the United States. Applicant's father has lived in the United States since about 1994. He traveled between the United States and Colombia for work.

Applicant has no ties to the Colombian government. He has not served in the Colombian military. He has no financial interests in Colombia. He does not maintain contact with any other relatives in Colombia. Applicant and his wife are in the process of buying a home. He earns about \$118,000 a year. His wife has two jobs.

Applicant's program manager testified that Applicant is a good worker who is always willing to accept additional responsibility. He is a lead a project member currently and maintains deadlines that are challenging. He is aware of and observant of rules and regulations about safeguarding government information. In sum, he is reliable, dependable, and trustworthy. (Tr. 20-21)

Applicant's Facility Security Officer (FSO) testified that Applicant submitted his Colombian passport to him, and it was shredded in Applicant's presence. (Tr. 31) This occurred in April 2015.

At the hearing, Applicant stated that he is a team lead for one of the company's largest projects. He has been employed with the company for almost two years. (Tr. 48) He does not discuss his work with his wife or any family members. His wife does not know anything about the security clearance process. He stated that after his security trainings and briefing, he learned that one should not discuss anything about his work.

ADMINISTRATIVE NOTICE

Colombia

Colombia is a constitutional, multiparty republic. Its last presidential election was considered by observers to be free and fair. There have been significantly fewer instances of security forces acting independently of civilian control than in past years. However, impunity and an inefficient justice system subject to intimidation limits Colombia's ability to prosecute individuals accused of human rights abuses. The availability of drug-trafficking revenue often exacerbates corruption.

The United States has long enjoyed favorable relations with Colombia. The United States provides substantial support to the Colombian government's counter-narcotics efforts, and encourages the government's efforts to strengthen its democratic institutions in order to promote security, stability, and prosperity in the region. Although the government's respect for human rights continues to improve, serious problems remain, including unlawful and extrajudicial killings, forced disappearances, insubordinate military personnel who collaborate with criminal groups, and mistreatment of detainees. Illegal armed groups and terrorists groups commit the majority of human rights violations-including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

Violence by narco-terrorist groups and other criminal elements continues to affect all parts of the country. Citizens of the United States and other countries continue to be victims of threats, kidnapping, and other criminal acts. The United States has designated three Colombian groups - the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) - as foreign terrorist organizations. The U.S. State Department has advised travelers (U.S. citizens) about the dangers of travel to Colombia, and specifically the potential for violence by terrorists groups and armed criminal gangs called "BACRIMS" in all parts of the country.

Any person born in Colombia may be considered a Colombian citizen, even if never documented as such, and dual U.S.-Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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 ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a naturalized U.S. citizen in 2010. He used his Colombian passport in 2011 when he visited Colombia. In 2011, when he used his Colombian passport, he also had a U.S. passport. AG ¶ 10(a)(1) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

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

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

In 2015, Applicant surrendered his Colombian passport to his FSO when he learned that it was an issue for obtaining a security clearance. The passport has been shredded. Applicant has no intention of traveling to Colombia or renewing his passport. He is willing to renounce his Colombian citizenship and will obtain guidance from his FSO. Applicant's FSO testified at the hearing and confirmed this fact. At the time of the 2011 travel, Applicant did not have a security clearance or have any reason to believe use of his Colombian passport raised a security concern. No one advised him that this could be an issue. AG ¶ 11(b and e) apply. Applicant has mitigated the security concerns under the foreign preference guideline.

Guideline B, Foreign Influence

The security concern under Guideline B is set out in AG ¶ 6 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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Finally, “sharing living quarters with a person, or persons, regardless of citizenship status, if the relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” can be a disqualifying condition. AG ¶ 7(d)

Applicant’s mother, stepfather, and stepbrother are citizens and residents of Colombia. Applicant maintains some contact with them. He provided some financial support for his mother. Applicant’s wife lives with him in the United States. Applicant’s wife, who is a Colombian citizen, maintains some contact with her siblings. Her parents are deceased. Security concerns could arise in connection with the potential that hostile forces might seek classified information from Applicant by threatening harm or offering benefits to Applicant or his spouse’s relatives in Colombia. Based on this evidence, AG ¶¶ 7(a), 7(b) and 7(d) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a), 7(b) and 7(d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the Government does not have the initial burden of disproving mitigating conditions. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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).

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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a prima facie security concern to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant’s burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for applicant. Colombia is a country with strong, and cooperative ties with the United States.

Security concerns under this guideline can be mitigated by showing that “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 U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant’s mother, stepfather and stepbrother have no connection to the Colombian government. Colombia is a republic, with strong and cooperative ties with the United States, especially in the area of counter-narcotics. There is no evidence that Colombia is known to target U.S. citizens to obtain protected information. While there remains the possibility of terrorist activity it is not of significant magnitude in this situation to merit denial of Applicant’s security clearance.

Similarly, AG ¶ 8(b) can mitigate concerns when “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant has loyalties to the United States. He is married to a Colombian woman who is now a permanent resident of the United States. She plans to apply for U.S. citizenship next year. He has his profession here in the United States. He is a naturalized citizen. His father is a U.S. citizen who lives in the United States. Applicant’s loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated under AG ¶ 8(b)

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 an 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. The factors weighing towards approval of Applicant's security clearance are noteworthy; and more substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or committed any security violations. He is a naturalized U.S. citizen and is married to a woman who plans to apply for her U.S. citizenship next year. His father is a U.S. citizen who has lived in the United States since 1999. His loyalty to the United States is not an issue. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or his family or his spouses' family.

A Guideline B decision concerning Colombia must take into consideration the geopolitical situation and dangers there. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007). Colombia is a friendly country with the United States; however, Colombia's government has to contend with the combined terrorist activities of left-wing guerillas, and drug cartels. Applicant's mother, stepfather, and stepbrother live in Colombia. They are citizens of Colombia. They are potential targets of terrorists who may attempt to pressure or coerce Applicant by threatening his relatives living in Colombia. I conclude that the possibility that terrorists in Colombia would coerce him into providing classified information, or he would provide classified information through affection for Colombia is minuscule.

Applicant has received praise from his employer concerning his work. He has received security training and briefings. He has complied with rules and regulations. As soon as he learned that having his Colombian passport would hinder his ability to secure a clearance for his work in the United States, he surrendered it to the proper authorities.

He is establishing his life in the United States. Applicant's family has no connection with the government of Colombia. Considering all the evidence, I conclude Applicant has met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance.

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 preference concerns and foreign influence concerns are mitigated. The Applicant has carried his burden. Eligibility for access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline B :	FOR APPLICANT
Subparagraphs 1.a-d:	For Applicant
Paragraph 2, Guideline C :	FOR APPLICANT
Subparagraphs 2.a-b:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge