

Applicant is a strategic planner for a defense contractor. He was born a dual national in 1972 in Colombia to an American mother and a Colombian father. Applicant voted in elections after becoming a U.S. citizen. Since then, he has formally renounced his Colombian citizenship and surrendered his Colombian passport. His mother and father, who still live in Colombia, have no connection or association with the government of Colombia. They do not create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 16, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated February 4, 2007, Applicant responded to the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Material (FORM) dated May 23, 2007.² Applicant received the FORM on May 29, 2007, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant submitted a written response on July 12, 2007.³ The case was assigned to me on September 10, 2007.

FINDINGS OF FACT

Applicant admitted all of the allegations under Guideline B. He also admitted allegations under Guideline C with the exception of 1.e. After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 35-year-old strategic planner for a defense contractor. He was born in Colombia to an American mother and a Colombian father, thus acquiring his American citizenship. He studied in a British school where he received his International Baccalaureate Diploma in Colombia. After graduation, Applicant studied in Colombia receiving his undergraduate and graduate degree from the Universidad in the area of architecture and urban planning. After receiving his degrees, he worked in the academic arena in Colombia. The university has no political or religious affiliation. In fact, the university was founded by his family and relatives to help low-income students gain a higher education and benefit from educators who were trained in the U.S. Applicant was a professor, dean and administrator of the university.⁴

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended, modified and revised. (Directive).

²The government submitted five items in support of its contentions.

³The government granted Applicant an extension of time to submit additional materials.

⁴Item 2 (Applicant's sworn answer, dated February 5, 2007).

When Applicant worked in Colombia for the university from 1996 until 2004, he was not involved in defense work. He was a professor of art and architecture. He resigned from his position in 2002 and moved to the U.S. to become a research fellow, performing research on global poverty. As a leader in the professional community (Member of American Institute of Architects), he trains professionals to make changes in a global economy. He has worked in several U.S. government projects to determine strategies to improve the use of citizen tax money. He recently completed an advanced degree in a well-known American university, receiving an honorary award.⁵

Applicant is married and has two children. His wife is a Colombian citizen, who is in the process of applying for U.S. citizenship, resides in the U.S. with her husband. She is a legal permanent resident of the U.S. Applicant's two children are U.S. citizens. Applicant and his wife moved to the United States in 2002. When Applicant moved to the U.S. with his wife and two sons, they bought a house.⁶

Applicant's father is a citizen and resident of Colombia. His mother is an American who resides in Colombia. They are both academics. Applicant's brothers and sisters live and work in the United States. His brother works for a satellite connection provider and is Director of Government Relationships. His sister is a professor and does research work on cancer and related fields. His other brother is a director in an accounting team for a federal agency.⁷

Applicant's uncle was a senator in Colombia from 1999 until 2003. He served his four-year term but is no longer a senator. During that time, Applicant helped his uncle reach the Colombian senate by proposing funds for marketing strategies and budget allocations. He stressed that this help was more of an occasional brainstorming activity and not a decision making position. Applicant also was listed as a third alternate candidate for a position to the House of Representatives in 1998. He was not elected. Since then, he has not participated in politics.⁸

Applicant exercised his Colombian citizenship by voting in the Presidential elections in 2006. He voted because he believes in democracy and that election was the first time in the country's democratic history that a president's reelection was possible. He did not know that it would have any impact on a security clearance. He admits that every four years he voted in major Colombian elections.

On January 26, 2005, Applicant completed a security clearance application.⁹ During a September 14, 2006 interview with a Department of Defense investigator, Applicant stated he was willing to renounce his dual citizenship. When he became aware that his dual citizenship was an issue, Applicant surrendered his Colombian passport, and formally renounced his citizenship on July

⁵Applicant Exhibit C (Certificate, dated May 2006).

⁶Applicant's Response to FORM, dated July 12, 2007.

⁷Item 2, *supra* at note 2.

⁸*Id.*

⁹Item 4 (Security Clearance Application, dated January 26, 2005).

6, 2007, as verified by the Facility Security Officer.¹⁰ By surrendering his passport, he surrenders his ability to vote in Colombian elections. As a dual citizen Applicant was obligated to use his Colombian passport to enter Colombia.

Applicant works as an associate in a large U.S. company involving clients such as Department of Homeland Security, Department of State, Center for Disease Control, and Nuclear Regulatory Commission. His work is related to large U.S. projects advising his clients of

Applicant's work was essentially academic and not coerced or pressured by any group. He was not in a position of a conflict of interest between the U.S. and Colombia. He has never been linked to any terrorist or illegal group. His work is linked to academic research that fosters knowledge, openness and creativity. The government conceded in its argument that Applicant would not be subject to coercive foreign influence by the Colombian government.

I take administrative notice of the following adjudicative facts from the U.S. Department of State reports submitted by the government.¹¹ Colombia is a developing country of 46 million people in South America. It has a free market economy with major commercial and investment ties to the United States. Colombia maintains an excellent extradition relationship with the United States. The United States has continued close cooperation with Columbia under the current administration. Recognizing that terrorism and the illicit narcotics trade in Colombia is inextricably linked, the U.S. Congress granted new, expanded statutory authorities in 2002 making U.S. assistance to Colombia more flexible in order to better support the President's unified campaign against narcotics and terrorism. Colombia has a democratic government. Colombia and the U.S. enjoy friendly relations in economic, defense, and political matters. The U.S. State Department reports that, although serious problems remained, the Colombian government's respect for human rights has improved in some areas. The threat of crime is significant in all parts of the country because of the activities of the political and drug-related terrorist groups in the country, but is somewhat less prevalent in most urban areas. The presidential elections generally are free and fair.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹² As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person

¹⁰Letter dated July 6, 2007 from FSO to DOHA.

¹¹Item 6 (U.S. Department of State, Background Note: Columbia, March 2007); Item 5, U.S. Department of State, Consular Information Sheet: Colombia, 16 August 2006, March 2007.

¹²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

access to such information.”¹³ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁴ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁷

The revised Adjudicative Guidelines (AG) set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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. This raises a security concern under the foreign preference guideline.

¹³*Id.* at 527.

¹⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁷Exec. Or. 10865 § 7.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) 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. This includes but is not limited to: (1) possession of a current foreign passport; . . . (6); seeking or holding political office in a foreign country; and (7) voting in a foreign election*), apply in this case. Applicant voted in Colombian elections after becoming a U.S. citizen. His name was on the ballot in 1998 for a house seat in 1998. Until recently, he had a Colombian passport.

I have considered all the Foreign Preference Mitigating Conditions (FP MC), and I especially considered FP MC 11(a) *dual citizenship is based solely on parents' citizenship or birth in a foreign country*, FP MC 11(b) *the individual has expressed a willingness to renounce dual citizenship*. FP MC (e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*. Applicant was a dual U.S. and Colombian citizen because his mother is American and his father is Colombian. Applicant has not only expressed a willingness to renounce dual citizenship; he has formally surrendered his Colombian passport to the Facility Security Officer on July 6, 2007. Since he has surrendered his passport, he will no longer be allowed to vote in elections, nor will he be able to run for office. Applicant was an alternate for a seat ten years ago. Applicant and his wife and sons now live in the U.S., and have a home here. Applicant's work is in the U.S. Thus, a permanent behavioral change has occurred. Applicant's commitment is to his work and family in the U.S.

Applicant has mitigated the security concerns under Guideline C, Foreign Preference. Thus, I find in favor of Applicant for those allegations.

Guideline B, Foreign Influence

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. This raises a security concern under the foreign influence guideline. 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.

I considered Foreign Influence Disqualifying Condition (FI 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*; 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*; . . . and 7(d) *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*). Applicant's mother and father live in Colombia. His wife lives with him. Although the record does not reflect whether his wife has contact with family members in Colombia, commonsense dictates that if he has contacts with his parents, most likely his wife has similar contacts. Thus, the government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove

a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

I considered Foreign Influence Mitigating Conditions (FI MC) 8(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*, and (FI MC 8(a) *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 that 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.* Applicant's parents have no connections to the Colombian government. Columbia is a republic, with strong and cooperative ties with the U.S., especially in the area of counter-narcotics. Colombia's government generally respected the human rights of its citizen's, with some caveats that would also apply to many other friendly countries and allies. There is no evidence that Colombia is known to target United States citizens to obtain protected information. While there remains the possibility of terrorist activity it is not linked to classified information. It is extremely unlikely that Applicant will ever be placed in a position of having to choose between the interests of his mother, father or uncle, or the government of Colombia and the interests of the United States. The government has even conceded this point in its argument of the case.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Substantial mitigating evidence weighs towards grant of Applicant's security clearance. Applicant is a mature person. He lives in the U.S. with his wife and two sons. There is no evidence he has ever taken any action that could cause potential harm to the U.S. He takes his loyalty to the U.S. seriously, and works with U.S. agencies to develop strategies for democracy in the U.S. The U.S. and other federal agencies have benefitted from his work. His ties to the U.S. are strong.

Some circumstances weigh against Applicant in his whole person analysis. Colombia is a friendly country with the U.S.; however, Colombia's government has to contend with the combined terrorist activities of left-wing guerrillas, the rise of paramilitary self-defense forces in the 1990's and the drug cartels. His father and mother still live in Colombia. They are a potential target of terrorists who may attempt to pressure or coerce Applicant by threatening his relative living in Colombia. Nevertheless, 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's entire professional life has been devoted to the spread of knowledge and information to enhance global democracy. He exercised his universal democratic rights in his country as a dual citizen. He believes in democratic principles and has worked to increase those principles in Colombia. As soon as he learned that having his Colombian passport would hinder his ability to

secure a clearance for his work in the U.S., he surrendered it to the proper authorities. Many members of his family are U.S. citizens. He has now established his life and work in the U.S. His wife is soon to become an American citizen and his two sons are U.S. citizens. Applicant's family has no association with the government of Colombia. I find there is almost no potential for pressure, coercion, exploitation or duress. Applicant is an acceptable security risk. 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.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to foreign preference and foreign influence. The evidence leaves me without doubts as to Applicant's security clearance and suitability.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a-g: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a-h: For Applicant

DECISION

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

Noreen A. Lynch

Administrative Judge