



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



In the matter of:)	
)	
)	ISCR Case No. 15-01232
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 5, 2015, the Department of Defense (DOD) 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 7, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2016, scheduling the hearing for February 1, 2016. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on February 9, 2016.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. A letter from Department Counsel to Applicant was marked Hearing Exhibit (HE) I.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Colombia. The request was not admitted in evidence but was included in the record as HE II. Applicant did not object, and I have taken administrative notice of the facts contained in HE II. Of note is that Colombia is one of the oldest democracies in Latin America. The United States is Colombia's largest trading partner. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems. Any person born in Colombia may be considered a Colombian citizen, and dual U.S.-Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

Findings of Fact

Applicant is a 31-year-old engineer employed by a defense contractor. She has worked for her current employer since 2014. She is applying for a security clearance for the first time. She has a bachelor's degree. She is married with a child.¹

Applicant was born in Colombia to Colombian parents. She has never known her father. When Applicant was a child, her mother married a native-born U.S. citizen who was a member of the U.S. military. Applicant and her mother moved to the United States with Applicant's stepfather when Applicant was about six years old. Applicant attended primary school, high school, and college in the United States.²

Applicant has two half-siblings who were born in the United States. Her two half-siblings are serving on active duty in the U.S. military. Applicant's mother became a U.S. citizen in 2003. Applicant became a U.S. citizen in 2009. Applicant's husband is a native-born U.S. citizen. He works for a defense contractor and holds a security clearance.³

Applicant's grandfather, aunt, and cousins are citizens and residents of Colombia. Her grandfather is elderly and ill. Applicant talks to her aunt about every

¹ Tr. at 18-19, 34; GE 1, 2.

² Tr. at 19-21, 28, 38; Applicant's response to SOR; GE 1, 2.

³ Tr. at 30-31, 38, 40-41; GE 1, 2.

other month. About five to six times a year, she sends her aunt between about \$100 and \$200. Her contact with her other relatives is primarily through social media. There is no indication that any of her family members have ties to narcotics trafficking, criminal gangs, or Colombia's intelligence services. None of her Colombian relatives have visited the United States.⁴

Applicant's mother and stepfather took the family to Colombia for a visit when Applicant was 11 years old. There was difficulty departing Colombia because Applicant had a different last name than her stepfather. It was months before she was permitted to depart Colombia.⁵

Applicant did not consider herself a dual U.S.-Colombian citizen. She thought when she became a U.S. citizen that she was no longer a Colombian citizen. She visited Colombia in 2010. She traveled on her U.S. passport, but she also brought the expired Colombian passport that she had since she was a child. She was told by immigration officials that she should have a Colombian passport. She decided to renew the Colombian passport so that there would be no problems when she departed Colombia.⁶

Applicant has not returned to Colombia, and she has not used the Colombian passport since she obtained it in 2010. She surrendered the Colombian passport to her facility security officer (FSO) in January 2016. She plans to initiate the process of renouncing her Colombian citizenship.⁷

Applicant credibly stated that her allegiance lies with the United States. She stated that she would report any attempt to use her family in Colombia against her.⁸

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 are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

⁴ Tr. at 22-27; Applicant's response to SOR; GE 1, 2; AE B.

⁵ Tr. at 21; GE 1, 2.

⁶ Tr. at 21-24; Applicant's response to SOR; GE 1, 2.

⁷ Tr. at 22-25; Applicant's response to SOR; GE 1, 2; AE A.

⁸ Tr. at 23-24, 28-33; GE 2.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 safeguard 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 EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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; 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's grandfather, aunt, and cousins are citizens and residents of Colombia. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems.

Applicant's contacts in Colombia create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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 U.S.; and
- (b) 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.

I considered the totality of Applicant's ties to Colombia, but they are outweighed by her deep and longstanding relationships and loyalties in the United States. Applicant never knew her father. Her mother married a member of the U.S. military and moved to the United States when Applicant was a child. Her half-siblings were born in the United States and serve in the U.S. military. Her husband is a native-born U.S. citizen who works for a defense contractor and holds a security clearance. They have a child. Applicant has a good job with a defense contractor. She credibly stated that she would report any attempt to use her family in Colombia against her.

I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Colombian government, a terrorist group, a criminal organization, or a drug cartel. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(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; and

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

Applicant obtained and possessed a Colombian passport while a U.S. citizen. AG ¶ 10(a) is applicable. The renewal of her Colombian passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of her Colombian citizenship.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

(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; and

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

Applicant exercised her Colombian citizenship by obtaining a Colombian passport while a U.S. citizen. Therefore, her dual citizenship is not based solely on her parents' citizenship or birth in a foreign country. AG ¶ 11(a) is not applicable. She

surrendered the passport to her FSO. She plans to initiate the process of renouncing her Colombian citizenship. AG ¶¶ 11(b) and 11(e) are applicable.

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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. I considered Applicant's ties to Colombia, but they are far outweighed by her deep and longstanding relationships and loyalties in the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence and foreign preference security concerns.

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
Subparagraphs 2.a-2.d:	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.

Edward W. Loughran
Administrative Judge